

An Examination of the Tenancy Agreement as a Shield in Property Management in Nigeria

Dabara I. Daniel (Corresponding author)

Estate Management Department, Federal Polytechnic Ede

PMB 231, Ede, Osun State, Nigeria

Tel: 234-80-2561-5074 E-mail: dabara2000@yahoo.com

Olatoye Ojo

Estate Management Department, Environmental Design Management Program

Awolowo University Ile-Ife, Osun State, Nigeria

Tel: 234-83-503-1679 E-mail: olatoye_ojo@yahoo.com

Okorie Augustina

Estate Management Department, Federal Polytechnic Ede

PMB 231, Ede, Osun State, Nigeria

Tel: 234-80-5020-3661 E-mail: okaugusta@yahoo.com

Received: May 3, 2012

Accepted: June 5, 2012

Published: July 15, 2012

doi:10.5430/ijba.v3n4p54

URL: <http://dx.doi.org/10.5430/ijba.v3n4p54>

Abstract

The purpose of this study is to critically examine tenancy agreement as a shield in property management in Nigeria. Renting is an essential component of a healthy housing system of a nation. It is observed that for most tenants, signing their tenancy agreement will be their largest financial commitment during the year; hence it is an issue not to be taken lightly. The rental housing sector in Nigeria is bedeviled with acute shortage of housing units (said to be between 14-17million units) this in turn impacts negatively on the sale and rental markets. The study revealed that tenancy agreement gives protection to the stakeholders in the rental housing sector only on paper. This is because many rental agreements between landlords and tenants in Nigeria are personal and informal in nature, concluded outside of any government regulatory framework or formal legal system. This informality and lack of official documentation makes going to court an extremely impractical way of dealing with landlord-tenant conflicts. The provisions of the rent control and recovery of premises laws in Nigeria have been held more in disobedience than in obedience for many years. For effective regulation of the rental property market in Nigeria, it was recommended among others, that a strategic approach to developing a workable rental housing policy should first acknowledge the rental arrangements which already exist and then find flexible, realistic ways to regulate and enforce them.

Keywords: Landlord, Property manager, Property management, Rent, Tenant, Tenancy agreement

1. Introduction

Property owners, property managers, governments and investors in the real property sector the world over, have invested enormous resources in developing model leases, tenancy agreements, mortgages, purchase and sale agreements, licenses and other instruments that are routinely used in connection with the development and operation of land and landed properties. The rights and obligations contained in these instruments are of great practical use when they are enforced in an efficient and effective manner (Andrew, 1987; Gilbert, 2008). The vast bulk of rental housing across the world has been provided by the private sector, and increasingly by small investors. The exceptions are mainly found in Western Europe. In Denmark, Finland, Germany and Switzerland, some companies continue to put money into rental housing and, in France, banks, insurance companies, pension funds and real-estate companies rent out one eighth of the total housing stock. In France, about 2 million landlords own about 4.2 million dwellings, although private sector companies

still control 1.1 million units. In Canada, it has been noted that: “the small investor has always been important in the supply of rental housing.” And, in Russia, small-scale landlords seem to be on the increase (UN-HABITAT, 2006; Mondel, 2001; UN-HABITAT, 1999; Watson & McCarthy, 1998). Over 3 million households in the United Kingdom live in the private rented sector, which at current turnover rates typically means that around 2 million households seek out and sign up for a new tenancy every year. For most new tenants, signing their tenancy agreement will be their largest financial commitment during the year (Langsether et al, 2003, UN-HABITAT 2003). According to Wessel (1998) for most applicants of rented accommodation there is a lack of information available about their future landlord and their track record, and the condition of the properties available for letting. Most tenants sign a tenancy agreement with typically only a brief, largely subjective viewing of the demise property. In the world today, over one billion people are suffering the consequences of homelessness or inadequate housing. As is so often the case, Africa’s share of the misery is disproportionately large. The right to adequate housing is desperately far from being realized in the countless impoverished and underdeveloped rural areas, slums and informal settlements to be found in Africa. (COHRE, 2003)

Nigeria has one of the worst housing situations in the world. Urban drift, or movement of the population from rural areas to urban centers, has created severely congested cities, and a crushing demand for land and housing, which the Government has been simply unable to cope with. Landlords, Tenants, and Lenders have always focused on ways in which they can minimize their risk of loss and liability. In our current economic downturn, this focus is even more acute, as lenders requirements in housing financing is considered cumbersome and very difficult to access. (Olatoye, 2005; Akomolede, 2006; Ojo, 2003; Francis, 2011). The pressures arising from the shortage of housing in Nigeria (said to be between 14-17million units) is felt strongly in the sale and rental markets. Properties are generally over-valued and rental rates unjustifiable (Mabogunje, 2007; Okupe, 2002). In Nigeria, the rights of parties involved in the rental housing sector are protected by The Landlord and Tenant Act. Tenant rights primarily concern the protection against notice of termination and against unreasonable rental fees. As a main rule the landlord cannot terminate the tenancy contract without just cause, and the rental fee in new tenancy agreements shall not exceed the current market rent (Mary, 2010). Rights in the tenancy market can be defined by a number of factors. Wessel (1998) categorizes weak rights in the rental market by the following factors: renting from an employer; leasing property; subletting in apartment buildings; subletting in housing cooperative societies or shareholding housing societies; borrowing a dwelling; leasing a fully furnished dwelling and tenancy contracts with a time limit of less than 3 years.

The aim of this study is to examine tenancy agreement as a shield in property management in Nigeria; it considers the characteristics of good quality rental housing and sound landlord-tenant rental arrangements and then presents policy options to promote and regulate the rental arrangement especially for the urban poor. With this in view, the paper addresses the following questions: How does the tenancy agreement provides shield in property management? To what extend does the tenancy agreement provides protection for the landlord, tenant and property manager? What are the problems inherent in the execution of the tenancy agreement as a shield in property management? The answers to these questions are central to identifying the problems inherent in the enforcement of tenancy agreement as a shield in property management in Nigeria, as well as provision of viable recommendations that will ensure the protection of all parties in the rental housing sector in the country.

2. Theoretical Framework and Literature Review

2.1 Tenancy Agreement: Meaning, Significance, Components and Purpose

Tenancy agreement is a legal document that defines the relationship between the landlord and the tenant. This formal definition of the landlord-tenant relationship clearly states the responsibilities of the tenant to the landlord and vice versa. Agreements of this nature are usually drawn up by a real estate attorney for a fee. However, there is a trend that has started to take root in Nigeria in recent years. Many landlords now desire to keep the legal fee to themselves. They collect the attorney fee from the tenant and give the tenant a free tenancy agreement from a previous transaction or something downloaded from the internet. By so doing the landlord and tenant risk having a document that will not stand up in a court of law and that put them both at unnecessary risk. (LNREA, 2012).

The tenancy agreement essentially states the landlord and tenant’s rights concisely and without any ambiguity. The tenant’s obligations to the landlord are the landlord rights and vice versa. Unfortunately, a lot of landlords do not treat their tenants with respect. They try to run the relationship like a boss-subordinate relationship. Resulting in unfair treatment of tenants in many instances. (Segun, 2011; Francis 2009). According to UN-HABITAT (2006), there are two kinds of leases and the laws are different for each: The periodic lease (generally a month-to-month tenancy) and the lease for a definite term (a rental agreement specifying a definite rental period, generally six month or a year). The tenancy agreement which could be either oral or written is designed to protect the interests of all parties involved in the rental housing sector and should state clearly the responsibilities of the landlord and the tenant. A written tenancy

agreement is preferable and must be duly signed by all parties after reading and understanding the contents of the agreement.

The contents of a good tenancy agreement should include but not limited to the following:

- Name of the tenant(s)
- Name and address of landlord and the agent
- Property address
- Length of tenancy
- Date tenancy begins
- Length of notice required
- Amount of deposit required – detailing where it is held, when you get it back and what circumstances under which you won't get it back
- Amount of rent payable, when it is due and method of payment
- What the rent covers – does it include bills and other charges?
- Whether the property will be furnished
- Landlord and tenant responsibilities – external and structural repairs, safety etc
- Rules of tenancy – pets, subletting, lodgers, guests, usage of property etc

2.1.1 Responsibilities of the Tenant and the Landlord

The tenant:

- Pay rent, household bills and other applicable charges
- Keep the property secure at all times
- Repair any damages caused by the tenant to the property
- Abide by the rules of the tenancy, as detailed in the tenancy agreement
- Keep the property clean and tidy

The landlord:

- Repair and maintain the property
- Ensure that the property is in good working order and equipped for the tenant to move into and inhabit
- Inform the tenant when they intend on entering the property to do repairs etc
- Insure the property and all contents that do not belong to the tenant

According to LNREA (2012), a standard tenancy agreement states landlord and tenant rights as follows:

2.1.2 The Landlord's Covenants

The landlord hereby covenants with the Tenant (subject to the payment by the tenant of all the rents and other sums payable hereunder and provided that the tenant has complied with all the covenants and obligations on the part of the tenant to be performed and observed) as follow:

- i. To keep the Demised Premises structurally sound air and watertight and the exterior of the Demised Premises in good and tenantable repair and condition.
- ii. That the tenant paying the rents hereby reserved and observing and performing the several covenants and stipulations herein on the part of the tenant contained shall peaceably and quietly hold and enjoy the Demised Premises throughout the term without any interruption by the landlord or any person rightfully claiming under or in trust for the landlord.

2.1.3 Provided Always and It Is Hereby Agreed as Follows

- i. If and whenever during the term the said rents or other sums hereby reserved or made payable or any of them or any part thereof shall be in arrears and unpaid for thirty (30) days after becoming due whether formally demanded or not it shall be lawful for the landlord without any formal notice at any time thereafter and notwithstanding the waiver of any previous right of re-entry into and upon the Demised Premises or any part thereof in the name of the whole and

thereupon this tenancy shall absolutely cease and be determined but without prejudice to any rights or remedies which may have accrued to the landlord against the tenant in respect of any breach of any of the covenants herein contained.

- ii. If the Tenant shall fail to pay the rents or any other sum due under this Tenancy whether formally demanded or not the Tenant shall pay to the Landlord interest on such rent or unpaid sum at the Bank interest rate prevailing on the last day of the last year of the Term calculated up to the date on which they are actually paid and such interest shall be deemed to be rents due to the Landlord.
- iii. Nothing in the preceding clause shall entitle the Tenant to withhold or delay any payment of the rents or any other sum due under this Tenancy after the date upon which they fall due or in any way prejudice affect or derogate from the rights of the Landlord in relation to such non-payment including (but without prejudice to the generality of the above) under the proviso for re-entry contained in this tenancy.
- iv. The Rent herein paid is subject to review at the expiration of the two-year term granted and subsequent renewals thereafter shall be done annually and shall be determined at the prevailing market rental value of similar properties within the neighborhood.
- v. Three (3) months before the expiration of the term, the landlord and the tenant shall carry out joint inspection of the Demised Premises. After such inspection, the landlord shall cause to be served on the tenant a notice in writing indicating any repairs or renovation (if any) which need to be done or any defect, decay or want of repair found in breach of the covenants contained in the tenancy and requiring the tenant to execute the repairs or remedy the defect, decay or want of repair immediately.

If the Tenant does not proceed diligently with the execution of the repairs within 21 days after service of the said notice the Landlord may (but without prejudice to any other right or remedy) enter the Demised Premises with all necessary workmen and appliances and execute the repairs and the cost of the repairs shall be a debt due to the Landlord under this Tenancy agreement.

You will notice that the agreement above, which is a section of a valid lease agreement, states the obligation of the landlord to the tenant. In simple language, the landlord covenants to . . .

- 1). Ensure the property is structurally sound and in good condition and
- 2). Allow the tenant to enjoy his stay in the rented apartment with minimal disturbance, if any

However, the next section consolidates the landlord rights by using the words, "provided always . . .".

This means that the landlord's covenant to the tenant is conditional. That is, dependent on the tenant meeting certain obligations (LNREA, 2012).

2.1.4 Tenant's Covenants

The Tenant covenants with the landlord as follows:

- i. To pay the rent and other sums and charges levied in respect of the demised Premises herein mentioned at the times and in the manner herein provided and not to exercise any right or claim to withhold rent or any right or claim to legal or equitable set off.
- ii. To pay all rates taxes assessments (including tenement and water rates) which are now or during the term shall be charged assessed or imposed upon the Demised Premises or any part thereof or on any occupier thereof or the proper proportion of such rates, taxes assessments attributable to the Demised Premises.
- iii. To pay promptly all charges for electricity, telephone and other services consumed or used at or in relation to the Demised Premises during the Term and at the end of the Term to provide evidence of payment of all the bills.
- iv. At all times to keep the interior of the Demised Premises and the appurtenance thereof including the doors, windows and other glass fixtures, fittings, fastening wires, waste, water drain and other pipes and sanitary and water apparatus therein and the painting and decoration thereof in good and substantial repair and condition throughout the Term (except reasonable wear and tear) and to replace from time to time all Landlord's fixtures and fittings in the Demised Premises which may be or become beyond repair at any time during or at the expiration of the Term.
- v. To repaint as and when necessary and otherwise keep in a good state of decorative condition the internal walls and other surfaces in the Demised Premises including doors and window frames and to paint in a proper and workmanlike manner with good quality paint to the satisfaction in all respects of the Landlord such parts of the interior of the Demised Premises as have previously or usually been or ought to be so treated immediately before giving up possession of the Demised Premises whether upon the termination or expiration of the Term.

- vi. Not to make any alteration or addition to the Demised Premises without the prior written consent of the landlord (such consent not to be unreasonably withheld).

2.2 Property Management and the Property Manager in Nigeria

The Nigerian Land Use Act of 1978 statutorily empowers the Estate Surveyor and Valuer to act as agent in transactions relating to land and landed properties. Estate surveyors render many professional services; these include: valuation for all purposes, estate agency, property management, facilities management, property marketing, property development appraisal, and environmental management. In practice, the estate surveyors carry on property management services which include selection of tenants, acceptance of rent, responding to and addressing maintenance issues, advertising vacancies for letting, reviewing rent and representing the landlord before courts of competent jurisdiction in ejecting defaulting tenants, amongst other services. In addition to managing income and expense related activities, estate surveyors manage construction, development, repair and maintenance of a property (Chika, 2008). Real estate agency is a process that helps to build the bridge that exists between estate owners and buyers. Estate agents help to market properties to the public and get tenants and buyers for their clients. Funmilayo and Olatoye (2011), asserted that in real estate agency, the real estate agent's reputation is the most important thing that affects quality delivery in real estate agency in Lagos metropolis. It is quite disheartening, as observed by Aroloyin and Olatoye (2011) that the real estate agency market in Nigeria has recently seen other professionals and even people without formal training in any related discipline intruding into real estate related services. It is quite unfortunate that most landlords engage the services of these intruders rather than qualified estate surveyors and valuers. The incursion of these quacks breeds serious problems in the Nigerian rental housing sector.

In Nigerian urban areas (particularly Port Harcourt, Abuja, Warri, and Lagos), estate surveyors are constantly faced with great challenges posed by both tenants and landlords. Some tenants after the expiration of the initial advance rent payment of one to three years, the problem of collection of subsequent rents sometimes sets in. Most prospective tenants who were usually eager to meet the terms, conditions and requirements stipulated in the tenancy agreement, often become recalcitrant no sooner than they had taken possession of the accommodation (Oni, 2010). The estate surveyor consequently faces problem of managing bad tenants and the blame is put squarely on him by the landlord. He comes under pressure to continue having the landlord as his client while encountering problem of managing the bad tenant. The landlord often complains about the estate surveyor's wrong decision to select bad tenants into occupation of the property, even when the landlord himself had played prominent role in selecting and approving the tenant. The last option open to an estate surveyor may be ejection of the tenant. Process of ejection from writing statutory notices, instructing a lawyer to take out a writ, and attending court proceedings is time consuming. The process involves time, monetary and non-pecuniary costs sometimes borne by the estate surveyor, where the landlord refuses to bear such costs. The time and energy that could be spent on more rewarding professional assignments are spent on attending court sittings which may last up to twenty-four months in Lagos. The initial celebrations of a done deal in form of agency fees collected soon turn to despair and great concern as such fees are sometimes spent on writing rent demand notices, letters and reminders, transportation, and attending court sessions (Oni, 2010). In the opinion of Akomolede (2006), it is better not to let a property than let it to a difficult tenant. He suggested that ability and willingness to pay required rent, suitability of the tenant to the property, ability and willingness to meet the terms of the lease, provision of suitable reference, payment of rent, and caution deposit are paramount in selecting tenants. This assertion was supported by Udo-Akagha (1981) and Ojo (2003) who stated further that estate surveyors encounter problems with difficult tenants and that they cautiously go about selecting tenants based on prestige and economic climate at the time of transaction. Relating the success of management of property and type of tenants, Brzowski (2008) opines that landlord and agent's success depends on screening of tenants. In Bello (2008), tenant's ability to pay rent and observe other covenants in tenancy agreement are paramount considerations for judging whether they are good or bad. Estate surveyors sometimes find it tougher to deal with difficult corporate tenants especially when they default in rent payment and the need to eject them arises; they have resources to engage experienced lawyers to frustrate ejection processes. Also, the decision to rate a particular tenant over the others is done basically by intuition, without scientific measure and technique to actually predict really good prospective individual or corporate tenant (Oni, 2010). Hence, the estate surveyor is left with the herculean task of safeguarding his clients' investment, protecting his tenants' rights and ensuring that he also is fully shielded from problems arising from stakeholders in his management portfolio.

2.3 Landlords

A landlord is a person or organization that owns a property (a building, house, apartment, or plot of land) that is rented to others (tenants). This arrangement is usually under the terms and conditions of a tenancy/lease agreement or a similar legal entitlement. Across the globe, landlords include both rich and poor, individuals and companies. In Belgium,

“landlords are drawn from all income categories” although there is a higher proportion of landlords in higher income groups. But most evidence suggests that the vast majority of landlords operate on a small scale and few are rich. In Africa, most landlords have similar kinds of backgrounds to that of their tenants except that they tend to have lived in the city longer and are a little better off. In Mali, homeowners tend to be “significantly wealthier than tenant households” although they are rather similar in many other respects. However, in Soweto, Johannesburg, landlords are among the poorest residents in the township. The more affluent households are either those with no backyard residents or those who accommodate only relatives or friends. In Kumasi, resident landlords tend not to be better off than their tenants and poorer than owners who do not let out rooms. Admittedly in other parts of Africa, the landlord is sometimes drawn from a different more affluent class than the tenants (UN-HABITAT, 2006)

All landlords let property to obtain an income but the reasons they do so and the strategies that they follow in generating that income are highly diverse. Clearly, for some landlords renting is a commercial exercise. They calculate the return on their capital, take any incentives that may be on offer from the government, minimize their taxable income and employ professional agents. Many landlords would argue that the real virtue of owning property and renting it out is the security it offers for the future.

Landlords in African countries include companies and individuals, rich and poor persons operating both in the formal and informal sectors, private sector and public sector housing agencies, as well as government departments. Private sector landlords include: investors who build rental units on vacant land and rent them out; investors who buy developer-built houses and rent them out; and owner-occupants who provide rental units on part of their land or within their own houses. The only difference between formal and informal sector landlords is that formal sector landlords have acquired ownership and building rights within the state’s regulatory framework, whereas informal sector landlords have not. Landlords can also be classified according to the scale of their operations. Some landlords with access to big capital may develop hundreds of rental units on various pieces of land, while others may be individual households or retired persons who operate on a very small scale, with one or two rental rooms inside or at the back of their own house. Small-scale landlords provide a large proportion of rental housing in African cities. Many landlords tend to gradually make more and more money through their rental businesses, but shift back and forth between the various categories described below, which also describe different investment scenarios (UN-HABITAT, 2006). Four types of landlords were identified by UN-HABITAT (2011), these are: Household landlords; Commercial landlords; Public sector landlords; and Employer landlords. Small-scale landlordism is sometimes the only available source of income for some landlords, renting out part of the property to tenants can be an economic lifeline, especially where there is no other income source for the household (Amole et al, 1993; Tipple et al, 1991).

2.4 Tenants

A tenant is somebody who rents a building, house, apartment, plot of land, or piece of property for a fixed period of time. This arrangement is usually under the terms and conditions of a tenancy agreement or a similar legal entitlement. For many people, the decision to rent their housing is a deliberate, reasoned choice. One reason may be because they can’t afford to buy a house, but there are other, equally important reasons why they may choose to rent: Renting lets people stay mobile and move away when work is available elsewhere, without being tied down to any particular place or to regular house payments; Renting gives people flexibility in how they manage their household budgets, moving to cheaper housing when times are hard and to better housing, when their incomes increase, or freeing up more of their earnings for more essential needs like food, education, medical care or emergencies; Renting suits people during transitory periods of their lives, when they are not yet ready to settle down in one place; Renting is convenient for households who may not want to make the long-term financial commitment that comes with buying a house, or to face the long-term costs involved in repairing and maintaining their own house; Renting allows people to send more of their city earnings home to relatives, or to invest in buying land or building a house or business back in the village. (UN-HABITAT, 2011).

Many tenants needlessly suffer grave hardships for lack of knowledge of the protections which the relevant laws confer on them. Under the Rent Control and Recovery of Residential Premises law of Lagos State - similar laws exist in virtually all the States in the country - it is unlawful for a landlord to increase house rent within an interval of three years after the last increment, and such increment must not exceed twenty percent of the old rent. A tenant can therefore refuse to pay an arbitrary increase that falls short of the above requirements, and seek remedy before a Court of law or Rent Tribunal. It follows that a tenant who neglects to pay such unlawful rent will not be liable to be ejected by the landlord even after three months of default in payment. Furthermore, a landlord who forcefully ejects a tenant commits a criminal offence and is liable upon conviction to some fine or a term of imprisonment. Such a landlord will also be liable to pay damages to the tenant if the latter takes out a civil action. The law has therefore clothed a tenant with the status of

iremmovability, even at the expiration of a subsisting term of tenancy, because at that point such a tenant is no more a contractual tenant but a statutory tenant. It is only by an order of court, upon proof by the landlord that one of the grounds for ejection provided by the law exists, that a statutory tenant may be ejected by the landlord (Segun, 2011; Francis, 2009).

2.5 Landlord-Tenant Relationships and the Tenancy Agreement

The relationship between the landlord and the tenant is based on an agreement. While their relationship is usually reasonable, some common problems are experienced in African cities: The landlords complain that their tenants don't take good care of the rental housing, pay their rent late, misbehave in general and don't understand that rising costs of utilities, maintenance and repairs make it necessary to raise the rent. The tenants complain that their landlords fail to maintain the housing properly, don't repair things when they break, charge unfairly high fees for utilities, increase the rent without warning, turn hostile when the rent is paid a little late, threaten eviction or fail to return security deposits when they move out. It is observed that the relationship between landlord and tenants in Nigeria, in most cases is not cordial (Kumar, 2001; Rakodi, 1995; Francis, 2009).

Many rental agreements between landlords and tenants in Nigeria are personal and informal in nature, concluded outside of any government regulatory framework or formal legal system. This informality and lack of official documentation makes going to court an extremely impractical way of dealing with landlord-tenant conflicts. In some cases, landlords will try to avoid problems by only accepting tenants who have been recommended by people they know. But in other cases, landlords use a different strategy and actively seek to attract strangers and outsiders, because they want to avoid being too close to their tenants to maintain a more business-like relationship, in the hopes that the tenants will take care of their rental unit, respect the rental conditions and leave when they are asked to. There can also be a "dark side" to the informal agreements between tenants and small-scale landlords, where a landlord takes advantage of the lack of a written contract to constantly raise the rent, squeeze more and more tenants into limited space, let the building deteriorate into slum conditions, or in other ways disregard the needs of tenants and the terms of their agreement. Where there is a serious shortage of low-income housing in a city, unscrupulous landlords will know that tenants have little option but to put up with exploitative and often illegal rental conditions, because they lack the resources to find better housing or challenge the landlord's actions using the legal system.

2.6 The Rental Housing Sector

Rental housing is mostly a phenomenon among low-income groups and as a temporary solution among younger households (Langsether et al., 2003). Millions of people in African cities are tenants. Rental housing may be only a partial answer to urban housing problems, but it is an important housing option – especially for the urban poor and particularly in situations where people are not ready or able to buy or build houses of their own. Rental housing is an integral part of a well functioning housing market. In spite of this, governments in Africa have done little to support the improvement of rental housing which already exists or the expansion of affordable rental housing. Rental housing markets are influenced by, and respond to, local economic and political conditions and regulatory frameworks, and operate very differently from city to city. Landlords and tenants develop and use rental housing in flexible and inventive ways to maximize the asset value of their properties and to satisfy their accommodation needs (UN-HABITAT, 2011).

In most developed countries, the vast majority of tenants occupy accommodation that is subject to a formal contract and is covered by environmental and safety controls. In many poorer countries, most rental business lies outside the law. In housing located in illegally developed settlements and even in some central city areas, few contracts are issued, the rental housing legislation is mostly ignored and few landlords pay income tax on their rental earnings. Where there is public housing it is often sublet illegally as in Mexico, Chile and Kenya. In Jamaica: "about one-third of [public] units are illegally sublet by the original mortgagors" (UN-HABITAT, 2006)

Where formal rental contracts are issued, their nature can vary even within the same country. In the Republic of Korea there seem to be at least five kinds of rental agreement varying from renting by the day "*jjogbang*" to "*chonsei*", the arrangement by which tenants put down a large sum of money at the beginning of a contract and are repaid, interest free, at the end. "*chonsei*" contracts in the Republic of Korea, "*anticresis*" in Bolivia, "*girvi*" in Surat and "*bogey*" in Bangalore all seem to involve tenants paying nothing in rent for a tenancy of two or three years but providing the landlord with an interest-free loan. Such an arrangement is popular with owners where prices are rising quickly or when they need access to capital. In Bangalore, "*bogey*" occurs for a number of reasons: "to raise finance for house construction or improvement; to raise money for investment in an existing business; to use the money raised in more profitable activities. It is only commonly used in parts of Bangalore and by particular kinds of people" (UN-HABITAT, 2006).

Rental housing for poor families differs remarkably both within cities and across countries. UN-HABITAT (2006), has earlier identified the following kinds of rental accommodation: rooms in subdivided inner-city tenements; rooms in custom-built tenements; rooms, beds or even beds rented by the hour in boarding or rooming houses, cheap hotels or pensions; rooms or beds in illegal settlements; shacks on rented plots of land; rooms in houses or flats in lower or middle-income areas; accommodation provided by employers; public housing; and space to sleep rented at work, and in public places.

Rental housing suffers from a negative reputation: landlords are often perceived as being exploitative and only too happy to offer crowded and substandard housing at the highest price they can squeeze from the vulnerable poor. Rental housing, especially at the lower end of the market, has also often been seen as being shrouded in illegality and as contributing to inner-city decay. The frequent eviction of tenants and their mobility have likewise been seen as potential sources of civic unrest. But even so, great numbers of people who live in Africa's cities rent the housing they live in. In Kisumu, Kenya, 82% of households were living in rental accommodation in 1998; in the same year, 60% of households in Addis Ababa and 57% of those in Kumasi were also renting their homes (UN-HABITAT, 2003). Rental housing today makes up a large proportion of the urban housing stock in many African countries and in many other countries around the world (UN-HABITAT, 2011).

2.7 Rental Arrangements

The rental amount a landlord charges will depend on the quality of the accommodation itself, as well as the quality of the larger environment, including the unit's access to basic infrastructure, public services, neighbourhood amenities and jobs. In most rental arrangements, the rental rate will be set at a level which allows the landlord to profit from the rental unit and to have a return on the investment, by earning more than the amount invested in constructing the rental unit and the maintenance costs. But in cases of subsidized public sector housing, the rental rates may be lower than what is required to recover the original investment. Landlords tend to argue that rents are too low, whereas tenants, and their associations, argue that they are too high. According to UN-HABITAT, (2011), in seeking for a good rental accommodation, tenants should consider: Quality of the rental housing; the quality and durability of the building; materials used in building; the level of maintenance; the level of crowding; Access to jobs and public services; Location and social support systems; Responsiveness to tenants' mobility patterns; A tenant's stage in the life cycle and access to basic infrastructure.

Another important variable in rental housing arrangements is the duration of the rental agreement. A rental contract can be made for a specific period of time – such as a month, a year, five years or even longer. In some countries lease periods are limited by specific laws, but can be renewed once the contract period has expired. Rental housing contracts may be made as verbal agreements or involve some simple paper lease contract, which both landlord and tenant sign. Some types of longer-term rental agreements require a written contract, sometimes even with some official registration of the contract. For some landlords and some tenants, a short-term rental agreement may be the most suitable one. Landlords may need to generate income from a vacant room or house for a short period, before selling the property. Tenants may not want to commit themselves to staying in one settlement or city for a long time. These short-term arrangements are one of the reasons why rental housing is such a useful part of the urban housing market. But short-term agreements can also lead to a lack of maintenance of the property, as tenants may feel too insecure with a short tenure lease to invest time and money in keeping the premises in good repair. Secure long-term tenure, on the other hand, creates conditions in which tenants are more willing to take responsibility for keeping their rental accommodation in good condition (Langsether et al, 2003; COHRE, 2006; Watson et al, 1998).

Most rental agreements require the tenant to pay a fixed sum of money to the landlord or his agent on a monthly basis. The majority of these landlords and their agents include the service charges for water and electricity in the rent rather than charging for them separately (CSIR Built Environment, 2006). In addition, the tenant usually has to deposit “key money” with the landlord on first taking occupation of the accommodation – an amount equal to one, two or more months' rental, to be kept by the landlord or his agent if the tenant defaults on payments, or damages the property. In some countries tenants have to pay a very large advance on rental, to protect the landlord from losses if they fail to make monthly or weekly payments; in Nigeria and Ghana, for example, the tenant may have to pay up to two or three years' rental at the outset, to secure the accommodation. Low-income tenants face great difficulty in accumulating the lump sums needed to pay key money or a big advance. Policy makers, savings collectives and private sector finance institutions can help tenants to meet their rental costs by developing financial tools to protect landlords against loss of rental, while helping tenants to save money for regular rental payments (UN-HABITAT, 2011).

2.8 Policies Which Regulate Rental Housing in African Cities

UN-HABITAT (2006) identified four major problems with rental housing arrangements:

- 1). Housing policies are often biased in favor of homeowners and fail to take the needs of tenants into account. A lack of policies that protect the rights of tenants can increase the risk of them being exploited by unscrupulous landlords.
- 2). When rental housing conditions are poor, the problem is not usually with the rental arrangement itself. Rather, it is related to the state of a city's overall housing conditions and the complex factors which cause poor living conditions and poverty in general.
- 3). Because so much of rental housing is informal and largely "invisible", a lot of it falls outside the control of government rules and regulations. This has allowed for a great diversity and flexibility in rental housing markets, but at the same time has made it more difficult to plan policy recommendations and interventions to support rental housing.
- 4). Housing policies that don't include conditions for acceptable rental agreements lead to situations in which landlords and tenants must struggle to claim their rights when an agreement is breached. Absence of enforceable written contracts and efficient arbitration systems means that the cost of going to court to claim unpaid rent, fight illegal evictions, or force landlords to do necessary maintenance must be borne by individual tenants and landlords, who usually don't have the resources to do so. Using policies to promote rental housing in a city if national governments can acknowledge the gaps in their existing housing policies, and adjust their regulatory frameworks to give more support to the aspects of ongoing rental practices that work well, it will help a lot to tap the enormous potential of both the formal and informal rental housing markets. Where there is political will to improve a city's housing policies and make them more "renter-friendly" in the long term, a good start would be to promote more competition in housing markets in the short term. Greater competition would mean more options and greater flexibility in what kinds of rental units are available. This could be done in a number of ways.

On the supply side, policies could be developed which reduce obstacles to the production of more rental housing so the supply and variety increase. For example, if homeowners were offered incentives to build one rental unit on their property, this would lead to a new supply of units emerging in all parts of the city, suitable for tenants with different income levels and rental needs. It is important to make sure that rental supply exists to meet the needs of middle-income tenants in the city, so that this income group does not end up taking over the available supply of housing designed to be affordable for low-income households. On the demand side, policies which can enable more households to rent might include ones that encourage landlords to offer secure long-term tenure to tenants. This would make it possible for people to see renting housing as a safe option, and tenants would be likely to invest more care and resources in the maintenance of their rental housing if they knew they would be able to stay there over the long term. While the incidence of renting varies considerably across the world, rental housing accommodates a significant share of families in some countries; including two of the world's most developed societies, Switzerland and Germany (UN-HABITAT, 2006).

2.9 Challenges with Rental Housing

Some of the challenges inherent in rental housing are: Discrimination against some categories of tenants: Novac et al. (2002) describe housing discrimination as any unfavorable treatment in the private or public sector that directly or indirectly leads to systematically different conditions for disadvantaged groups in the housing market. Discrimination can take different forms, such as denial of housing, higher housing prices or rental fees, particular requirements or different treatment of certain tenants. Others include: Housing affordability; Landlord profits; Quality of the rental housing stock; Inner-city problems; Legal issues; Mobility and eviction; Landlord-tenant conflict etc (UN-HABITAT, 2006).

2.10 Tenancy Agreement as a Shield in Nigeria

In Nigeria, particularly Lagos state, the appropriate laws regulating tenancy agreements are the Rent Control and Recovery of Residential Premises Law Vol. 7, Laws of Lagos State, 2003 and the newly enacted Lagos Tenancy Law, 2011(similar laws exist in all the other states in Nigeria). The Lagos Tenancy Law has aroused considerable public interest since its enactment, much of which surrounds the issue of advanced rent which the law prohibits. Section 4 of the new Law makes it unlawful for a Landlord to demand or receive any rent in excess of one year from a sitting yearly tenant, six (6) months from a sitting monthly tenant and one year from a new or a would be tenant. It is also unlawful for new and sitting tenants to offer to pay rents in excess of one year. The penalty for violating this provision is a fine of One Hundred Thousand Naira or three (3) months imprisonment. An earlier law which was observed to have failed poses great concern as to whether the new law will succeed where the earlier law failed. (Segun, 2011)

The ever increasing migration of people into the major cities in the country in pursuit of greener pastures has made the quest for securing decent accommodation in these cities a Herculean task, which only very few privileged individuals can afford. Many Nigerians make do with squatting with family relations or friends, while others manage squalor and

unhygienic accommodations where the rents are within reach. The situation is such that even those who are gainfully employed are finding it rather difficult to keep pace with the rate of rent increments, because such rents are way higher than what a medium income earner could ever afford given his meager earning - the low cadre civil servants quickly come to mind here. Landlords in major cities in the country are simply reveling in the euphoria of this era of unbridled appreciation of house rents - most of them embark on arbitrary increments of rents by unreasonable proportions at regular intervals, often using this as a strategy to eject tenants who are unable to keep up with such irregular increments, knowing full well that another person standing by would quickly jump at the apartment regardless of the unreasonable asking rate because of the dearth of accommodations. In Lagos State particularly, helpless Nigerians suffer untold hardships in the hands of some greedy and wicked landlords who employ different tactics including "self-help" to eject tenants who are unable to meet with absurd and perverse increments of rent (Francis, 2009; Segun, 2011).

Over the years, some African governments have tried to achieve housing affordability by forcing landlords to keep rents low. The introduction of such controls sometimes represented a genuine effort to help tenants, and some governments in newly independent African countries introduced rent controls as part of an ideological commitment to socialism. Rent control was seen to be an effective way of protecting poorer groups from exploitation by the rich. At times, governments used socialist rhetoric and mechanisms such as rent control as part of a strategy of winning elections. Arguably, however, many governments maintained those controls as a façade to hide the lack of an effective housing programme. Public housing construction programmes were expensive, whereas rent controls cost the state nothing, as they placed the financial burden of renting out housing units at low profit or no profit on the landlords who owned them. In addition, since tenants greatly outnumbered landlords, it was not always that easy to remove rent controls.

However, in recent years, rent controls have been discredited, as some negative effects that they have on the rental housing supply in cities have become evident. Some of the main problems with rent control are:

Equity: Rent controls can operate inequitably in three ways. Firstly, they favor some tenants at the expense of others. In particular, they tend to favor those who have lived in rental housing for years against those who wish to become tenants. When rent controls apply only to sitting tenants, new tenants lose out. Secondly, there is no guarantee that those covered by rent controls are actually poor. For example, if the legislation only covers sitting tenants and these are more affluent than new tenants, the result is to give a rental advantage to those who need it least. Thirdly, tenants clearly gain at the expense of landlords. And in cases where tenants are more affluent than the landlords, the effects of rent control are the reverse of what is intended.

Efficiency: By distorting market values, rent control often encourages the inefficient use of housing. For example, small tenant households may occupy housing that is much larger than they require, and for which they would not be prepared to pay the market price, limiting the availability of accommodation to larger households. More importantly, by holding down profits, rent controls discourage some landlords from investing in rental property.

Maintenance: Where rent control makes rental housing unprofitable, a regular complaint has been that landlords do not maintain the property. Rent controlled buildings in cities often deteriorate to slum conditions.

2.11 Grounds for Ejecting Tenants

The only valid grounds upon which a landlord may successfully eject a tenant upon application to a Court of competent jurisdiction or a Rent Tribunal are as follows:

- a. that the rent lawfully due by virtue of the law is in arrears of three months after it became due; or
- b. that the tenant has been guilty of the breach of an express covenant or agreement of the tenancy; or
- c. that the tenant has given notice of his intention to quit as a result of which the landlord has contracted to sell or let the premises or has taken such other steps that are likely to put him in difficulty if he could not obtain possession; or
- d. the premises are reasonably required for any purpose which is in the public interest; or
- e. that the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is nuisance or annoyance to adjoining occupiers, or has been used as a brothel, etc; or
- f. that the premises are so overcrowded as to be dangerous or injurious to the health of the in-mates; or
- g. that the premises are subject of an abatement notice issued by a public authority - such notice is given where the premises is in a dilapidated state and poses imminent danger to inhabitants; or
- h. that the premises require substantial repair on account of which it is necessary for the tenant to vacate possession - except where ejection will cause serious hardship for the tenant; or

- i. that the premises are required by the landlord for his occupation, for any of his children above 18 years, or for his parents.

It is not enough for the landlord to merely aver any of the above as ground in support of his intention to eject a tenant, he must go ahead to prove that such ground actually exist. Many tenants suffer in silence, instead of consulting legal practitioners for proper counseling on what to do when confronted with threats of imminent unfair ejection; some even abandon themselves at the mercy of merciless landlords, and cowardly surrender possession in the face of such threats oblivious of the enormous protection which the law has conferred on them. On the other hand, some landlords, ignorant of the strict requirements of the law for ejecting a tenant, still prefer to do it their own way rather than seek legal advice - thus they invariably end up in one legal logjam or the other.

3. Conclusion and Recommendation

The study revealed that in Nigeria the Tenancy Agreement as an instrument in property management purports to provide protection to all the parties involved in the rental housing sector. However, it was observed that this is mostly true only on paper. The Nigerian rental housing sector is mostly an informal setting, where Tenancy Agreement are not enforceable because most of the contracts are “invisible” in the sense that most agreements are either done verbally or informally without a strong backing of the law, hence unenforceable. The provisions of the rent control and recovery of premises laws in Nigeria have been held more in disobedience than in obedience this could be as a result of the wide gap between housing need and housing supply most especially in the urban centers.

Renting is an integral component of a healthy housing system, therefore, for effective regulation of the rental property market it was recommended that a strategic approach to developing a workable rental housing policy should first acknowledge the rental arrangements which already exist and then find flexible, realistic ways to regulate them. The government should:

- examine their laws and policies to ensure that they provide equal protection to all stakeholders in the rental housing sector and that these laws are implemented in a realistic and effective manner.
- set minimum standards for the management and maintenance of rental properties.
- encourage potential landlords by developing an effective land administration system which makes land accessible and affordable for development of rental properties,
- provide/encourage access to affordable housing finance options for mortgages and small loans for landlords to improve their homes for rental purposes,
- implement policies which reduce construction costs. These include reducing fees and taxes related to the cost of production of houses and consider regulating the cost of building materials,
- establish a legal and regulatory structure to promote, control and monitor housing supply.

The general increase in supply will by itself promote competition in the rental property market. Thereby curbing the present rental housing problems in Nigeria.

References

- Akomolede, K. (2006). *Estate Agency Practice in Nigeria*. Lagos: Bamboo Books
- Amole B, Korboe D., & Tipple G. (1993). The family house in West Africa. *Third World Planning Review*, 15, 355–372
- Andrew CL. (1987). *The Role of Rental Housing in Developing Countries: A Need for Balance*. Washington DC: World Bank, Report No. UDD-104
- Araloyin, F. M., & Olatoye, O. (2011). An Analysis of Real Estate Consumers’ Perception of Service Quality in Estate Agency Practice in Lagos Metropolis, Nigeria. *Journal of Economics and International Finance*, 3(3), 139-145. [Online] Available: <http://www.academicjournals.org/jeif/fulltext/2011/Mar/Araloyin%20and%20Ojo.htm> (20th April 2011)
- Bello, M. O. (2008). Tenants Performance or Housing Discrimination: Evidence From A Nigerian Real Estate Market. *Journal of the Nigerian Institution of Estate Surveyors and Valuers*, 31(1), January – June.
- Brzowski, C. (2008). *Managing Tenants Part Three: Written Criteria for Tenant Selection*. February 9, 2008: In “The Bigger Pockets” An Online Real Estate Magazine.
- Chika, E. U. (2008). *Professional Practice for Real Estate practitioners*. Lagos, TREEM Nigeria Limited.
- COHRE. (2003). Global Survey on Forced Evictions: Violations of Human Rights No. 9, COHRE April 2003. [Online] Available: <http://www.cohre.org/downloads/survey9.pdf> (21st April 2012)

- COHRE. (2004). Housing Rights in West Africa, Report of Four- Fact Finding Missions. [Online] Available: http://sheltercentre.org/sites/default/files/COHRE_HousingRightsInWestAfricaDraft.pdf (22nd March 2012)
- CSIR Built Environment. (2006). *Resource Report 6: Research into Landlords in Townships*. Report produced as part of the Housing Entrepreneurs Research Project funded by the Finmark Trust, the Social Housing Foundation, Nedbank, and the National Department of Housing, South Africa
- Francis, M. (2009). Nigeria: Landlord & Tenant - the Right to Shelter and Statutory Protection of Tenants. Daily independent, Lagos. [Online] Available: http://www.iut.nu/members/Africa/Nigeria_articleMarch4_2009.pdf (9th April 2012)
- Funmilayo, M. A., & Olatoye, O. (2011). Factors Affecting the Provision of Quality Service in Real Estate Agency in Lagos Metropolis, Nigeria. *International Journal of Business Administration*, 2, 71-79. [Online] Available: <https://springerlink3.metapress.com/content/gx33374k4651u5q6/resource-secured/?target=fulltext.pdf&sid=hvlvzdnjwslmgli4q1ebnma4&sh=www.springerlink.com> (5th April 2012)
- Gilbert A. (2008). Slums, tenants and home-ownership: on blindness to the obvious. *International Development Planning Review*, 30(2), i-x. <http://dx.doi.org/10.3828/idpr.30.2.1>
- Kumar S. (2001). *Social Relations, Rental Housing Markets and the Poor in Urban India*. London: London School of Economics and Political Sciences
- Langsether, A. Gulbrandsen, L., & Annaniassen, E. (2003). Leiemarkedet og leietakernes rettsvern [The rental market and renters legal protection] Report No. 2 (Oslo: Norwegian Social Research Institute).
- LNREA. (2012). Lagos Nigeria real estate advisor.com 2012. [Online] Available: <http://www.lagos-nigeria-real-estate-advisor.com/lease-agreement.html> (17th April 2012)
- Mabagunje, A. (2002). Housing Delivery problems in Nigeria. Punch, Wednesday, May, 2002.
- Martin, N. F. (2006). Do Your Remedies Hold up in Court? ICSC - 2006 U.S. SHOPPING CENTER LAW CONFERENCE.
- Mary, A. S. (2010). Social Assistance Recipients and Tenancy Conditions in the Private Rental Market. *Journal of Housing Studies*, 25(5), 591-605. [Online] Available: <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=25&hid=10&sid=46de5257-1a62-4e4f-b42b-4ed0565fa049%40sessionmgr11> (7th April 2012)
- Mondel P. (2001). Unlocking the Opportunity for a National Rental Housing Strategy. Presentation to the Federal, Provincial and Territorial Ministers of Housing, 2001 Housing Ministers' Conference, Quebec City, Quebec.
- Novac, S., Darden, J., Hulchanski, D., Seguin, A. M., & Berne`che, F. (2002). Housing Discrimination in Canada: What Do We Know About It? Research Bulletin 11 (Ottawa: Centre for Urban and Community Studies).
- Ojo, B. (2003). *Management and Maintenance of Multi-Tenanted Properties in a Depressed Economy: A Case Study of Okunola Shopping Complex, Osogbo, Osun State*. Thesis Submitted for Election into Corporate Membership of the Nigerian Institution of Estate Surveyors and Valuers.
- Okupe, O. (2002). Problems of Real Estate Developers in Nigeria. A paper presented at a workshop organized by the Nigerian Institute of Quantity Surveyors. Abuja.
- Olatoye, O. (2005). Borrowers' Perception of the Degree of Cumbersomeness of Lenders Requirements in Housing Financing in Southwestern Nigeria. Conference Proceedings, Brisbane, Australia. [Online] Available: http://www.rics.org/site/download_feed.aspx?fileID=2015&fileExtension=PDF (8th March 2012)
- Oni, A. O. (2010). Harnessing Real Estate Investment through Decision Process for Selecting Tenants in Nigeria Paper presented at the 10th African Real Estate Society Conference Organized by the African Real Estate Society held at Naivasha, Kenya
- Rakodi C. (1995) Rental tenure in the cities of developing countries. *Urban Studies*, 32(4-5), 1-25. <http://dx.doi.org/10.1080/00420989550012898>
- Segun T. (2011). Reviewing the New Lagos Tenancy Law. [Online] Available: http://www.perchstoneandgraeps.com/uploads/pub_files/microsoft_word_-_reviewing_the_new_lagos_tenancy_law_by_segun_talabi.pdf (7th April 2012)
- Tipple AG., & Willis KG. (1991). Tenure choice in a West African city. *Third World Planning Review*, 13, 27-46.

- Udo-Akagha, S. (1981). Property Management in Practice. *Journal of the Nigerian Institution of Estate Surveyors and Valuers*, 5(1), 10-24
- UN-HABITAT. (1999). *Strategies for Low-Income Shelter and Services Development: The Rental Housing Option*. Nairobi: UN-HABITAT
- UN-HABITAT. (2003). Housing the Poor in African Cities. [Online] Available: http://www.citiesalliance.org/ca/sites/citiesalliance.org/files/Quick%20Guide%20-%20Rental%20Housing%20-%20A%20Much%20Neglected%20Option%20for%20the%20Urban%20Poor_0.pdf (22nd March 2012)
- UN-HABITAT. (2006). *Rental Housing, an Essential Option for the Urban Poor in Developing Countries*. [Online] Available: http://www.unhabitat.org/downloads/docs/3588_62479_655.pdf (5th April 2012)
- UN-HABITAT. (2011). Housing the Poor in African Cities. [Online] Available: http://www.citiesalliance.org/ca/sites/citiesalliance.org/files/Quick%20Guide%20-%20Rental%20Housing%20-%20A%20Much%20Neglected%20Option%20for%20the%20Urban%20Poor_0.pdf (17th April 2011)
- Watson V., & McCarthy M. (1998). Rental housing policy and the role of the housing rental sector: Evidence from South Africa. *Habitat International*, 22(1), 49–56. [http://dx.doi.org/10.1016/S0197-3975\(97\)00023-4](http://dx.doi.org/10.1016/S0197-3975(97)00023-4)
- Wessel, T. (1998). Housing and living conditions. An analysis of the survey of housing and living condition. Project Report 111 (Oslo: Norwegian Building Research Institute).