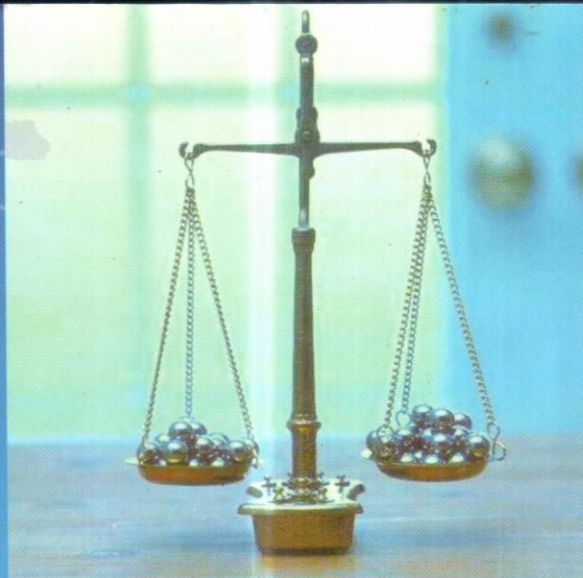




Abuja
JOURNAL
OF PRIVATE AND
COMPARATIVE
LAW

2010/2011

VOLUME 1

THE INSTITUTION AND ENFORCEMENT OF RENT CONTROL IN NIGERIA: AN APPRAISAL

BY

BASHIR LEKE IJAIYA *

AND

YUSUF ABDUL-RASHEED MUSA **

Abstract

This paper examines the relationship between the landlord and tenant particularly on the issue of rent increment and the debate that used to accompany it. The rent control is critically examined stemming from when, how and why a landlord can increase house rent. It also discusses the role of tribunal in the determination of house rent. The various forms of rent control were also examined. The paper also focuses on how a standard rent can be determined and how crises that used to arise as a result of the increment can be solved,

1. Introduction

Whenever the question of rent control arises, the debate more often than not reveals, more than anything else, how widely the central issues of rent control are misunderstood. Two examples of these misunderstanding are as follows.

First, a standard feature of the debate concerning rent control is that battle lines are typically drawn between landlords and tenants, with the popular argument claiming that rent control works to the advantage of tenants and to the detriment of landlords. In reality, the conflict of interest occurs between tenants of different kinds, for instance between sitting tenants and new tenants or between tenants who have transferable job and those with jobs that allow them to settle down in one place.

Secondly, what stirs most people against existing rent control laws in Nigeria are stories of people who have held apartment for many years and now pay "absurdly" low rents. Thus to Tierney¹ it is shocking that

'---Cooke still has his eight-room & 2,078-a-month apartment or fifth avenue with a park view.'¹

1. * Teaches Law in the Faculty of Law of the University of Ilorin, Ilorin, Nigeria.
E-mail: lekebash2003@yahoo.com

** Teaches Law in the Faculty of Law, University of Abuja, Abuja, Nigeria.

1. J. Tierney 't the Intersection of Supply and Demand' The New York Times Magazine 19 May (1997).

Similar accounts have been heard from around the world. The old widow who lives in a large apartment in Delhi and pays a rent of 100 rupees (approximately \$3) per month is the kind of familiar story which gives rise to indignation and shock. However, we feel that the reason for indignation in such cases is a misunderstanding of the economics of rent control. Suppose Mr. Cooke or the old lady had bought the apartment many years ago (for a price which today could appear absurdly small). This is equivalent to a rental agreement, which involves a lump sum initial payment and then a very small monthly payment; in this case, zero. Should this be reason for shock and indignation? Should this be the basis of saying that the old lady should return the apartment to the original owner or at least start paying a higher monthly rent? Clearly not. She bought the place and that is the end of the matter.

It is to be further noted that, if a monthly rent of zero is no reason for indignation, why should a monthly rent of Rs 100 be treated differently? If the old lady pays a rent of Rs 100 because that the agreement (or generally accepted presumption) was that that is what she would do forever, then we could effectively, think of her as having bought the place under the agreement to pay in monthly installment of Rs 100. Of course, Rs 100 looks very small today; but zero looks even smaller and that is what a person who bought the apartment she lives in pays. In this paper attempt shall be made to argue that there are important reasons for removing rent control, but the shock value of a low rent is not one of them.

In the light of the foregoing, the aim of the present paper is to examine the law of rent control, the extent of its applicability and enforceability as well as suggesting ways by which same can be enforced thereby putting an end if not all to the battle usually occurring between the landlords and the tenants. It is also desired in this paper that reference shall be made to the Kwara State Rent Control Recovery of Residential Premises Laws. Cap 139 the Laws of the Kwara State of Nigeria Vol,3 1994.

In the next section that follows, a conceptual clarification of rent control is discussed. Section three discusses the determinants of standard rent. Section four discusses the rent review clause. The conclusion is contained in the last section.

2. The Institution of Rent Control

In the United States and Europe, the numerous government controls in the rental housing market, which are generally described as "rent control" arose during world war II in response to the mass disruptions caused by the war. After the war, New York and many European jurisdictions retained versions of these out of fear that the return of troops would cause demand shocks and send rents skyward. In other parts of the United States the social² upheaval and high inflation of the 1970's was a driving force behind the re-implementation of rent controls. While a number of jurisdictions have since abandoned or relaxed rent control laws, they are still commonly found in the United States and all over the world.

It is worthwhile at this stage to clarify what it means for a housing market to have no rent control. There really are two kinds of "no rent control" (A) the kind with no government intervention in the market and (B) the kind where the government provides the foundation for contracting between agents and enforces the contract by committing to take positive action against those who renege on their contracts. There will of course, always be some restrictions on the range of allowable contracts. For instance, you have not allowed to stipulate in a contract that the landlord gets to kill the tenant if the tenant failed to pay the rent on time.

Note that, while (A) above describes the case where there is no government involvement in the rental market, (B) requires active involvement of the government. In this paper when we consider a regime with no rent control, we shall be concerned with (B), which will at times be referred to as a "free contract regime". By the converse of the above definition, we shall say that the housing market is "rent controlled" if government fixes the rent or sets limits on rent increases or disallow the eviction of tenants, irrespective of what contract the tenant and the landlord may have signed. Essentially rent control is a generic term to describe rental laws, which

2. R. Arnott "Time for revisionism on Rent Control" *Journal of Economics Perspectives* Vol. 9 P.99-120 (1995)

severely limit the contract that landlords and tenants are allowed to sign. For example, a landlord and a tenant may agree in principal to a contract where the tenant stays for exactly two years and pays 10% more in rent each year, but there can be a rent controls; law that considers this an invalid contract because it disallows contracts that specify a move-out date, or which set rent increases too high.

One of the most popular form of rent control, called "rent stabilization" or second-generation rent control "allows landlords to freely choose a nominal rent when taking on a tenant (the tenant is of course free to reject the offer), but places restriction on raising rent on a sitting tenants, thereby causing an erosion in the real value of rent if a tenant stays on for too long, whenever there is positive inflation in the economic, which for most economies is true most of the time. This means that landlords will prefer short-staying tenants to long-staying tenants. It is therefore no doubt that information concerning tenant-types will be better known to the potential tenants than the landlord.

Rent control was a strict regime started in 1947 that assigned rent for individual properties and allowed only minor increases. This policy currently covers slightly more than 100,000 units in New York City and is declining with vacancy decontrol. Much more common are properties under rent stabilization. This system was implemented much later, in 1969, and was a less stringent form of rent regulation where periodic rent increases are allowed.

Note that, there was however, no provision for the resetting of rent to market levels upon vacancy, but there were ways for landlords to raise the controlled rent over and above the regulating tribunal board. One way was through pass-through cost. This allowed landlords who spent money on improvement to a rent stabilized apartment to raise the rent by appealing to the tribunal board. Another way was by pleading hardship or increased operating costs. Anecdotal evidence suggests that landlords raise rents through these channels often even if the amount of money spent on improvements is small. As both of these tactics are sure to meet opposition from a sitting tenant, the common practice is for the landlord to appeal for these increases upon vacancy.³

3. S. Jarrot & M. Micheal "Rent Regulation in New York City: A Briefing Book" New York: Community Training and Resource Centre P 13 (1997)

What is especially surprising about the poor quality of the popular rent control debate is the fact that rent control is a well-studied subject in economics. Yet examples of incomprehension abound in the popular press. The most common example is where the rent control debate is posed as 'a battle between tenants and landlords. For example, Billy Easton, executive director of the New York State Tenants and Neighbours Coalition is quoted to have said that:

'Why would landlords be fighting (a continuation of rent control) so hard unless they stood to make a huge profit'? 4

The above proposition is a clear illustration of the mentality of those debating this issue. It may be true that tenants and landlords are battling over rent control, but this is not a direct effect of the economics of the problem. In fact, much of landlord's resistance is to the bureaucracy of the system. In an editorial, the editors of the New York Times write

'(Rent control) — is a bureaucratic nightmare/or small landlords---', 5

What is perhaps more interesting is how often a symptom of rent control gets mentioned, but rarely as a consequence of the economics of rent control, just as a side-effect. This is the tension between long staying tenants and short-staying tenants. For instance in the same editorial, the New York Times States

' — The leases of the very-long term tenants, — tend to be the cheapest in the rent-regulated system — ' 6

It is very important to note that rent regulations start battle not only between landlords and tenants but also between neighbours in the same building. 7

It is to be further noted that many empirical studies of rent control have been disappointingly uninformative. However, a few areas of general consensus have emerged.

4. The New York Times, 6 May 1996,

5. The New York Times "A Generational Rent Gap" 13 June 1997,

6. Ibid

7. The New York Times Neighbor -V. Neighbor 16 April 1997.

Rent control has led to tenure discounts or lower real rents for long-term tenants⁸. Also some evidence exist that turnover and therefore mobility is lowered in areas with rent control. Little convincing evidence exists to support the notion that rent control hampers construction and maintenance. In the overall, the empirical evidence suggest that the effect of rent control laws are higher rents for new and short-term tenants, smaller increases for sitting tenants leading to lower rent for long-stayers, and little effect on revenue for landlords.⁹

There are also been a considerable amount of theoretical work done on rent control. The common textbook version of rent control is a simple price ceiling model of supply and demand that relates most closely to what was described as "first generation" rent controls¹⁰. They are akin to the 'rent control' regime which New York City implemented in 1947, in which rents were fixed at a level and rarely allowed to rise. In this version, demand exceeds supply, and the "winners" in the market are those tenants lucky enough to find housing. For the landlords, rents control limits the amount of money they can charge for their properties and they see the market value of their property fall and therefore neglect maintenance and upkeep. In addition, new housing is not constructed, as the expected return on such an investment is limited. Secondary effects include mismatches of tenants to properties, with tenants holding on to large apartments long after their need for the extra space has gone, reduced labour mobility, and increase in discrimination and the rise of non-rent payments from tenants to landlords.

There has also been some work done on the political economy of rent control, where both landlords and tenants are considered political actors and can influence policy⁵.

It has been observed that there are many more tenants that landlord and the question is why is rent control not more widespread*? Two types of tenants

-
8. S. R Borsch "On the West Germany Tenants Protection Legislation" *Journal of Institutional and Theoretical Economics* Vol. 142 P380-404 (1986)
 9. E. O. Olsen "What is Known about the Effect of Rent Controls" Consulting Report for U. S. Department Of Housing and Urban Development Construct No NA90-7272 (1990).
 - 10 R. Aj-nott note 2-P 120.

have been modeled under the rental housing market viz, permanent and temporary¹². Permanent residents stay in a community so their numbers are fixed while temporary tenants are transitory and their numbers vary. Only permanent residents vote a rent control policies and rent control in this case applied only to permanent residences and is a price ceiling. This ceiling determines supply of housing. When voting a permanent resident does not know if he will be displaced from his permanent dwelling and also does not know the number of temporary residents in the community. The permanent residents therefore weigh the benefit of lower rent if he maintains his permanent dwelling and the cost of potentially finding a new dwelling in a market with excess demand.

It is to be further noted that notwithstanding the existence of many different forms of rent control in the world, we will focus on a stylized version, which is widely used throughout the world. This paper will focus on a rent control regime which does not allow the eviction of a sitting tenant and which limit the amount a landlord may increase the rent on a sitting tenant (enough so that rent do not typically keep up with inflation)¹³ upon vacancy, however, the landlord is free to negotiate a new rent with a new tenant.

It is interesting to note that under the Rent Control and Recovery of Residential Premises Law, the Governor of the State is empowered by order to classify the type and categories of residential accommodation, zone the area of the state and fix the standard and maximum rents for such accommodation.¹⁴

It is to be further noted that notwithstanding the ownership of the accommodation apartment by the landlord, it shall be unlawful for a landlord to accept an agreed rent in respect of any accommodation to which this law applies which is in excess of the standard rent prescribed for the type of the accommodation¹⁵. In essence, the landlord is free to enter into an agreement as to rents with a tenant but such

11. G. Fallis "Rent Control: The Citizen, the Market and the State". *Journal of Rent Estate Finance and Economics* Vol. 1 P 309-320 (1998).

12. D. Eppele "Rent Control with Reputation: Theory and Evidence" *Mimeo* Pp 34 (1994).

13. *Ibid* Pp 36.

14. Section 1 (2) of the Kwara State Rent Control and Recovery of Residential Premises Law, Cap 139. 1994.

agreement as to rent should not be unreasonably above and in excess of the standard rent.

The law is very magnanimous on a tenant to the effect that where the agreed rent is higher than the standard rent prescribed for the type of accommodation the tenant shall be made to pay the standard rent prescribes for such accommodation ¹⁶

However, where the agreed rents is lower that the standard rent prescribed for the type of accommodation under this law, the tenant shall continue to pay, as from the passing of this law, the agreed rent until the tribunal makes an order varying the agreed rent in accordance with the provisions of the law.¹⁷

3. How to Determine Standard Rent?

The landlord having been precluded by the Law from fixing a rent above the standard rent prescribed by law can thus be saved from this requirement of the law through application to the tribunal having jurisdiction to hear and determine matters on residential premises. A tenant or any interested person can also apply to the tribunal for the determination of the standard rent payable in respect of such accommodation within the limit of the rent prescribed by law'. The tribunal upon been satisfied with the application brought before it for fixing the rent prescribed of any accommodation shall sign the drawn order, which same is to be signed by a district judge.⁹

Interestingly, the order made by the tribunal shall supersede the agreed rent between the landlord and the tenant and any order made by the tribunal shall not only bind the landlord and tenant but shall bind all person including the landlord, tenant or mortgagee of the building where the accommodation is situated.

Note however, that, any agreement where by a bona fide contractor invests in the development of any property to which this law under consideration applies, and in

15. Section 3(1) Ibid

16. Section 3 (2) Ibid

17. Section 3 (3) Ibid

18. Section 4(1) Ibid

19. Section 4 (2) Ibid

20. Section 4 (3) Ibid,

consideration of such investment, takes a lease of the property for period of time at a rent lower than the standard rent shall not be rendered invalid and unlawful.²¹

It is also to be noted that it shall be unlawful and illegal for the agreed or standard or maximum rent of any accommodation to which this law applies to be demanded or received in excess of three months for individual tenant and twelve months for commercial or institutional tenants. The law vehemently frowns against this practice and a punitive measure is prescribed for the violation of this provision. Any landlord found to have contravened the provision of this law shall be guilty of an offence and is liable on conviction to a fine of amount equivalent to the excess of the rent received.²³

However, where either advertently or inadvertently an agreed rent has been paid to the Landlord in advance in excess of that provided under the law, before the commencement of this law under consideration, such rent shall not be recoverable by a tenant.²⁴

It is to be stated that the Governor is not only empowered to classify types and categories of residential accommodation, zone the area of the state and fix the standard and maximum rents for such accommodation but can also make regulations inter alia,

- a. Prescribing forms to be used for the process and procedure of a tribunal.
- b. Prescribing the amount of increase or reduction to be allowed by tribunals in relation to repairs to premises according as the liability to make them is established before the appropriate tribunal
- c. Prescribing the type and nature of repairs of fixtures in premises where the accommodation is and the amount to be allowed in computing a standard rent where the tribunal is satisfied that the repairs of fixtures, as the case may be, are necessary to make the premises reasonably fit for human habitation.
- d. Prescribing the imposition of penalties (other than for non compliance with any order fixing standard rent), and
- e. Generally for matters coming before a District Court.

21. Section 4 (5) Ibid

22. Section 4 (6) Ibid

23. Section 36 (4) Ibid

24. Section 4 (7) Ibid.

It is interesting to note that the law under consideration provides for sanctions and penalties for any one who advertently or inadvertently contravenes the provision of the law. The law is to the effect that where the tribunal has found that any landlord has violated any of the provisions of this law or regulations made thereunder less than two occasions, the Governor shall, on the recommendation of the tribunal, acquire the interest of the landlord in the premises in relation to which the offences have been committed²⁵. The law goes further to provide that where premises are compulsorily acquired pursuant to the subsection (1) of the above section, there shall be paid such compensation as may be determined under the provision of the Land Use Act or the Public Lands Acquisition (Miscellaneous Provisions) Act, or any other written law).

4. Rent Review Clause

In a long term lease, some landlords usually insert the rent review clause to enable them cater for the inflationary situation in the country and for the real property appreciates day by day. This, it is submitted will prompt up higher rent than the one agreed at the commencement of the tenancy agreement. In the absence of the rent review clause, the landlord cannot unilaterally increase the rent after the agreed rent. No matter the period for which the tenancy is created. It is therefore unwise and inadvisable for the landlords to create a long-term agreement without the rent review clause.

The effect of this rent review clause is that it takes both the landlord and tenant back to the initial negotiation for rents. It is also advisable that the tenancy agreement should have an arbitration clause under the rent review clause so that where the parties cannot conveniently reach an agreement as to the new rent payable the parties may then invite or refer the case to an arbitrator to fix the new rents that will be payable to the landlord. In *Jibowu. V. Epee*²⁵ the landlord in the case wrote to her tenant requesting her to pay the rent in advance as oppose to arrears under the initial agreement. It was held that, the tenant was not bound to honor the request in the absence of an express or implied acceptance of the offer.

25. 40.Y-S.H.C.(PtII)Pp 151(1970)

her to pay the rent in advance as oppose to arrears under the initial agreement. It was held that, the tenant was not bound to honor the request in the absence of an express or implied acceptance of the offer.

Also, in *Gomez. V. Williams*²⁶ the court held that the landlord could not unilaterally compel the tenant to pay his rent monthly when he has been paying yearly. It is to be further noted that, before the landlord increases his rent even where there is a rent review clause, he must put into consideration the market value of the property as at the time of increment because of the fact that the real property appreciate day by day. On the other hand, where the landlord fails to observe this observation, the landlord could be deemed to have increased his rent arbitrarily. The rent however, should be increased to such an amount, as could be a fair rent for the premises and as to reflect the market value of such premises.

In *Away Motors Ltd V. Adewumi* a deed was created for a term of 25 years with a rent review clause that the rent would be subject to review after 12 years. The initial rent was N1, 500 when however, the parties could not reach an agreement as to the rent after 10 years agreed upon, the landlord proceeded and initiated an action in court asking the court to fix a rent. The High Court fixed new rent at N4, 500 per annum without taking into consideration the inflation situation in the country. On an appeal to the Court of Appeal by the tenant, it was held that the trial court erred in law by arbitrarily fixing the rent without evidence of open market that is, the real value of the premises.

5. Conclusion

As beautiful and elegant as this law is, it is disheartening to note that, this law only exists in our statute book without being enforced. It is just like a bulldog without teeth to bite. A toothless law indeed. It is clear that landlordin Nigeria without recourse to the law does arbitrarily result to increasing rent not mindful of the position of the law. At times, landlord increase rent without any justification to do so. Buildings and¹⁰ apartment that have being built and constructed for years are subject to

26. N.M.L.R.Pp 149 (1976).

27. IN.W.L.R.Pp 468 (1992).

increment without any repair and renovation to put same in tune with the current taste of habitation.

On the final analysis therefore many tenants have suffered serious injustice and intimidation from the arbitrary conduct of landlords who seek to increase house rent without following due processes of law. It is our submission that, the faster this law is applied and enforced the better so as to save and relief our tenants from the arbitrary use of power of the landlord. It is equally submitted that, monitoring machineries be put in place to check the excessive abuse of this law by our landlords. Interestingly, the public at large especially the tenants need to be sensitized of the position of the law about how to enforce their rights against the landlords before the tribunal vested with power to decide, determine and fix standard rent for apartments. This, it is submitted if put in place will ensure peaceful co-existence between the landlords and tenants and the incessant conflicts between the landlords and tenants put to an end.

References

- D. Eppler 'Rent Control with Reputation: Theory and Evidence.' Mimeo, (1994)
- E. O. Olsen 'What is known about the Effect of Rent Controls?' Consulting Report for U.S Department of Housing and Urban Development. Construct Number NA90-7272. (1990).
- G. Fallis 'Rent Control: The Citizen the Market and the State.' *Journal of Real Estate Finance and Economics*. Vol. 1pp. 309-320. (1988)
- J. Tierney 'At the Intersection of Supply and Demand.' *The New York Times Magazine*. May, 19. (1997)
- Kwara State Government of Nigeria 'Kwara State Rent Control and Recovery of Residential Premises Law Cap 139. (1994)'.
- R. Arnott 'Time for Revisionism on Rent Control'. *Journal of Economics Perspectives*. Vol. 9 pp. 99-120 (1995).
- S. Jarret & M. Michael 'Rent Regulation in New York City: A Briefing Book'. New York: Community Training and Resource Center (1997)
- S. R. Borsch 'On the West German Tenants Protection Legislation' *Journal of Institutional and Theoretical Economics*. Vol. 142 pp. 380-404. (1986)
- The New York Times 'A Generational Rent Gap: Opinion' *The New York Times Magazine*. June 13, (1997)