

**LEGAL REMEDIES AVAILABLE TO LESSEE AGAINST FORCEFUL EVICTION IN
DELHI**

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ABSTRACT

Due to urbanisation and the prospects of better job opportunities, many people often migrate to metropolitan cities. However, the rates of properties in such cities like Delhi, etc is very exorbitant. In turn, people prefer to stay in rented or leased homes which are more affordable to them. The situation is quite similar with the companies who find it more economical and easier to lease office spaces rather than purchasing them. Therefore, there has been a significant rise in the leasing of properties.

Nonetheless, with the increase in the numbers of lease agreements, there has also been a proportional increase in the problems which arise between the lessor and the lessee relating to the immovable property which has been leased. Therefore, many laws have been enacted to protect the rights of both the lessor and the lessee via Acts of Parliament and different State Legislations. However, this paper will only focus on the various rights available to lessee against forceful eviction in Delhi under The Transfer of Property Act, 1882¹ and The Delhi Rent Control Act, 1958².

INTRODUCTION

A lease is governed under the provisions of The Transfer of Property Act, 1882³. A Lease is defined as “A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”⁴

¹ The Transfer of Property Act, 1882, No. 4, Acts of Parliament, 1882 (India).

² The Delhi Rent Control Act, 1958. No. 59, Acts of Parliament, 1958 (India).

³ The Transfer of Property Act, 1882, No. 4, Acts of Parliament, 1882 (India).

⁴ The Transfer of Property Act, 1882, § 105, No. 4, Acts of Parliament, 1882 (India).

A Lessor is the transferor, the lessee is the transferee while rent can be defined as money, share, service, or other thing to be so rendered.⁵

The lessor is bound to put the lessee in the possession of the property upon his request.⁶ If the lessee pays the rent on time and performs the contracts binding on him, he may hold the property without any interruption.⁷

FEW IMPORTANT FEATURES OF A LEASE

1. Under lease, there is a transfer of interest in the property via the lessor to the lessee, where the possession of the immovable property is transferred to the lessee.
2. A lease is a heritable right. In Chapsibhai Dhanjibhai Danad vs Purushotram⁸. The Hon'ble Supreme Court held that the lease is both transferrable and heritable.
3. Therefore, the death of either of the party does not have an effect on lease since it is a heritable right.
4. The money share or service to be rendered under lease is called rent. Hence, it may not necessarily be just money.⁹
5. The consideration which is paid for transfer of the said immovable property is called the premium.¹⁰
6. Lease for an immovable property shall be made for 11 months. If the duration exceeds that, then the lease agreement can only be registered under Section 107 of The Transfer of Property Act, 1882.¹¹

BRIEF OF THE DELHI RENT CONTROL ACT, 1958

Almost all the States have their respective Rent Control Acts which seek to protect the rights and interests of both the landlords and the tenants of their respective States. In the Union

⁵ *Id.* at 105.

⁶ The Transfer of Property Act, 1882, § 108(A)(b), No. 4, Acts of Parliament, 1882 (India).

⁷ The Transfer of Property Act, 1882, § 108(A)(c), No. 4, Acts of Parliament, 1882 (India).

⁸ Chapsibhai Dhanjibhai Danad vs Purushotram, 1971 AIR 1878, 1971 SCR 355.

⁹ The Transfer of Property Act, 1882, § 105, No. 4, Acts of Parliament, 1882 (India).

¹⁰ *Id.* at 105.

¹¹ The Transfer of Property Act, 1882, No. 4, Acts of Parliament, 1882 (India).

Territory of Delhi, we have The Delhi Rent Control Act, 1958¹² which governs the tenancy laws under the jurisdiction of Delhi.

- The main objective of the Act is to safeguard the interests of the tenants from the unwarranted evictions by the tenants and to ensure that the tenants are not being forced to pay more than a standard rent as mentioned under Section 6 of the Act.
- The Act received the assent of the president of India on 31 December 1958 and came into force on 9th February 1959.
- The jurisdiction of the Act is “the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule.”¹³
- All the proceedings under the Act will take place before the Rent Controller who is appointed by the Central Government. There can be more than one Controller to perform the duties imposed on him under the Act.¹⁴

It is important to note that if the rent of a said immovable property is equal to or less than ₹3500, then the provisions of the Delhi Rent Control Act, 1958 will apply. However, if the rent is more than ₹3500 then, the provisions of The Transfer of Property Act, 1882 will apply and a suit for possession can be filed in the Civil Court.¹⁵

BRILLOPEDIA

FORCEFUL EVICTION

It is often the case that the lessors abuse their power and forcefully evict the lessee without the due process of law. Due to this, many lessees often live in the fear of being evicted even after due compliance with their contracts/agreements.

However, in today's time, many laws have been enacted to protect the lessee from unwarranted eviction by their respective lessor. The landlords cannot evict the lessee without a just reason before the expiry of the lease or the agreement. There must be a substantial reason behind such eviction otherwise the tenant has the right to approach the Court to defend himself/herself against an illegal eviction.

¹² The Delhi Rent Control Act, 1958, No. 59, Acts of Parliament, 1958 (India).

¹³ The Delhi Rent Control Act, 1958, §1(2), No. 59, Acts of Parliament, 1958 (India).

¹⁴ The Delhi Rent Control Act, 1958, §35(1), No. 59, Acts of Parliament, 1958 (India).

¹⁵ Dhanapal Chettiar vs. Yesodai Ammal 1979 AIR 1745, 1980 SCR (1) 334 (India).

GROUNDS FOR EVICTION

A landlord can file a suit of eviction for residential as well as for commercial properties as held by the Hon'ble Supreme Court in *Satyawati Sharma (Dead) By Lrs vs Union Of India & Another*.¹⁶

The Delhi Rent Control Act, 1958¹⁷ under Section 14 also lays down the various grounds under which a tenant can be evicted by the landlord after filing an application before the Court of the Rent Controller of the respective jurisdiction of the premises.:

1. "The tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him."¹⁸
2. If without obtaining the consent of the landlord, the tenant has sublet or assigned whole or any part of the premises.¹⁹
3. If the premises have been let for a purpose other than the agreed one without obtaining the consent of the landlord.²⁰
4. If the premises being let for residence is not being resided by the tenant or any of his family members for a period of six months immediately before the date of the filing of the application for the recovery of possession.²¹
5. If the landlord or any of his family members have no other reasonably suitable residential accommodation and the premises are let for residential premises only which he requires *bonafide* for occupation of residence.²²

The meaning of the word *bonafide* as used in clause (e) was assessed in the case of *Freddy Fernandes v. P. L. Mehra*²³ by the Delhi High Court where it was evaluated when a claim would be held to be bonafide. the High Court reasoned that if a landlord has alternate accommodations to choose from, he has a right to choose the accommodation which is more convenient to him than the other. Hence, he is entitled to choose between alternative accommodations according to his convenience.

¹⁶ *Satyawati Sharma (Dead) By Lrs vs Union Of India & Another*, (2008) 5 SCC 287 (India).

¹⁷ The Delhi Rent Control Act, 1958, No. 59, Acts of Parliament, 1958 (India).

¹⁸ The Delhi Rent Control Act, 1958, §14(1)(a), No. 59, Acts of Parliament, 1958 (India).

¹⁹ The Delhi Rent Control Act, 1958, §14(1)(b), No. 59, Acts of Parliament, 1958 (India).

²⁰ The Delhi Rent Control Act, 1958, §14(1)(c), No. 59, Acts of Parliament, 1958 (India).

²¹ The Delhi Rent Control Act, 1958, §14(1)(d), No. 59, Acts of Parliament, 1958 (India).

²² The Delhi Rent Control Act, 1958, §14(1)(e), No. 59, Acts of Parliament, 1958 (India).

²³ In *Freddy Fernandes v. P. L. Mehra*, ILR 1973 Delhi 682 (India).

6. If the premises have become unfit or unsafe for human habitation and the repairs required to fix the premises require it to be vacated.²⁴
7. If the premises are required *bonafide* by the landlord to build or rebuild or make any alterations which cannot be carried unless the premises are vacated.²⁵
8. “If the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted, a residence.”²⁶
9. “If the tenant has built a residence and ten years have elapsed thereafter.”²⁷
10. If the premises were let to the tenant as residence because the tenant was in service or employment of the landlord and the tenant ceases to be under his service or employment.²⁸
11. If the tenant caused or permitted to be caused substantial damage to the premises.²⁹
12. If the tenant has used the premises contrary to any condition issued by the landlord or the Central Government or the Delhi Development Authority (DDA) or the Municipal Corporation of Delhi.³⁰
13. If “the landlord requires the premises in order to carry out any building work at the instance of the Government or the Delhi Development Authority or the Municipal Corporation of Delhi in pursuance of any improvement scheme or development scheme and that such building work cannot be carried out without the premises being vacated.”³¹

BRILLOPEDIA

REMEDIES AVAILABLE AGAINST FORCEFUL EVICTION

SUIT FOR INJUNCTION

“An injunction is a court order requiring a person to do or cease doing a specific action.”³²

According to Chapter VII and VII of The Specific Relief Act, 1963³³, injunctions which can be filed are either temporary or perpetual in nature. An injunction can be filed in a Court of

²⁴ The Delhi Rent Control Act, 1958, §14(1)(f), No. 59, Acts of Parliament, 1958 (India).

²⁵ The Delhi Rent Control Act, 1958, §14(1)(g), No. 59, Acts of Parliament, 1958 (India).

²⁶ The Delhi Rent Control Act, 1958, §14(1)(h), No. 59, Acts of Parliament, 1958 (India).

²⁷ The Delhi Rent Control Act, 1958, §14(1)(hh), No. 59, Acts of Parliament, 1958 (India).

²⁸ The Delhi Rent Control Act, 1958, §14(1)(i), No. 59, Acts of Parliament, 1958 (India).

²⁹ The Delhi Rent Control Act, 1958, §14(1)(j), No. 59, Acts of Parliament, 1958 (India).

³⁰ The Delhi Rent Control Act, 1958, §14(1)(k), No. 59, Acts of Parliament, 1958 (India).

³¹ The Delhi Rent Control Act, 1958, §14(1)(l), No. 59, Acts of Parliament, 1958 (India).

³² Cornell Law School, <https://www.law.cornell.edu/wex/injunction>, (last visited March 03, 2021).

³³ The Specific Relief Act, 1963, No. 47, Acts of Parliament, 1963 (India).

law by a tenant to prevent the landlord from evicting him from the said premises. This is an important step if the landlord forces the tenant to evict the premises without the due process of law.

SUIT UNDER SPECIFIC RELIEF ACT, 1963 AND CIVIL PROCEDURE CODE, 1908

If the landlord forcefully evicts the tenant then he/she can file a suit for dispossession of immovable property under Section 6³⁴ of The Specific Relief Act, 1963. According to Section 5³⁵ of The Specific Relief Act, 1963, A person may recover the possession of his property if he is entitled to its possession in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908)³⁶.

SUIT FOR DAMAGES

The tenant can also file a suit for damages after being aggrieved by such unwarranted eviction. The grounds can be

- damages for breach of contract,
- mental harassment and distress,
- rent/cost of temporary accommodation,
- damages for loss in reputation in society,
- damages for false and frivolous litigation by the landlord, etc.

However, it is upon the discretion of the respective Court to decide whether or not it entertains such suits and whether or not it allows the grounds for such suits based upon the facts and circumstances of each case. However, an aggrieved party can either file a suit for damages or a suit for injunction and not both.

³⁴ Section 6: (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person 2 [through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

³⁵ Section 5: A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908).

³⁶ The Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908 (India).

POLICE COMPLAINT UNDER THE INDIAN PENAL CODE, 1860³⁷

There are certain cases where the relevant sections of The Indian Penal Code, 1860³⁸ may apply to the landlord. The tenant, under such circumstances can approach the nearby police station to lodge a complaint or an FIR against the landlord or his agent. A few examples of this scenario could be harassment by the landlord, assault, battery, criminal trespass, etc., all of which are covered under the provisions of the Indian Penal Code.

RENT CONTROLLER

In case the tenant is being evicted on grounds other than the ones mentioned under Section 14 of The Delhi Rent Control Act, 1958³⁹, the aggrieved can approach the Rent Controller of his/her jurisdiction to challenge such jurisdiction. The Controller can then summon and examine any person on oath as per the powers vested to him under The Delhi Rent Control Act, 1958⁴⁰

MODEL TENANCY ACT, 2021

The Model Tenancy Act, 2021 was first proposed in the year 2019 as Model Tenancy Bill 2019 but was later approved by the Union Cabinet on 2 June 2021. The Act aspires to protect the rights and interests of the tenant and the landlord by providing a speedy dispute redressal and by establishing a Rent Authority, Rent Court and Rent Tribunals. This means that rent and tenancy related disputes will no longer be tried by Civil Courts which is a one step ahead towards a speedy disposal of justice.

The Act has been implemented by the Centre but each State/ Union Territory will have to pass its own Model Tenancy Act. The Act aims to register all tenancy agreements on its portal by providing a unique registration identity to them.

³⁷ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

³⁸ *Id.*.

³⁹ The Delhi Rent Control Act, 1958, No. 59, Acts of Parliament, 1958 (India).

⁴⁰ The Delhi Rent Control Act, 1958, § 36(2)(a), No. 59, Acts of Parliament, 1958 (India).

Section 21(1)⁴¹ of the Act states that “a tenant shall not be evicted during the continuance of tenancy agreement”.

The Act also provides for such a situation under Section 21(2)(b)⁴² where a landlord can move the Court if the tenant refuses to pay the rent for two months. However, if the tenant pays his arrears within one month of the matter pending before the Court, the tenant may be allowed to say, if this is their only default of the year.

The Act provides for conditions under which a tenant can be evicted by a landlord:

- Refusal on part of tenant to pay rent.
- Non payment of rent for 2 months or more.
- Occupation of part or whole of the rented premises without a written consent of the landlord.
- Misuse of the rented premises by the tenant despite a written notice being served by the landlord.

Conclusion

The Delhi Rent Control Act, 1958⁴³ was enacted to protect the interest of both tenants and landlords. However, with the passing of time, it became a tool of harassment by the landlords who often took advantage of their tenants who were mostly vulnerable to the demands and unwarranted eviction of the landlords. The main issue in the eyes of the researcher is that the Act only covers those tenants which pay a rent below ₹3500 as rent. This does not cover most of the tenants in Delhi who essentially pay more than this amount. This in turn makes the Act ineffectual since then the provisions of the Transfer of Property Act are applied to the

⁴¹ Section 21(1): A tenant shall not be evicted during the continuance of tenancy agreement except in accordance with the provisions of sub-section (2).

⁴² Section 21(2)(b): The Rent Court may, on an application made to it in the manner prescribed, make an order for the recovery of possession of the premises on one or more of the following grounds, namely: - (b) that the tenant has not paid the arrears in full of rent payable and other charges payable as specified in sub-section (1) of Section 13 for two months, including interest for delayed payment as may be specified for in the tenancy agreement or prescribed, as the case may be, within one month of notice of demand for the arrears of such rent and all charges payable being served on him by the landowner in the manner provided in sub-section (4) of Section 106 of the Transfer of Property Act, 1882: Provided that no order for eviction of the tenant on account of default of payment of rent shall be passed, if the tenant makes payment to the landowner or deposits with the Rent Court all arrears of rent including interest within one month of notice being served on him: Provided further that this relief shall not be available again, if the tenant defaults in payments of rent consecutively for two months in any one year subsequent to getting relief once.

⁴³ The Delhi Rent Control Act, 1958, No. 59, Acts of Parliament, 1958 (India).

remaining population. In January 2019, the Delhi High Court dismissed a petition which challenged the Delhi Rent Control Act which was filed by a bunch of landowners. The researcher believes that there should be a uniform law for rent in all States which covers all the issues relating to rent and eviction. Even though we have the Transfer of Property Act, it does not cover a variety of topics like grounds for eviction by a landlord of a let premises.

With the implementation of The Model Tenancy Act, 2021, the researcher believes that the situation might change for the better, from the perspective of both the landlords and the tenants. With the establishment of Rent Courts and Rent Tribunals, there will be a speedy mechanism for the disposal of cases which relate to the Property issues. This is a much-needed change in the eyes of the researcher since most of the cases pending before the civil courts relate to property related suits. The researcher believes that this will give way to the protection of interests of both the landlords and the tenants who often come into disputes with each other. This might also enable the aggrieved parties to approach the Courts if there is a light at the end of the tunnel in the form of speedy and timely redressal of the problems faced since many people often refuse to approach the courts since matters can take even years to get solved.

Even though we have various laws in place which protect the rights of the tenants, it is often the sad reality that the rights of the tenants are not being protected. At various times, the landlords have continued to abuse their powers against the tenants. Especially in the Covid-19 pandemic where a lockdown was imposed, the tenants were at the mercy of their landlords who provided little to no relief from rent and threatened eviction upon their tenants.

Hence, the researcher would like to conclude the paper by suggesting a uniform law for all States where the amount of rent does not govern which law will apply to the aggrieved parties. Even though there are various reliefs available to the tenants from unwarranted eviction, the same will not be as much effective if the cases take such a long time to get resolved. Hence, there is a dire need for the enactment of the Model Tenancy Act which aims to establish the Rent Courts and Rent Tribunals which will provide a speedy mechanism for the disposal of the cases.