The Legalities of Trespass to Tenancy in Malaysia

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Abstract: The landlord-tenant relationship in Malaysia is mostly governed by the tenancy agreement, which spells out the rights and obligations of both parties. Despite having the legal agreements, it has been reported that many issues arise, such as trespass committed by landlords to the tenanted property and recovering losses from the tenants who disappeared. As of today, the country has yet to enact specific legislation to deal with issues arising between landlords and tenants. Hence, in the event of any dispute, the tendency for Malaysian landlords is not to go through the legal system to settle them as it is a costly and time-consuming process. Some tenants who are aware of this legal inefficiency choose to exploit it for their benefit at the landlord’s expense. Hence, the main issues in this paper will be the possible ways in which trespass could be committed by landlords into the tenanted property, and their rights are not very well-protected, and quite often, the safety deposits collected beforehand are never enough to cover the losses. Given several lacunae, this paper analyses the on the possible or several ways in which the landlord could commit trespass into the tenanted property. Also, this paper will investigate the current Malaysian legal system to identify the current solutions available for eviction and repossession of a tenanted property. Also, this paper seeks to similar practices in Australia and the United Kingdom, which have a long-standing legislation governing tenancy issues. The research adopts doctrinal research in which secondary sources including academic journals, online sources, and decided cases are referred. The authors contend that contrary to the United Kingdom and the Australian legal position, there is a gap in the Malaysian law in governing landlord-tenant relationship.

Keywords: Trespass, Tenancy Agreement, Eviction, Property Repossession, Landlord, Tenant

1. Introduction

The law of trespass stands solemnly as a seemingly tranquil and uncomplicated backwater of property law. Many academic commentators agree that trespass doctrine is relatively uncomplicated: Because trespassing strikes at the very core of a property owner’s right to exclude, there is widespread agreement that property owners should be entitled to injunctive remedies to protect against trespassing. Trespass is concerned with the right to exclude intrusions by others, and it applies to relatively gross invasions by tangible objects, persons, cars, and buildings (Woodbine, 1924). Trespass law can be divided into few categories, with each having their definitions and characteristics. Trespass to land can be defined as “unreasonable interference” with someone else’s land (Talib, 2003). Firstly, such encroachment maybe in the form of entering the land, which is in someone else’s possession without permission, refusing to leave when permission has been revoked, and by throwing objects into the land. Secondly, by remaining on someone else’s land, such as a licensee whose license has been revoked or a tenant who has been issued a notice of repossession by the landlord. Thirdly, by entering and placing an object on someone else’s land and finally by interference to someone else’s airspace, which is deemed to be the space above a person’s land. Examples include aeroplanes that fly above a person’s land and telephone wires that cross into a person’s land (Talib, 2003:31-37).

Another type of trespass is trespass to property, which occurs when a person who has no legal rights to the property, enters that property without getting the consent of the legal owners or occupants (Loader, 1992). Trespass may also relate to a person that is also known as intentional torts (Trevelyan, 2019) and virtual trespass involving illegally using another person’s computer system or electronic device (Alley, 2018; Brown and Judge, 2018).

Within the international literature, several commentators have argued on the implications of trespass; for instance, McCormick (1924) discusses the impediments faced by the landlords in evicting problematic tenants who failed to pay rent. Besides, Ramos (2020) asserts that usually, in the landlord-tenant relationship, there exist unequal bargaining powers to the detriment of the tenant. He pointed out that the urgent need to regulate tenancy relationships privately entered between landlords and tenants became inevitable, and the ultimate result of this is to have a specific law on the rent control and recovery of premises. On the other hand, Alley (2018) and Brown & Judge (2018) have conducted studies into the augmented reality game ‘Pokémon Go’ and discussed the implications of placing a virtual object in someone’s private property.
analysed the issue of whether publicly used but privately owned spaces, such as shopping centres, could be used for ‘expressive activities’ without constituting a trespass to property. However, currently, there is very little academic research (internationally and locally), which discusses the specificities of trespass that occur between a tenant and a landlord. Tenancy trespasses are a common occurrence around the world. In Malaysia, many of such cases are resolved outside the court as the legal framework has made it a cumbersome task for the parties to resolve it through the legal system.

The paper begins with an explanation of the general concept of trespass. Next, the paper discusses the four types of trespasses that may occur in a landlord-tenant relationship. Furthermore, the paper will proceed to discuss the limitations of enforcing trespass by using a tenancy agreement and, finally, there recommendations to improve the enforcement of tenancy trespass in Malaysia.

**Trespass to Tenancy in Residential and Commercial Premises**

The tenancy agreement is a legally binding contract between the tenant and landlord which includes all the mutually agreed upon terms and conditions of that contract (Onakoya, 2017). In Malaysia, tenancy agreements are governed by the Contract Act 1950 as well as the Specific Relief Act 1950, Distress Act 1951, Civil Act 1956, and the National Land Code Part 15 ‘Lease and Tenancies’ (Sufian, 2012). A tenant can be defined as a person or company that has a legal right to occupy a specific property under a signed and agreed upon tenancy agreement with the landlord (Hayward, 2017). The focus of this paper is on the question whether the actions of a landlord or a tenant could amount to trespass after there has been a breach of the tenancy agreement caused by the tenants defaulting on their rental payments, or causing damage to the property or using the property for a purpose not stated and agreed upon in the tenancy agreement.

The definition of trespass to tenancy shares the general definitions of trespass to land, to property, and to tenancy. Generally, a trespass is said to have occurred in two situations: 1) if a landlord enters his/her property while the right of occupation of that property is given to a tenant and 2) if a tenant who has no legal right to remain in a tenanted property refuses to leave the premises (Alley, 2018) (Chan, 2017) (Onakoya, 2017) (Sufian, 2012) (Talib, 2003) (Loader, 1992). In Malaysia, a landlord can legally enter a property in four circumstances. Firstly, to conduct a ‘viewing’ session for a prospective tenant; secondly, to inspect the condition of the property; thirdly, to conduct repairs (Property Guru, 2019). These three circumstances, however, require the landlord to give advance notice of intention to enter the premises to the tenant (Chan, 2017) (Wai, 2018). The fourth circumstance is any ‘entry’ conditions that are stated in the tenancy agreement (Sufian, 2012). Upon analysis of the Malaysian and international cases on trespass to tenancy, four specific types of trespasses were identified: 1) the act of ‘locking the doors’ to property; 2) the act of cutting utilities to the property; 3) the act of entering a tenanted premises and selling the tenant’s belongings to recover the finances owed and 4) the act of refusal to leave the property. These will be further discussed below.

**1) ‘Locking the Doors’ of the Property**

The first point of the discussion is whether a landlord can legally lock the doors to or seal off the property to stop the tenant (who has breached the tenancy agreement) from entering the premises. This action can be regarded as a form of ‘self-help’ eviction, where the landlord is attempting to rectify the problem by his/her actions without any recourse to legal proceedings (Chew and Ong, 2006). Landlords will often justify their actions by stating that their tenant had breached the tenancy agreement and that they are entitled to regain possession of their property. In Malaysia, the act of ‘locking doors or sealing the property’ by landlords is prohibited under Section 7(2) of the Specific Relief Act 1950, which states that a landlord is not allowed to repossess his/her property without a court order even if the tenant has breached the initial tenancy agreement.

The application of this law can be seen in Abdul Muthalib Hassan v. Maimoon Hj. Abd. Wahid [1992] 1 CLJ 88, where the defendants padlocked and closed the premises without a court order to prevent the plaintiffs from entering. The court held that the act of locking the doors was an act of trespass and that the non-payment of rent was not a valid justification. A similar decision was also seen in Dr. Harjit Singh v. Suhaime Bin Samat & Anor [1995] 1 LNS 62, where it was held that the defendants’ actions of locking the plaintiff out without a court order were in direct contravention to section 7 of the Specific Relief Act 1950. In the case of SME Aerospace Sdn. Bhd. v. Steyr Mannlicher (M) Sdn. Bhd. [2006] 5 CLJ 121, the court stressed that obtaining a court order before any attempt to recover possession of a property is a mandatory requirement and that no one should be allowed to take the law into their own hands. The court also stated that section 8 (1) of the Specific Relief Act 1950 gives the right to any person that has been forcibly dispossessed by the landlord without a court order to reclaim...
possession of that said property (even though that tenant’s tenancy has expired) by suing the landlord under this section.

The illegality of engaging in such a form of ‘self-help’ evictions can also be seen in some international cases. For example, in a South African case, Taddeese and Others v Peer NO and Others (5250/2016) [2016] ZAKZDHC 26 the tenant had failed to honour a signed acknowledgement of a previous debt with the landlord and had also sub-let a section of the commercial premises to different tenants (approximately 150) as living accommodation without the permission of the landlord. Upon discovery of this, the landlord placed a lock on the main gate and denied the tenants and the sub-tenants entry into the premises. In response, the tenant went to the court to seek ‘spoliatory relief.’ The court held that the landlord’s act of locking the gate was illegal and akin to taking the law into his own hands and, in doing so, unlawfully dispossessed the said tenants from the premises. The granting of ‘spoliatory relief’ meant that the landlord had to allow the tenantsto enter the premises even though the tenants had breached the tenancy agreement. The question of whether the tenants had breached the agreement was not taken into consideration, as the matter of importance was that the tenants were unlawfully dispossessed by the landlord. Under the South African law, in order to legally evict a tenant, the landlord needs to apply for a court order.

Another example is an American case of Jordan v. Nationstar Mortgage LLC 374 P.3d 1195 (Wash, 2016). This case was not a tenant versus landlord case but rather a case related to a homeowner who had defaulted on his/her mortgage payments and thereafter who came to the property and changed the lock on the front door of the house. The lender argued that it was written in the deed of trust that if a borrower were to default on their loans, the lenders would be able to enter the property to secure the property and protect the lender’s interests. Hence, they were legally permitted to do so. The issue here was whether the terms in the deed of trust conflicted with a law in Washington which does not allow any lenders to take possession of a property before foreclosure. It was held that the terms in the deed of trust conflicted with the existing law and therefore was not valid, making the lender’s act of changing the lock illegal.

As discussed above, in Malaysia, the ‘locking of doors’ is not a permitted option for evicting a tenant that has breached the tenancy agreement. However, one of the legal procedures for eviction based on a default of rental payments is as follows. The landlord will firstly have to issue a notice to the tenant requesting that the tenant pay the outstanding amount (Schneiderman, 2018). If, after a given time, the tenant does not respond or settle the outstanding amount, the landlord may then issue a notice of termination to the tenant. Such action is followed by the filing of a legal suit against the tenants for arrears of rent, which will be done through the landlord’s lawyers (Schneiderman, 2018). In this legal suit, it is usual to seek for vacant possession of the property (Greif, 2018). After a decision is made by the courts and the order for vacant possession is given to the landlord, the representing lawyers will then have to file for a writ of possession to request for the bailiffs to repossess the property (Wai, 2018) (Chan, 2017).

2) Cutting Utilities by the Landlord

Other instances of which trespass to tenancy could happen are whereby the landlord has cut the utilities, including electricity or water supply in the premises. In Malaysia, there are some incidents whereby the tenants hold the landlord’s property by refusing to move out despite months of rental arrears, knowing that the eviction process is time-consuming (Begum, 2018). No matter how good the screening process, landlords are sometimes unlucky to get bad tenants. These tenants may pretend to be reliable tenants during the interview process in such a way that the landlord is convinced that all is fine, and after moving in, they show their true colours (Ng, 2015). When tenant is unable to commit to the terms and conditions in the tenancy agreement, the landlord may reserve the right not to return all the security deposit for the damagedone to the property of the landlord. Any attempts by the landlord to drive the tenant out of the property by terminating the utility supply without any letter of demand or a court order to repossess the property may consequently lead to a breach of contract by the landlord (Desmond & Gershenson, 2017). In the United States, New York’s Tenants Guide for landlord explicitly states that a court order is required for the termination of utilities such as water, electricity, and gas within the property occupied by any errant tenant. Failure to do so may result in a charge for trespass to property.

In general, utilities may include tax assessment, management fees, sinking fund, insurance, trash collection, electricity, gas, water, and sewer—anything that comes out of a pipe or outlet. In some rental units, utilities may include telephone, cable, and high-speed Internet. The lease agreement or tenancy agreement should specify who (landlord or tenant) should pay for the utilities. In practice, a landlord is responsible for tax assessment, management fees, sinking funds, and insurance, while the tenant is responsible for trash collection, electricity, water, sewer charge, telephone, cable, and high-speed internet. (NST Property, 2018)
In Malaysia, the practice is that a landlord is held responsible for the utilities when the unit is vacant and would usually cancel these accounts on a date that is specified in the lease (Lee, 2017). It is the tenant’s responsibility to contact the utility companies, sign up for utilities, pay for them, and would cancel the utilities (such as electricity) when the lease is up and notify the landlord. At this point, the utilities revert to the landlord’s name. The failure to pay the utility bills would lead to the termination of such services, which will be the personal responsibility of the tenant under the terms of the lease or rental agreement and thus may lead to eviction for violation of the lease (Azlinor, 2012).

A landlord can evict the tenant under the term and conditions of the lease or tenancy agreement (for example, if the tenant fails to pay rent), following proper rules and procedures. Research from the University of Ibadan, Nigeria, shows that a landlord does not have to observe these implied covenants if the tenant fails to pay rent or is in breach of other terms of the tenancy. In such cases, the landlord may take action to evict the tenant and claim damages for the tenant’s breach. (Onakoya, 2017). However, it is essential to note that if a landlord disconnects the supply of water, electricity, or gas to the property while the tenant is still in possession, such an act will constitute a breach of this implied covenant, which allows the landlord to cut off the utilities to force the tenant out (NST Property, 2018). Apart from that, in Malaysia, the landlord can reserve the right to request relevant authorities to stop the supply utility facility if the tenant breaches the tenancy agreement. Most important of all, the landlord and the tenant should have an explicit tenancy agreement in place to protect each party’s interests in case of late payments or non-payments (Property Guru, 2018).

3) Entering Property and Selling Tenant’s Possessions to Recover Finances

The third type of trespass to the tenancy is when landlords enter the tenanted property and sell any movable property belonging to the tenant as a means to recover his finances. Basically, a tenant has the right to have enjoyments of the property/premises, which must not be disturbed by the landlord, his/her agent, or servants (NST Property, 2018). Furthermore, such enjoyment requires the tenant to pay the rent on time or before the due date that has been agreed upon between the parties when signing the tenancy agreement and has to take care of the owner’s property or premises (Onakoya, 2017). However, a landlord may face some problems such as non-payment of rent for three months by tenants, in which the security deposit given by the tenant may be insufficient to recover the landlord’s losses.

In these instances, when the landlord calls tenant, he could not get through to the tenant or when the landlord goes to the property or premises to look for the tenant and later found out that the tenant had already abandoned the property or premises, the landlord may enter such property and dispose of or sell any property belonging to the tenant found in the premises. Such action may be allowed if the landlord found that the interior of the premises or his furniture has been damaged by the tenant to recover his losses for the damage.

In such a situation, the Malaysian law provides for an application for a warrant of distress under the Distress Act 1951. Section 5(1) of the 1951 Act states that a landlord or his agent can apply ex parte to a Judge or Registrar for an order for the issue of a warrant of distress. The purpose of this warrant is to recover the rent amount due or payable to the landlord by the tenant for a period not more than twelve completed months of the tenancy agreement. Besides, the warrant shall pass to the bailiff, and the bailiff will seize or distrain movable property found in the premises and sell them off to obtain the amount of rent therein stated to be due to the applicant, together with the loss of the applicant and the fees and expenses of the bailiff.

However, in such instances, landlords need to adhere to the law. For example, Section 8(d) of the Distress Act 1951 states that everything that relates to the tenant’s business, such as tenant’s computer or digital mobile that is part of the tenant’s company usage files cannot be distrained and sold off. The exception under Section 8(d) only applies to all furniture and valuable movable property or items belonging to the landlords. However, any computer and handphone that contain the tenant’s company usage are not under warrant of distress. Hence, despite applying for the warrant of distress, landlords may not be able to recover his losses. They are in a worse position as they may need to spend much money on legal representation and litigation matters.

In the United Kingdom, when a tenant leaves the premises before the tenancy agreement end and without notifying the landlord, it is known as tenant abandonment (Anor Nettlawman, 2020). The UK approach states that despite not paying for the rental, the tenant is still a legal occupant of the premises because the tenancy agreement is still on-going. Hence, a landlord needs to give a reasonable period of notice (around 28 days) to the tenant to prove that the latter has abandoned the premises or has not left the premises on a short-term basis for some reason, such as admitted to hospital, etc. Besides, the Torts (Interference with Goods) Act 1977 provides some guidance to landlords on the measures to take when his/her tenants leave their belongings and abandon the
premises. In such instances, a landlord needs to give the tenant a reasonable period of notice, which is typically around 21 days before selling the tenant’s belongings. Also, a landlord needs to keep the tenant’s belongings for three months if the tenant owes money to the landlord. A landlord has the right to sell reasonable items and goods to recover his losses and should return the excess amount beyond their need to the tenant (Reeve-Lewis, 2010).

4) Tenant Refuses to Leave the Landlord’s Property

The fourth type of trespass to the tenancy occurs when the tenants refuse to return the possession of the property to the landlord. It often occurs when the tenants are unable to find alternative solutions to their needs for a suitable shelter after a notice of termination is served by the landlord. Some of the contributing factors to this type of trespass include the tenant’s inability to fulfill the usual tenant’s obligations such as failure to pay the agreed rent in full and on time or failure to maintain the rental property in good condition, and misuse of the property for any other purposes other than those stipulated in the tenancy agreement. In these situations, it is essential to note that tenants cannot be evicted by force regardless of the situation. As mentioned previously, recovering the possession of the property cannot be done without a proper court order, as provided by Section 7(2) of the Specific Relief Act 1950. In the case of Abdul Muthalib Hassan v. Maimoon Hj. Abd. Wahid [1992] 1 CLJ 88, the court ruled that the failure of the tenant to pay his rent is not a reasonable justification for the landlord’s act of trespass.

Nonetheless, certain parties are given absolute immunity during these eviction situations in Malaysia. For example, in 2019, it was reported that the Penang government had ordered the eviction of several families from the People’s Housing Project (PPR) apartment units in Taman Manggis, Penang, due to a breach of contractual terms and requirements. The lawyer representing the families evicted, Mohd Khairul Azam Abdul Aziz, claimed that the evicting officers representing the Penang government had threatened to lock up occupants at the time of eviction, which can be considered as an act of illegal confinement and trespassing, and which could lead to a lawsuit under Section 8(1) of the Specific Relief Act 1950 (Dermawan & Muzamir 2019). However, it was later found out that the evicted tenants of the Taman Manggis people’s housing project flats cannot file a lawsuit against the State Government as section 8(3) of the Specific Relief Act 1950, has put a limitation on the parties that can be sued for the dispossess of property to include any government of Malaysia, which in this case, would include the State Government of Penang. This position clearly shows that the law is not inclusive enough to protect the rights of regular citizens who act as landlords.

Limitations on Enforcing Trespass to Tenancy Agreement

Currently, Malaysia does not have any specific law governing tenancy issues, nor is there a standard tenancy agreement required by the law. As of today, tenancy agreements are governed by the Contracts Act 1950, which basically considers that contractual parties have agreed at their own free will, based on mutually agreed terms (Kader et al. 2015). The disadvantage of a contractual agreement is the difference in bargaining power between a landlord and a tenant, which may result in the inclusion of unfair terms and conditions (Razak, Kasmaddin & Kassim, 2019). Hence, during disputes, any remedies available are highly reliant on the tenancy agreement that was agreed upon beforehand, which can be concluded in a highly unfair manner. Furthermore, even with the presence of a comprehensive and well-written tenancy agreement, individual tenants with ill intent may still choose to ignore it altogether.

In actual practice, however, the utilization of proper legal methods to evict a tenant is an infrequent occurrence due to the time and cost constraints (Lee 2017). Thus, it is much more common for landlords to either negotiate with the tenant for a revised payment structure that is workable or, for a return of the property’s possession, peacefully. However, unscrupulous tenants are known to exploit this anomaly by holding the landlord at ransom by refusing to move out despite many months of unpaid rental while staying literally for free. Hence, the situation is very pro-tenant in Malaysia. The situation is compounded by the fact that landlords may face an issue that involves runaway tenants, where they have no course for settlements outside the court at all. If the landlord chooses to trace the rogue tenant, he can resort to employing a private investigator. This again will incur financial resources, with little certainty of success. These are among the grievances facing a landlord when a private residential tenancy is purely governed by the Contract Act 1957.

Malaysian legal framework does not adequately protect the owner of the property because, as shown by the Distress Act 1951, despite allowing the landlord to sell specific things from the tenant’s belonging with specific conditions and terms, there is no other specific law to solve the problem. Besides, according to Netalawman (2020), the UK Government does have its laws to guide on tenant abandonment, but Malaysia does not have
anyspecific law to guide the landlords when a similar problem. Also, the lack of legal knowledge on the part of landlords contribute to their violation of the law of trespass in evicting tenants. On the other hand, the disadvantage of going through the Malaysian legal system to evict a bad tenant is that it is a very time consuming and an expensive process. According to Chan (2017), the whole process can take seven months at a cost of RM10, 000. If the tenant decides to challenge the landlord in court, it could potentially lengthen the process and add on considerable costs.

**Recommendations for Enforcing Trespass in Tenancy**

In view of the problems and lacuna in the law relating to a landlord-tenant relationship in Malaysia, it is suggested that a new law and certain amendments should be introduced to existing legislation to make it less cumbersome and cost-effective to evict occupants who are no longer granted any rights to occupy a premise. Having a right to take possession and forcefully evict any tenant without a court order, even with a tenancy agreement for any form of contract breach would go a long way in shifting the power balance in the Malaysian landlord-tenant relationships, and thus, encourage better behaviours from the tenants (Instone, et al, 2014).

The first recommendation pertains to the action of ‘locking the doors’ as a type of trespass. It is submitted that such action should not be considered as a trespass in two situations; 1) When the tenant is in arrears of rent for more than three months and notices of demand of payment have been sent, 2) There is concrete evidence that the tenant is being a ‘nuisance’ and has caused damage to the property.

As it stands, section 7 (2) and section 8 (1) of the Specific Relief Act 1950, may be regarded as being too ‘pro-tenant.’ It can potentially provide too much protection for a tenant who has committed a breach in the tenancy knowing that the landlord will not pursue any legal options due to the high cost and time-consuming processes. As discussed earlier, the tenancy agreement is a contract that allows for both parties to include any terms and conditions so long as it is not contrary to the law (Harris, 2017). Hence, even if a landlord were to include conditions where he or she can ‘lock the door’ if there is a failure to make rental payments, such action will not be valid because it contravene section 7 (2) of the Specific Relief Act 1950. It is suggested that section 7 (2) of the Specific Relief Act 1950 be amended to include a specific ‘duration’ provision, to the effect that the action of ‘locking the doors’ is permitted after three months of failure to make rental payments or if there is concrete evidence that a tenant has damaged the property, in which the landlord can be permitted to “lock the doors” immediately.

Section 8 (1) of the Specific Relief Act 1950 should also be amended to include a provision, to the effect that if a tenant is in arrears of rent for more than three months or is proven to have damaged the property, he/she should not be permitted to sue the landlord for unlawful dispossession. In other words, a person that has committed a wrong should not be given an opportunity to seek justice until that initial wrong is corrected.

Another recommendation is to adopt the practice of developed countries with long-established laws governing the landlord-tenant relationship. For example, the Australian Residential Tenancies Act 2010, which is applied across all states with individual variations (Sufian, 2012). According to Section 87 (2) of the said Act, landlords are required to give at least 14 days’ notice of termination due to a breach of the agreement. If the tenants are unwilling to vacate before the end of the notice period, landlords are required to apply for a possession order within 30 days from the last day of the termination notice, as mentioned in Section 121 (2). If the landlord’s application is accepted, the tribunal will issue an order for the tenant to vacate by a specific date. If the tenant still does not vacate, the landlords can obtain a warrant for possession from the tribunal and have it enforced by the Local Sheriff’s Office.

On the other hand, Section 106 (3) states that:

“The landlord may take immediate possession of residential premises that have been abandoned by the tenant if there are no remaining occupants. Note: The residential tenancy agreement is terminated if a tenant abandon the residential premises (see section 81 (4) (d)).”

Several provisions in the Act provide that a termination order issued by the Tribunal may specify that the order for possession takes effect immediately, such as:
- Section 90 (2): Serious damage or injury by tenant or other occupant
- Section 91 (3): Use of premises for illegal purposes
- Section 92 (2): threat, abuse, intimidation or harassment
In contrast, the Malaysian legal position indicates the absence of any specific law to guide the landlords when facing tenant abandonment. Hence, landlords who do not know the law well may make many mistakes such as trespassing the house directly and selling off the tenant’s belonging without applying for a warrant of distress. A similar law such as that in the UK to set a certain period of notice after which the landlords may sell off the tenant’s belonging legally and recover his losses.

The third recommendation pertains to the act of ‘landlord cutting the utilities’. The current legal system on the tenancy agreement is governed by the Contacts Act 1950 and Civil Act 1956. The Malaysian property market has many different types of tenancy agreements or lease agreements because of the particular term and conditions of the property or the landlord’s personal preferences or tenant needs. There are many possibilities for each party’s breach of the contract, and landlord should reserve the right to terminate utility supply by a standard legal way. Conversely, tenants should give up their rights to claim owner trespass on the property in case of any default by them.

Finally, it is suggested that Malaysia should create and implement a Council for landlords in order to share each other’s experience in handling tenants, how to screen through potential tenants, and compile a centralized database with bad performance tenant which could help Malaysian landlords to avoid much legal issue in dealing with tenants. On the other hand, in case of tenants facing landlords trespassing their lawfully occupied property, they will know where and who to communicate. Nevertheless, it is a sound communication platform for landlords and tenants to review and obtain the proper measures to solve tenancy issues and avoid pro-landlord or pro-tenant policy.

2. Conclusion

It can be concluded that trespass to tenancy may occur through four types of trespasses identified earlier involving the act of ‘locking doors’, ‘cutting utilities’, ‘entering the property and selling the tenant’s possessions to recover finances’ and ‘tenants refusal to leave the property’. Such is the case even if the tenant had breached the tenancy agreement by defaulting on rental payments and/or has damaged the property. The only way that a landlord can forcefully evict a bad tenant is by applying for a court order which permits the eviction. This paper has also highlighted the weaknesses in the Malaysian legal system’s enforcement of trespass to tenancy. Firstly, the current Acts that govern tenancies can be regarded as being ‘pro-tenant’ and does not offer enough protection for landlords, even if it is evident that the tenants were the ones in the wrong. Secondly, the legal processes to obtain a court order is too time consuming and expensive. Such delay and costs often act as deterrence to landlords who are contemplating legal action. Thirdly, there is no specific ‘Tenancy Act’ that provide proper conditions to govern tenancies in Malaysia. In light of this legal lacunae, the Tenancy Act must be created to govern a tenancy relationship. Also, apart from creating a new law, the amendments are needed to the existing provisions of the Specific Relief Act 1950 to balance the rights between tenants and landlords. On the other hand, it is also suggested that an nationwide landlord-tenant database is created and maintained to protect the rights of both parties. In conclusion, it is also hoped that this paper would contribute to the body of literature in this area of law in Malaysia as the scarcity of the relevant literature does not auger well for creating any awareness of the lack of legal protection for landlords when tenants have breached the tenancy agreements.

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