

All about tenancy at sufferance

If a tenant continues to occupy a property even after expiry of the lease without the consent of the landlord, it is referred to as tenancy at sufferance. Under the law there is no difference between such a tenant and a trespasser



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Leasing commercial or residential property is an attractive source of income for many landlords (lessor). Tenants (lessee) on lease get the rights to enjoy such an immovable property for a specified time and are required to pay monthly/quarterly/annual lease. Both parties execute a lease deed which records the terms and conditions of the lease, including but not limited to capturing specifics such as the term, method of renewal and grounds of termination of lease.

At the end of the lease term, it is the duty of the lessee to vacate the property and hand over the possession of the premises to the owner. However, there have been instances of lessees refusing to vacate the house even after expiry of lease.

It is important to distinguish

between a tenant who continues to use the property after expiry of the lease term and a lessee who retains possession with the consent of the landlord.

In case a tenant is wrongfully staying in the house even after termination of the term or expiry of the lease without the consent of the landlord, it is a case of tenancy at sufferance and according to the courts there is little difference between such a tenant and a trespasser. To cite an example, Ashok had given a portion of his house to Rahul on lease and executed a registered lease deed for the same. Ashok died a few days following the expiry of the term of the lease but Rahul continued to be in possession of the leased premises. Ashok's legal

heirs want the property back but Rahul wants to continue with the lease and does not want to hand over possession to Ashok's heirs although the time period of the lease is over.

In such a case, the possession of the leased premises by Rahul is neither legal nor lawful in the eyes of law. A suit of wrongful possession can be instituted against him by Ashok's heirs and Rahul being a tenant at sufferance is liable for 'ejection' or eviction under the law.

On the other hand, tenancy by 'holding over' is applicable where the tenant retains the possession of the premises beyond the original lease term with the assent of the landlord. For example, Mehta leases out a portion of his property to Radha and executes a registered lease deed for the same. The term of the lease gets over but Radha continues to be in possession of the property and continues to pay rent to Mehta every month.

It is prima facie evident that Mehta has assented to Radha continuing to rent out his property as per the terms of the original lease.

An essential prerequisite for the tenancy by 'holding over' is a bilateral agreement between the lessor and lessee. The act of holding over after the expiry of the term does not create a tenancy of any kind. A new tenancy is created only when the landlord assents to the continuance of the tenant or the landlord agrees to accept rent for the continued possession of the leased premises by the tenant. If the acceptance of rent by the landlord/lessor is made with full knowledge and

on the express ground that the lessee intends to continue the lease, it may amount to tenancy by holding over.

In case of a tenancy by holding over, notice to quit must be given under the provisions of the Transfer of Property Act, 1882, for termination of the ongoing tenancy. However, if the lessee fails to vacate the premises beyond the termination notice period, the lessor can seek his or her eviction.

Mere continuance of possession after the expiry of the lease is not enough to entitle the tenant to establish tenancy by holding over. A tenant can hold over the property under the Act if the landlord accepts

rent or assents to his continuing to stay in the premises. In contrast, a lessee who earlier had lawful possession of the property but who wrongfully continues to be in possession despite termination or expiry of the lease term, without the consent of the lessor or without any agreement between the parties is treated under the law as a tenant by sufferance.

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I booked an under-construction flat in 2014 in a project sold by the builder under a particular name. Now the builder is selling flats in the same project under a different name. Since all the documents executed by the builder in my favour are under the project's earlier name, does such change in name have any bearing on my ownership?

—B R Kumar

As a good market practice, the builder should have given a written intimation to all allottees of the project about change in name of the project. You may approach the builder seeking clarification about change in name of the project. A mere change in the name of the project shall not affect your ownership rights in the flat.

I have given my house on lease to an individual. However, he has now further leased the house to a third party without my knowledge or consent. Is he entitled to sub-let the same?

—Dinesh Singh

The lessee's right to sub-lease the house depends on the terms and conditions of the lease deed. If there is no express prohibition in the lease deed on sub-letting the whole/ or any part of the house, then the lessee shall be entitled to sub-let the same.

My uncle wants to gift his property in my favour but he is bedridden and unable to visit the sub-registrar's office for registration of the gift deed. Is there any alternative for getting the gift deed registered?

—Santosh Singh

As this is an exceptional circumstance, your uncle may move an application showing special cause with the office of the concerned sub-registrar/ registrar. The authorised officer will then visit your uncle's residence and accept the gift deed for registration.

I have given my 2BHK house on lease. He has constructed a wall in the master bedroom and converted the house into a three BHK without my knowledge or consent. Is that allowed?

—Deepak Shah

As per law, the lessee must not, without the lessor's consent, construct any permanent structure on the leased property. This is a breach of tenancy and you may file a suit for eviction of the lessee.

The author is senior partner, ZEUS Law Associates, a corporate commercial law firm. One of its areas of specialisation is real estate transactional and litigation work. If you have any queries, email us at htestates@hindustantimes.com.