

Essentials of a lease deed

Make sure that the duration of lease is clearly mentioned in the document. Otherwise the tenancy will be valid on a month-to-month basis

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Our courts are overflowing with landlord-tenant disputes, most of them emanating from inappropriately drafted lease deeds or, worse, between parties not having executed a lease deed at all. This two-part series discusses terms that parties must negotiate and capture in the lease deed to make their rights enforceable.

Term and lock-in period:

The date of commencement and duration of the lease should be set out in the lease deed. If the duration of lease is not set out in the document, the tenancy will amount to a month-to-month tenancy arrangement where either party has the right to terminate the lease at any time, after giving prior termination notice to the other party. Lock-in period, if any for the lessee also needs to expressly set out in the lease deed. Lock-in period means a period during which the lessee is not entitled to terminate the lease except for circumstances specifically mentioned in the lease deed. Such a clause assures the lessor steady income from rent for a definite period. Most lease deeds also contain a clause that

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in the event of the lessee wishing to terminate the lease during the lock-in period, he or she shall be liable to pay rent for the unexpired lock-in period to the lessor. Therefore, it is important that the lease deed specify the circumstances under which the lease may be terminated validly by the lessee during the lock-in period without the liability to pay rent for the unexpired lock-in period.

Rent and security deposit: The rental amount should be just and adequate, as may be mutually agreed between the lessor and the lessee, keeping in mind factors such as location, type of construction, civic amenities and facilities, etc. The timelines and method of payment should be clear. A clause on interest-free refundable security deposit acts as a buffer for the lessor in case of any breach by the lessee – this amount is refunded to the lessee at the time of expiry or termination of the lease, provided the lessee has complied with conditions of the lease deed. For example, if the

lessee has damaged the property or not paid electricity and water charges, the lessor would be entitled to adjust costs borne towards rectifying the damage and payment of electricity and water charges from the security deposit. Parties may also incorporate a clause whether and by what proportion the rent and/or security deposit would stand escalated during the lease term.

Extension and renewal: To avoid litigation and uncertainty over leased premises after expiry of the lease term, lessors and lessees must be aware whether they would opt for an 'extension' clause or a 'renewal' clause. Renewal of lease is a fresh lease in itself which is independent of the previous lease. In order to give effect to a renewal clause under the original lease, a lease deed has to be executed once again by the parties. If the original lease deed contains a clause for renewal but the lessor fails to execute and/or get the lease deed registered for a further lease period, the aggrieved lessee may file a suit for specific performance of the renewal clause, provided he/she is not guilty of having breached any terms of the original lease deed. In case of an extension clause, the lease



period would not terminate at the end of the initial period if the option to extend the lease is duly exercised in accordance with the terms and conditions of the original lease deed. This is because an extension of a lease is treated as a prolongation of the original lease.

Transfer and attornment: The lessee may ensure that the lease deed contains an attornment clause, stating that in the event the property is transferred

by the lessor to a third party, a letter or deed of attornment would be executed whereby parties can recognise each other as a lessee and new landlord, respectively. Attornment is essentially the act of recognising a new landlord during the continuation of an existing lease on the same terms and conditions. In the absence of an explicit clause, the Transfer of Property Act, 1882 lays down principles of statutory attornment of a lease whereby all rights

of the original lessor would stand transferred to the new lessor (ie buyer) by statutory attornment, ensuring continuation of the existing lease.

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