

Renting a place? What's a lock-in period?

A lease deed that cannot be terminated for a specified time period has its advantages

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Numerous lease transactions for both residential and commercial properties these days have a lock-in period clause. This ensures that neither the owner (lessor) nor the lessee (lessee) is entitled to unilaterally terminate the lease before expiry of the lock-in period, except in certain specified events. The duration of the lock-in period can range from as little as one year to five years or more. For a lessor, the advantage of a lock-in period clause is that a steady income is assured from monthly rent for a definite period. He or she can, thus, make investment plans. The lessee on his or her part can enjoy peaceful possession of the premises for a definite period.

Now the question is, what happens if the lessee wants

to terminate the lease during the lock-in period? Clauses in most lease deeds state that in case he terminates the lease during the lock-in period the lessee shall be liable to pay rent for the remaining lock-in period. For instance, if a two-year lease is to be terminated after one year, the clause might stipulate that the lessee would be liable to pay rent for the remaining period. However, simply having such a clause does not make a lessee liable to pay rent for the entire period. How much he or she pays depends on numerous facts and circumstances unique to each case.

The following factors can be taken into consideration for determining whether the lessor's demand for payment

of rent by lessee for the unexpired lock-in period is justifiable and legally tenable:

(i) Whether the lock-in period clause represents genuine pre-estimate of damages or it is in the nature of penalty has to be judged by the facts in each case and in the background of relevant factors which are case-specific.

(ii) Whether the lessor had made the premises available to the lessee as per the lessees' unique requirements (for example, if lessor had incurred expenditure on infrastructure, fixtures and fittings specifically for the lessee's use). In such cases, court may evaluate whether the lock-in period was a reasonable clause to avoid duplication of such expenditure.

(iii) Even if the lessee has terminated the lease during lock-in period, the landlord may have to prove that he took reasonable steps to

minimise the loss suffered by him. For example, if a lessee has terminated the lease after only one year of the lease, even though the lock-in period is for two years, the lessor might be required to prove in court whether or not he had made all reasonable attempts to lease the premises to a new

lessee as soon as possible.

Parties to a lease must ensure the lock-in period clause is drafted carefully. They may incorporate exceptional circumstances under which the lease may be terminated validly by either party. However, whether or not a lessor can claim rent from

lessee for termination of lease during lock-in period may depend on the above factors from case to case.

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