

Onus on landlord for upkeep of building's air-conditioners



LEGAL VIEW
ASHISH MEHTA

Q: The building I stay in is about 20 years old, poorly maintained and occupied by more than 40 tenants. During the summer, chillers don't work. All complaints to the landlord have fallen on deaf ears. Moreover, a new clause has been added in the tenancy contract which says that chillers in the building shall not be the responsibility of the landlord. It also demands that the tenants must either sign contracts in the landlord's office and pay for the same to renew their respective agreements or vacate the premises within three days. Is central air-conditioning part of the basic services landlords need to provide? Can the landlord change the terms of agreement without giving sufficient notice? Is the landlord allowed to refuse the copy of the new agreement before signing? If the new clauses are not acceptable, can I go to the Rents Committee and deposit the cheque for the annual rent there in protest? What are the legal options open to me?

A: Since you haven't mentioned, we presume that your residence is in Dubai and the tenancy contract is subject to the applicable laws of the emirate of Dubai in the UAE. It may be noted that tenancy relations in Dubai are governed by Law No. 26 of 2007, as amended by Law No. 33 of 2008 (the 'Tenancy Law').

Pursuant to the first query, it may be noted that under the prevailing laws of Dubai, unless it is agreed otherwise, it is the landlord's obligation to handle the maintenance of the property, and to rectify or correct any defects or faults that may affect the tenant's 'targeted benefit' or desired usage of the premises. This is in accordance with Article (16) of the Tenancy Law, which reads as follows:

"Landlord shall, during the validity of the contract, be liable for handling the maintenance of the property and shall rectify any defects or faults that affect a tenant's targeted benefit from the premises, unless the two parties agree otherwise."

Although air-conditioning or chillers installed in buildings are not specifically mentioned as being part of the basic services that a landlord must provide, it may, however, be noted that it is the duty of the landlord to arrange for the maintenance of the property and correct any defects or faults it may have.

Pursuant to your second query, note that a tenancy contract is executed for a fixed term and cannot be amended unilaterally before the expiry of the contract. The amendment to the tenancy contract may be brought into effect only upon the expiry of an existing tenancy contract, whereby the rent for the property may be reviewed, and if there is a disagreement regarding the same, the Dubai Rental Disputes Settlement Centre shall have the authority to settle the fair rent for the property. This is in accordance with Article (13) of the Amended Tenancy Law, which reads as follows:

"Article (13) For the purpose of

renewing the tenancy contract, landlord and tenant upon its expiry may amend any of the agreement terms or review the rent whether by increase or decrease. If the parties do not reach an agreement regarding this, the committee may decide on the fair rent considering the standards referred to in Article No (9) of this Law."

For bringing in any amendments to the terms of an existing tenancy contract, either party (the landlord and/or the tenant) must notify the other party at least 90 days before the expiry of the existing tenancy contract. This is in accordance with the provisions of Article (14) of the Tenancy Law which reads:

"Article (14) If either party of tenancy contract wishes to amend any of its conditions pursuant to Article (13) of this Law, then he must notify the same to the other party not less than 90 days prior to the expiry date, unless both parties agreed otherwise."

In response to your fourth query, it may be noted that in the event the new terms in the amended tenancy contract are not acceptable to you, you may first negotiate with the landlord, and if such negotiations fail, you may choose to approach the Dubai Rental Disputes Settlement Centre, for the resolution of disputes regarding contract clauses.



Know the law

If either party of a tenancy contract wishes to amend any of its conditions, then he must notify the other party not less than 90 days prior to the expiry date of the agreement

Pursuant to your fifth query, you may note the following points as part of your legal options:

> In the event your landlord fails to follow the requirements for serving notice, then no new terms may be introduced within the tenancy contract;

> Your landlord may not demand eviction from the property arbitrarily unless in certain circumstances, which are stated under Article (25) of the Tenancy Law, which reads as follows:

"1. Landlord may demand the eviction of a tenant prior to the expiry of tenancy period in the following cases:

a. If tenant fails to pay rent value, or part thereof, within 30 days of the landlord's notification for payment; unless parties agreed otherwise.

b. If tenant subleases the property, or part thereof, without the landlord's written approval, and in such case, eviction shall be applicable to the tenant and the sub-tenant, and the sub-tenant's right to refer to tenant for compensation shall be reserved.

c. If tenant uses, or allows others to use, the property for illegal or immoral activities.

d. If the leased property is a commercial shop and the tenant leaves the same without occupation and without legal reason for 30 continuous days or 90 non-

continual days in one year; unless the parties agreed otherwise.

e. If tenant causes changes that endanger safety of the property in a way that it cannot be restored to its original condition or if he causes damage to it intentionally or due to his gross negligence to take proper precautions or if he allows other to cause such damage.

f. If tenant uses the property for purposes other than the purpose it was leased for or if he uses the property in a way that violates planning, building and land using regulations.

g. If the property is in danger of collapse, provided that landlord must prove such condition by a technical report issued by Dubai Municipality or accredited by it.

h. If tenant fails to observe legal obligations or tenancy contract conditions within 30 days from date of notification by landlord to abide by such obligations or conditions.

i. If development requirements in the Emirate require demolition and reconstruction of the property in accordance with government authorities instructions.

And for the purpose of this clause (1) of this Article, the landlord must notify the tenant through the Notary Public or by registered mail.

2. Landlord may demand eviction of tenant upon expiry of tenancy contract limited to the following cases:

a. If the owner wishes to demolish the property for reconstruction or to add new constructions that prevent tenant from benefitting from the leased property, provided that necessary licences are obtained.

b. If the property requires renovation or comprehensive maintenance which cannot be executed while tenant is occupying the property, provided that a technical report issued by the Dubai Municipality or accredited by it is to be submitted to this effect.

c. If the owner of the property wishes to recover the property for use by him personally or by his next of kin of first degree provided that he proves that he does not own a suitable alternative property for that purpose.

d. If the owner of the property wishes to sell the leased property.

And for the purpose of clause (2) of this Article, landlord must notify tenant with reasons for eviction at least 12 months prior to the determined date of eviction subject that such notice be sent through the Notary Public or by registered email."

How you can settle a UAE bank loan from outside the country

Q: I have availed a personal loan from a bank in the UAE.

However, owing to a loss of employment, my visa was cancelled and I had to leave the country. I have found a new job in my home country, and I am trying to contact the bank concerned to reschedule my loan as I am willing to repay the outstanding amounts. But the bank has filed a complaint against me in the UAE.



Know the law

Detention or a fine shall be imposed upon anyone who gives a draft (cheque) without sufficient and drawable balance or who, after giving a cheque, withdraws all or part of the balance, making the balance insufficient for the settlement of the cheque

A: You have not specified the nature of the complaint filed against you, and therefore our response shall be based on two probable scenarios, viz. complaint on dishonour of security cheque and a civil suit being filed against you for recovery of debt.

In the UAE, banks usually collect cheques from the debtors as security against loan, and they reserve the right to submit such cheque for encashment for recovery of dues from the debtor. If the cheque gets dishonoured, the banks have the right to file criminal case against the debtors concerned. This is in accordance with Section 401 of Federal Law No. 3 of 1980 which reads as follows:

"Detention or a fine shall be imposed upon anyone who, in bad faith, gives a draft (cheque) without a sufficient and drawable balance or who, after giving a cheque, withdraws all or part of the balance, making the balance insufficient for settlement of the cheque, or if he orders a drawee not to cash a cheque or makes or signs the cheque in a manner that prevents it from being cashed. The same penalty shall apply to anyone who endorses a cheque in favour of another or gives him a bearer draft, knowing that there is no sufficient balance to honour the cheque or that it is not drawable."

Hence, if you issued cheque/s in favour of your bank and the same got dishonoured upon submission, we understand that the bank had subsequently filed a criminal complaint against you.

It may also be noted that your bank would reserve rights to simultaneously initiate a civil suit against you for recovery of dues from you.

Since you are interested in settlement of your dues against the bank, you may consider to appoint a legal practitioner in the UAE, who may on your behalf contact and negotiate with the bank for an alternative repayment plan, and also for withdrawal of the complaint/s filed or civil suits initiated against you.

In the event the bank agrees and provides a repayment plan for you, you may be able to rehabilitate your outstanding loan and get it out of default. Once your dues against the bank are settled, your legal counsel may further obtain a 'no dues certificate' for you from the bank.

Ashish Mehta is the founder and Managing Partner of Ashish Mehta & Associates. He is qualified to practise law in Dubai, the United Kingdom, Singapore and India. Full details of his firm on: www.amalawyers.com. Readers may e-mail their questions to: news@khaleejtimes.com or send them to Legal View, Khaleej Times, PO Box 11243, Dubai.