

# The relationship between landlord and tenant within ireland assignment



Introduction In this essay, I shall discuss the nature of the Landlord and Tenant relationship in Ireland. I will examine the aspects of a Lease from both sides of the relationship and cover the rights of the landlord and tenant under the relevant legislation. In my final chapter I will evaluate how the personal relationship between the landlord and tenant has evolved thought out time with the passing of legislation. Leases have always been a popular way to regulate the relationship between a landlord and tenant over the rights of land.

Whether it be families looking for a long term stay or students searching for accommodation for nine months of the year. " Leases are landholding arrangements in which the tenant receives a proprietary interest in the property and the exclusive possession of it" I . Should the tenant have his rights infringed by the landlord, the tenant may seek court assistance to assist his rights under the lease, or since the creation of the PRTB<sup>2</sup>, which was established by the Residential Tenancies Act<sup>3</sup>, alternate dispute resolution is available.

The development of leases derives from the Landlord and Tenant Law Amendment (Ireland) Act 1860 which is commonly known as Deasy's Act, which will be discussed at a later stage, where it was established that the relationship between a landlord and tenant was one based on a contract. Identification of a Lease A lease is a legal agreement that results in a tenant receiving a right to exclusively possess land and a proprietary interest on it<sup>4</sup>. Leases have a variety of different legal protection under relevant statutes for both landlord and tenant so it is important not to confuse a lease with another type of legal arrangement such as a licence.

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It is important to distinguish the two separate concepts. A licence may be terminated without notice, without cause and also unilaterally. A lease on the other hand needs to be terminated by Deasys Act or legislation that has followed, such as breach of condition or anti-social behaviour. An interesting and famous case on this issue is that of *Irish Shell & BP Ltd v Coste*<sup>1105</sup>. This case involved a conflict over the existence of a landlord and tenant relationship or a mere licence. There was a contract, involving land occupation, paid on a periodic basis which allowed the alleged tenant to occupy the land.

It was a complex case but the court held that no matter what the document passed between the two parties called their relationship, it was only what appened in reality that mattered. The petrol company argued that it was a licence and the defendant a lease. By the decision the Irish Courts indicated they would remain in favour of the practical relationship presented before them rather than the relationship detailed in the contract. The Irish Courts prefer to make their decisions based on four headings<sup>6</sup>: 1 . Construction of the agreement 2. Intension ot the parties as interred from their words and actions 3.

Exclusive possession on the part of the tenant 4. The payment of rent  
Construction of the Agreement As a result of the courts commitment to perusing the true nature of the relationship between the parties, the decision as to whether or not a lease exists will essentially be a matter of construction and a court is empowered to treat that which is called a licence as a lease where appropriate<sup>7</sup> . Therefore while the parties will place a label upon their

relationship, be it a lease or a licence, it will not automatically result in the court finding that said relationship is in fact a lease or a licence.

The placing of the label on the relationship merely discloses prima facie evidence of the intention of the parties. Where there is no written agreement between the parties the court will engage in construction of their words and conduct<sup>8</sup>. Intention of the Parties While all contracts have the prerequisite of the parties' intention to create a legal relationship, in the context of a lease, the courts are concerned with an intention to create a specific type of legal relations, for example landlord and tenant. The courts will try to assess whether, in its everyday operation, the relationship between the parties is more akin to a lease than a licence"<sup>9</sup>. However, as we have seen the courts are willing to discard such labels if they find the actual operation of the relationship to contradict the label. This was reiterated by the Supreme Court in *Gatien Motor Company v Continental Oil Company of Ireland Ltd*<sup>10</sup>.

**Exclusive Possession** A key factor of the landholding relationship is whether or not the holder of the land has been given exclusive possession of the property. Exclusive possession is essential to the existence of a lease, but it is not determinative of a lease"<sup>11</sup>. In other words a lease is useless without exclusive possession but on the other hand exclusive possession does not void a licence agreement between parties either. When dealing with landlord and tenant, the term, not only gives the tenant the capacity to use and enjoy the land but also to exclude the landlord or anyone else from the property if he so wishes. The English case of *Street v Mountford*<sup>12</sup> is an important case in this jurisdiction.

Here, the House of Lords held that, apart from in exceptional circumstances, where residential accommodation “ is offered and accepted with exclusive possession for a term at rent, the result is tenancy’ thus placing exclusive possession at the heart of the assessment. The Street case was decided in relation to residential accommodation but the latter case of *London & Associated Investment Trust Plc. v Carlow*<sup>13</sup> extended it to commercial properties. Payment of Rent It is stated in s. of Deasys Act that the payment of rent is a characteristic of a lease but it does not however, make it clear if rent is a requirement of a lease. There is a certain authority from both Irish & English Jurisdictions that a gratuitous lease is acceptable<sup>4</sup> For the purposes of the Irish Courts it was stated by Kenny J, dissenting in *Costello*<sup>5</sup> that rent is “ essential for the creation of the relationship of landlord and tenant”.

Formation of a lease The general conditions for the formation of a lease can be found in s. of DeasVs Act 1860. S. 4 states: “ every lease or contract with respect to lands whereby the relation of landlord and tenant is intended to be created for any freehold estate or interest, or for any definite period of time not being from year to year or any lesser period, shall be by deed executed, or in writing signed by the landlord or his agent thereunto authorised in writing” Along with section four, landlord and tenant relationships can be created in law by means of assignment<sup>16</sup>, sub-lease<sup>17</sup>, implication<sup>18</sup> and equity<sup>19</sup>.

Termination of a lease A common form of termination of a lease comes in expiry, this occurs when the tenancy is for a fixed term and upon reaching the end of that time period the landlord and tenant relationship naturally comes to an end. If the tenancy is of a periodic nature or a tenancy at will a

notice to quit is required, otherwise it will continue indefinitely. A notice to quit can be served by either party of the lease or by any person who has been authorised to serve such notice.

In relation to agricultural land, residential tenancy<sup>20</sup> and houses<sup>21</sup>, the notice must be in writing, although it is common place for notices to quit to be delivered in writing, whatever the premises involved. In general at common law, a periodic tenant should receive notice equivalent to one period of the tenancy, e. g. a weekly tenant would receive a weeks' notice. However, the Residential Tenancies Act 2004 has now introduced statutory notice periods for all residential leases<sup>22</sup>.

For example, under the 2004 Act if the tenancy duration is under a period of six months the notice that needs to be given, by both the landlord and the tenant, is twenty-eight days. Forfeiture Forfeiture is an equitable action comprising the retaking of possession by the landlord of property, thereby ending the tenant's exclusive possession and, consequently, his leasehold rights<sup>23</sup>. Examples of where such an action might arise would be a tenant's breach of condition of the lease which may lead to the paying of compensation or the owing of rent.

In order to carry out a valid forfeiture there are certain legislative requirements which need to be followed. Commonly, cases of forfeiture require the landlord to serve the tenant with what is known as a section fourteen notice<sup>24</sup>. The effect of s. 4 is to give the tenant an opportunity to consider if he wants to maintain the lease and avoid forfeiture by righting the breach that lead to the issuing of the notice.

Section 14 consists of: “(1) The basis (or multiple basis) of the forfeiture and, if applicable, a requirement to remedy the breach although the form of the remedy is not specified and is a matter for the tenant, and (2) a demand for reasonable compensation; and (3) a notice of termination by forfeiture for failure to remedy the breach and provide reasonable compensation within a reasonable time of the service of the section 14 notice.

The reasonableness of the prescribed time period will be entirely dependent on the circumstances” If following the serving of the notice, the breach has not been remedied or if the compensation or rent owed has not been paid then the landlord is entitled to re- enter the premises, and in the process forfeiting the lease. The re-entry can be physical or legal, but the service of the notice without re-entry is not sufficient to forfeit the lease<sup>25</sup>. Tenants can apply for relief from forfeiture; such relief could be granted either under s. 14 or by means of an equitable remedy such as an injunction<sup>26</sup>