
Lease Agreement in Theory and Practice

SKENDER GOJANI, PhD
Faculty of Law
University "Haxhi Zeka", Peje
Kosovo

Abstract:

Definition of the lease agreement states that the lease agreement is the contract by which one party (the landlord) obliged to give the other party (the tenant) a certain item, in a temporary joy against a certain reward.

This paper aims at theoretical and practical treatment of the lease agreement, by which is done the right of possession and the use of an item.

Because of characteristics that this contract represents, it is important its detailed elaboration, with the aim to highlighting the special legal nature of the lease agreement as legal action, the lease agreement elements, characteristics, validity conditions, solution, termination and contract withdrawal. Also, this topic aims to present a general view of kinds of Lease Agreements.

This paper begins with a brief historical overview of the lease agreement, starting from Roman law, which constitutes the starting point and basis of the study and recognition of civil law, then I continued with the Albanian customary law. A special elaboration is made of the lease agreement, which treats in more detail the specific institutes of civil law, where the lease agreement place an important role.

Key words: Contract, Lease Agreement, Tenant, Landlord, Item

Introduction

In the world of business the word “Contract” is used a lot, we hear this word very often when we apply and get accepted in a job, we sign a contract, but not all of us know the reason why we sign this contract, or what does it contain, to avoid conflicts and mistakes, we should have the knowledge to know what we are signing. Also, each business start-up, rental of facilities are made of contracts, this means, each action in business between persons is based on a contract.

The question arises why is it important? - Contracts are important part of business life, they create an agreement between you and your employees, owners or tenants, suppliers, customers and other businesses. For example if you're the boss or the responsible person for contractual results, you need to better understand contracts and their meaning, i.e., when you understand what the contract mean, you will increase the control over the situation, your counsellors, other party, their counsellors and the negotiated results.

Lease Agreement

With lease agreement, the landlord is obliged to deliver to the tenant the certain item for use, while the tenant is obliged to pay the contracted lease¹. The use of the lease means the also the housing (Habitatio), use (usus) and use the fruits (ususfructus). It is the duty of the landlord to deliver to the tenant the thing contracted in regular condition with its following component parts. On the other hand, the tenant should keep the leased item in functional regular condition during the contract period and take action in the function of its maintenance.

¹ SMAKA, Dr.sc. Riza, GOJANI, Mr.sc. Skender, *The Business Right*, Prishtina 2012, p. 394

The essential elements of a lease agreement are: consent to the content of the contract, lease and contract duration².

The concept of leasing

The concept of leasing has existed in former Yugoslavia time and continues to exist today. The most recent property law that recognizes the concept of leasing is the Law on Ownership and Other Real Rights (2009/03-L-154)³. Articles 10.2.4 and 109 of this Law recognize the concept of leasehold, but not the detailed rights how a lease is created, or what it will include. Therefore, a lease agreement is a matter of contract, i.e. issue to what the landlord and tenant agree, and in cases where there has been no agreement explicitly, custom and practice guide.

Because a lease agreement is purely a contractual matter according the Kosovo law, when deciding a dispute, a court or arbitrator shall first see that what the parties agreed in writing. This makes important the existence of a lease contract clearly and explicitly, since there is no clear law and property leases standard to guide the court or arbitrator if the parties do not specify anything.

However, there are some exceptions to this lack of guidance, such as Law 03-L204 for Municipal Property Tax. This law makes the landlord responsible for property tax payments and specifies that the tenant will be responsible if the owner cannot be found.

Particulars of the lease agreement in general - Definition of the lease contract states that the lease contract is the contract by which one party (the landlord) owes to give the other party (the tenant) a certain item, in the temporary joy against a certain reward.

² GORENC, Viliam, *Fundamentals of the Business Law Statutory and Contractual*, Prishtine 2010, p.214

³ Ligji Nr. 03/L-154 "ON PROPERTY AND OTHER REAL RIGHTS", Prishtina, 25,06, 2009

The process of validation of the right of property ownership - Lawyers have widely discussed for the process of validation of property rights to lease contract for use of the benefits arising from the leased item. This right is verified gradually and depending on the willingness of the leased item, because the tenant uses gradually the usefulness of the item. Lease is not bound by signing the contract, but it owes in proportion to the use of benefits of that part.

Use of benefit from the leased item – The exploitation should be done with adequate tools and methods which tolerates the leased item. If a man rents a dwelling house, he has the right to use it as he want. He/she has the right to live in it, has the right to bring someone else in that dwelling house. Also has the right to install his tools and household appliances. But if the house is residential, the person who rented it, has no right to enter someone that damages the house, to open a workshop which could damage the house, e.g. blacksmith or any other micro-factory which damage the house. All this means that it must be used according to the traditions of the country for residential use.

Since the usefulness of the thing leased, becomes property of the tenant, he owns the right to use it himself, but also has the right to give it to someone else with similar price or less. However, he has no right to lease with a greater price due to greater damage to the leased item.

Not allowed leasing of the property leased to the higher price, except in the following three cases:

- If in the rented item you add anything, anything from your wealth and leases jointly in this case the contract is valid.
- If in the lease object you do any significant renovations or repairing that increase the value of the lease
- If the payment is made on another way from the first contract.

If a person rents a car or other vehicle to transport items, he has the right to carry different tools that have the same weight or less. In this case it should be noted that of the two elements, the expiration date, or the place where it will be used, because if not determined, then the contract is considered terminated⁴.

The sale of the property leased - The lease agreement for the leased item does not expropriates from owning its first owner, but during the time when the object is leased, the owner has a right to sell it? Most scholars support the opinion that the owner of the leased item, preserves its right to sell the item to the person who rented, or any other party⁵.

Termination and Cancellation of the lease: The lease however long it takes its time, it is again a temporary contract, so like every other contract, it has its beginning and ending. The lease agreement, according the opinion of scholars can terminate in the following cases:

- On completion of the termination of the lease agreement,
- The lease agreement can be terminated or cancelled by another contract for the cancellation of the agreed earlier contract, for any reason or accident that damages any party, the validity of the contract depends on the consent of both contracting parties.
- Disposal or destruction of the leased item that must exploit its benefits, lead to termination of the lease agreement, due to not achieving the fruit of the lease agreement.
- Death of any of contractual party causes termination of the lease agreement, while according to a second opinion, the death of one of the contracting parties do

⁴ <http://jusufzimeri.com/?p=803>

⁵ SMAKA, Dr.sc. Riza, GOJANI, Mr.sc. Skender, *The Business Right*, Prishtina 2012, p. 395

not lead to the termination of the contract, but it shall remain valid by his inheritors.

- The contract can be terminated if there are reasons. Therefore, reasons can be considered everything accidental that damages the contractual party, if the contract remains in force, and this damage is not avoided without terminating the contract.

Free lease agreement - the most common lease agreement for a residential apartment lease is the one that is called "4 + 4". On the abbreviation 4 + 4 means that the period of the lease cannot be shorter than four years, automatically renewable for other four years, except in extraordinary cases stipulated by law.

At the end of eight years, both parties, landlord and tenant, have the right to terminate the contract by giving a notice of at least six months before the expiry of the contract.

If in the contract are foreseen less than six months, this clause is not valid, so within six months it is advisable to communicate if the contract is terminated or not.

Lease can be terminated before 8 years, from the owner and also from the tenant, but only in cases provided by law⁶.

Payment of lease and common costs for the building -

Lease is the price that the tenant must pay each month to use the apartment. The price is placed in the leasing agreement and cannot change from year to year. It can change only if it is specified in the lease agreement.

If the contract foresees an increase of the price of the lease after the first year, this condition is against the law and therefore invalid. The lease that the tenant has to pay is the one from the first year and for the whole duration of the agreement.

⁶ <http://www.shqiptariitalise.com/component/content/article/45-udhezues/911-kontrat-e-qiradhenies.pdf>

The non-payment of at least two months of the rent brings opportunity that the tenant to be drawn from the apartment.

Leases to third parties - The lease agreement may foresee that the tenant be forbidden to lease the apartment to a third person or even a room of the apartment. If the tenant, who signed the contract, despite the ban decides to lease the apartment to a third person, threatens cancellation of a contract and the owner can ask for potential payment for the damages of the apartment.

Cancellation of the contract by the owner - Upon the expiration of the first four years of the lease, not before, the apartment owner may refuse renewal for four more years only if the following reasons exist:

- 1) want to give the apartment as a flat or to conduct a commercial activity personally or in favour of the husband / wife, parents, children or relatives up to the second scale of family bonding;
- 2) if the tenant has an apartment in the same municipality that has not leased;
- 3) if the apartment is located in a heavily damaged building that needs to be demolished or that require adjustment of the stabilizing intervention, which does not allow the tenant to continue living in the apartment;
- 4) if the owner intends to establish another floor above the flat, when it is located on the top floor, and the presence of the tenant present obstruction
- 5) If the owner will sell the house to third persons, always if it is the only residential apartment that he owns (excluding their home). In this case the tenant has the right to purchase the home before third persons with the same economic conditions imposed by the owner⁷.

⁷ Dr. Vehbe ZUHEJLI, El fikhul islamij ve ediletuhu 4/755, Darul fikr- Damask.

Warning: The landlord may not renew the lease agreement for 4 more years if the tenant does not live in the apartment that he/she has rented, without justifiable reasons (for example if it is transferred for work for several months in a different city).

So if exist any one of these conditions provided by law for the cancellation of the lease after the first four years, the landlord must send the tenant a letter in which he/she should mention the exact reason that pushes to terminate the lease agreement. This should be made within the six months from the date of expiry of the contract.

If not specified in details the reasons or the letter is sent without respecting the deadline, the cancellation of the lease agreement is not valid and shall be considered as it has never be done.

Cancellation of the lease agreement from the tenant – the one who rents a flat may terminate the agreement before the 8 years only for serious reasons and documented (e.g. for reasons of work, is forced to move to another city otherwise loses his work). The warning in this case should be given six months before the expiry date.

Paying the rent in the event of contract cancellation must be done for six months of warning, even if in the meantime the tenant may have found another home to live.

Termination of lease agreement - After realizing the desired goal of the contracting parties, the contract related to the lease terminates. The model of terminations are the following: the expiration of the time, the disappearance (loss) of the object under the influence of force majeure, the death of the landlord or the tenant and the alienation of the property leased⁸.

⁸ DAUTI, Dr.Sc. Nerxhivane, Obligation Right, Prishtina,2004, p 368

Conclusion

The contract is a legal action through which a party or parties create or extinguish a legal relationship. It is a key element of business relationships. It should be based on a legitimate cause. The object of the contract must be defined and ascertainable.

One of the aspects and the rights of tenant in the leasing agreement is the right of preference which consists on his right, that at the end of the term, if the landlord will rent again the leasing item, preferably in relation to other persons in entering into a new lease agreement.

A further important aspect of the lease agreement, where the law has given legal force to the silence of the parties and their misacting is the right of renewal in the silence the lease agreement. The law, in the lease agreement has emphasized the tenant behaviour that "goes" to keep the property and landlord behaviour that "allows" the tenant to use the property even after the contract expires. But, this does not understand that with the acceptance of rent payments after the contract expires, he has expressed the willingness to renew the contract. Silence renewed contract is regulated under the same conditions as the first contract, but will be considered as affiliated with fixed-term contract.

Important in the rental contract, represents the relationship between the contracting parties and the continuation of this relationship even after the alienation of the property subject to the lease agreement. In cases when the lease agreement is limited in time, the time will begin to be calculated at the time of affiliation of the contract and not from the time of alienation of the property. The lease agreement has not an exact date before alienation of an item and the third person is not obliged to respect a lease agreement, affiliated by a person who has no right to manage the object.

REFERENCES

- Gojani Skender, Glossary Legal Terminology, Pristina 2013
- Smaka Dr.Sc. Riza., Gojani Mr. Sc. Skender, The Business Right, Prishtina 2012
- Dauti, Dr.Sc. Nerxhivane, Obligation Right, Prishtine,2004,
- Gorenc, Viliam, Fundamentals Of The Business Law Statutory And Contractual, Prishtina 2010,
- Muhamed, Dr. Zuhejli, El Ukudul Musemat-El Beju-Elmukajida –El Ixhare, , Matbaa Halid B. Velid-Damask 1983.
- Zuhejli, Dr. Vehbe, El Fikhul Islamij Ve Ediletuhu 4/755, Darul Fikr- Damask,
- Law No. 03/L-154 “On Property And Other Real Rights”, Prishtina, 25.06, 2009
- Law No. 04/L-077 “For Relations Of Obligations” 10 May 2012
- [Http://Www.Webcrawler.Com/Info.Wbcrwl.301.1/Search/Web?Q=Renting+Contract+Form&Cid=131812316](http://Www.Webcrawler.Com/Info.Wbcrwl.301.1/Search/Web?Q=Renting+Contract+Form&Cid=131812316)
- [Http://Jusufzimeri.Com/?P=803](http://Jusufzimeri.Com/?P=803)
- [Http://Www.Shqiptariitalise.Com/Component/Content/Article/45-Udhezues/911-Kontrat-E-Qiradhenies.Pdf](http://Www.Shqiptariitalise.Com/Component/Content/Article/45-Udhezues/911-Kontrat-E-Qiradhenies.Pdf)