

THE LANDLORD ASSOCIATION

The Way Forward In Resolving Tenancy Disputes in Malaysia

The first phase of Chur Associates' Hi5er Club, which explored the various issues surrounding landlords and tenants, has reached its conclusion. As a final complement to the online published material, the Club is now releasing a full report and opinion on the various findings that have been amassed so far. Below, this report unveils a worrying gap in Malaysian tenancy law – one that a Landlord Association, with the right implementation can readily fill.

A GAP IN THE LAW

Undoubtedly, one of the major problems faced by landlords in Malaysia is the distinct lack of regulation of the relationship between landlords and tenants. Unlike many other jurisdictions, Malaysia does not have legislation that deals specifically with landlords and tenants. While provisions on tenancies and leases can be found in the National Land Code 1965 and the Specific Relief Act 1950 makes mention of eviction as a remedy, the existing legislation remains rather vague and toothless.

As a result, landlord and tenant disputes in Malaysia are largely governed by common law. This does not bode well for the landlord, as the present law hugely favours whoever has possession of the property, which is the tenant in most cases. A great burden is placed upon the landlords, who being unable to rely on the protection of the existing law, must now ensure that their tenancy agreements sufficiently provide for all eventualities.

However, even if landlords were protected by well-drafted tenancy agreements, they still face significant problems in enforcing their rights in Malaysia. This is due to the other main flaw in Malaysian tenancies – the lack of feasible methods available for landlords to resolve disputes. With an inefficient court system, conventional court actions in Malaysia take relatively longer periods of time as compared to other jurisdictions. For example, a landlord in Malaysia wishing to remove his tenant can expect to wait 270 days, while landlords in other jurisdictions are able to have their property vacant and ready for a new tenant in as few as 40 days. (Refer to table below. Source: Lex Mundi)

EVICTION FOR NON-PAYMENT OF RENT	COUNTRIES				
	Australia	Canada	Malaysia	Singapore	UK
Duration until completion of service of process	3	5	60	9	14
Duration of trial	35	21	90	40	73
Duration of enforcement	6	17	120	11	28
Total Days to Evict Tenant	44	43	270	60	115

While distress action is available as a way for landlords to recover rent arrears, this will not help procure an eviction, and may instead antagonize the tenant even further while

the tenant enjoys continued possession of the landlord's property -- a potential recipe for disaster. These hindrances, coupled with the lack of regulation have led many to resort to self-help methods such as cutting off the utilities or changing the locks to the premises. However section 7(2) of Specific Relief Act 1950 provides that a landlord can only enforce his right to recover his property through court service. As such these methods are illegal, and may even attract legal or even criminal liability. With so many issues plaguing the property rental industry, it is obvious then that the current disparity in Malaysia's tenancy laws should be rectified as soon as possible.

LANDLORD ASSOCIATION

Research has shown that the establishment of a Landlord Association can do much to aid the current situation in tenancy law. For instance, such an association can lobby for the setting up of a tenancy dispute tribunal which will lead to faster resolution of cases. Apart from that, a Landlord Association can also provide easy access to expert qualified mediators. Aggrieved landlords and their respective tenants can then take advantage of these mediators' vast experience in property and tenancy disputes to reach a peaceful settlement of their own.

At present however, Alternative Dispute Resolution ('ADR') methods such as those mentioned above remain an unpopular method of resolving disputes in Malaysia. As such, should the Landlord Association be able to support and promote these measures effectively, not only will tenancy disputes be solved quickly and with less hassle than ever before, but the backlog of court cases will also be significantly lessened.

Lobbying for Landlords' Interests

Besides the aforementioned, the presence of a Landlord Association will also make it possible for landlords to safeguard their interests through combined lobbying power. By giving a collective voice to landlords, the Landlord Association will be able to influence or change the laws that affect their livelihoods. For example, in the United Kingdom, the National Landlord Association has effectively lobbied for changes in nearly 50 Acts of Parliament and 70 Statutory Instruments.

More importantly for landlords in Malaysia however, is the association's potential role in lobbying for a Landlord and Tenant Act. It is perhaps also worth mentioning that when the law-makers eventually decide to compile Malaysia's tenancy laws into a single statutory act, it would be immensely valuable to have a recognized Landlord Association involved in the process to make sure that the landlords' interests are both preserved and represented.

Tenant Screening Database

A Landlord Association can also greatly mitigate the dispute resolution problem by setting up a Tenant Screening Database. Such a database can be developed to record the

tenants' renting history, employment history, criminal record as well as the particulars of any legal proceedings that they had been involved in against their landlords. While some investment of time and effort would be required before any meaningful amount of data can be compiled, the benefits that can be obtained afterwards are priceless. For example, with this database, a landlord would be able to use the compiled information to gauge the likelihood of the tenant defaulting or causing substantial problems. A blacklist can also be easily produced so as to warn landlords of tenants that have a bad track record. Conversely, this can be balanced with a list of 'premium' or '5-star' tenants as well, with the aim of rewarding good tenants.

Additionally, the Landlord Association can also integrate credit check services such as CTOS into its database. For a landlord equipped with this knowledge, encounters with nightmare tenants can be reduced to a bare minimum, thus solving tenancy related problems before they even begin. If done well, this database can become a solid ground for landlords to seek financing based upon their tenancies, or to procure writable insurance policies.

Landlord Insurance

One other way in which a Landlord Association would benefit the landlords of Malaysia would be by introducing and garnering support for a Landlord Insurance Scheme. No matter how good their judgment, landlords will inevitably encounter a situation where tenants default on their payments or cause damage to their property. As in any business, landlords are always looking for ways to protect themselves and minimize their risk. For instance, tenants are almost always required to pay a security deposit or a bond as a form of insurance against non-payments or damage to the premises. However, this protection against risk can be taken much further.

In other jurisdictions, insurance firms offer various landlord insurance policies that can cover damage to contents, building, legal liabilities, rent guarantee and emergency assistance. Rent guarantees are amazing insurance products that will protect a landlord in the event that the tenant fails to pay the rent, although a professional credit check of the tenant will be required. In the current pro-tenant climate of Malaysia, this would be the ideal way to mitigate a potential future loss suffered as a result of tenant defaults.

Unfortunately, landlords are as of yet unable to have this protection in Malaysia, despite it being readily available in other jurisdictions. In fact, even landlords in Singapore have recently been introduced to their very first landlord insurance policy. With the setup of a Landlord Association therefore, landlords as a collective whole will be able to show great demand and support for such a policy, with an eventual aim of approaching insurance companies to flesh out a protection scheme.

Pooled Resources

A Landlord Association also serves as a place for landlords to pool their resources and share information or advice. While the idea of assisting potential competitors may not be

appealing, however there is much more to be gained by adopting a unified stance. For instance, by sharing and employing standardised tenancy application forms or screening procedures, landlords are able to solidify the screening process and increase its effectiveness. Tenants are also less likely to complain or disagree when such screening practices are adopted consistently across the nation.

Apart from that, another obvious benefit that can be obtained is through the sharing of market price information. For example, allowing landlords in a certain area to keep track of market prices will not only benefit him or her, but also other landlords in the area as the market rate growth would be less likely to be slowed down by units that do not update their rental prices.

Summary

It is apparent from our findings above, as well as our survey results compiled from the Hi5er Club, that the time is ripe in Malaysia for the setting up of a Landlord Association. Such a bold move would represent a great step towards to the eventual resolution of the problems currently surrounding tenancy laws in Malaysia and indirectly make property investment an even more attractive proposition.

METHOD OF IMPLEMENTATION

Above, it has been made clear that a Landlord Association will bring benefit to the Malaysian property rental industry. Nevertheless, it is still crucial to select the correct mode of implementing a Landlord Association so as to meet the needs of Malaysian landlords. Our research and trial launch of the Hi5er Club highlighted three main issues raised by landlords regarding the establishment of a Landlord Association. These issues relate to operational problems, costs and overall sustainability. It is important to address them to ensure the successful establishment of an Association.

Avoiding Abuse of the System

One major concern raised was that information gathered by a Landlord Association could be used against both landlord and tenants. Information abuse is a problem for any organization, and which can be addressed by having highly transparent business processes, especially in relation to handling data. It is important that members of the Association (and tenants who provide personal details) feel that their data is well protected and will not be used against them. As such strict security protocol must be established to avoid this problem. It is thus essential for processes to be transparent, especially in relation to handling data. This can be achieved through strict agreements with severe penalties attached to a person revealing any information.

Another potential problem relates to a strong personality using the organization for their individual agenda. Again, this is common to any association, but it can be removed by having a purely online vehicle. There will be no power mongering since this type of Association would function more as an information portal, and less as a business

syndicate. This method of implementation would be very effective in removing the tint of politics, creating a neutrally-aligned Association.

Cost of Operation

Many other Landlord Associations (such as the South Australian Landlord Association) in foreign jurisdictions started by collection funds from landlords. However, our research revealed a high degree of unwillingness by Malaysian landlords to provide funding necessary for initial outlays. As such, it is important to minimize costs in the initial stages of establishing a landlord association, to ensure its sustainability. This is achievable through using an online vehicle since it has low fixed and variable costs.

As a more proactive Landlord Association becomes more tenable in Malaysia one possible means of funding the Association is to gather Tenancy deposits and hold them in a fund, using the interest on them to sustain the Association. Alternatively, a Landlord Association could seek sponsorship from banks or insurance funds in return for the Landlord Association offering that bank or insurance company exclusive access to its customer base. Given the benefits for both parties it is a highly tenable solution. However, these are both long-term solutions.

Membership Base

Building a strong membership base is important. One of the most difficult aspects in establishing an Association is marketing it effectively, so as to build up a sizable membership base. There are various ways to do this, such as advertising at seminars.

However, a more timely and cost effective method is to use an online vehicle. Since members can join anywhere people are free from geographical restrictions that would normally impede a conventional Association. A more proactive Landlord Association would require state or even regional bodies to have effectiveness, which is not viable in the initial stages of its establishment. An online portal would allow problems and disputes of a local nature can still be categorized through sub-forums.

Summary

Based on feedback received, it can be concluded that there is a general unwillingness by landlords to provide funding for a Landlord Association in Malaysia. This unwillingness means that it is important to use a method of implementation that minimizes costs, as such an online platform would be most suitable for Malaysia.

COMPARISON OF LANDLORD-TENANCY MODELS FROM OTHER JURISDICTIONS

The table below outlines how landlord-tenancy arrangements operate in foreign jurisdictions. Generally speaking countries with a Landlord Association have a lower

eviction period. This is because a Landlord Association can act as a lobby group, helping encourage the legislature to implement Acts which favour timely dispute resolution – from compulsory use of Alternative Dispute Resolution to guidelines encouraging fast track procedures allowing courts to evict tenants quickly.

It can be seen that the United Kingdom is relatively inefficient in comparison to other developed nations. However, despite this fact their Landlord Association provides a great deal of protection to somewhat negate these inefficiencies through an established insurance scheme and the implementation of relatively pro-landlord legislation. However, the bulk of their lobbying power came when the regional Landlord Associations banded together to form the National Landlord Association. It would be in Malaysia's best interests to skip the interim step of establishing regional bodies and instead creating a National Landlord Association from the onset.

Singapore is also noteworthy due to the fact that it does not have a Landlord Association and yet still has a relatively efficient eviction system. This is primarily due to an efficient court system and its established ADR scheme. The premise behind an ADR scheme is that a tenant does not want to be forcibly removed whilst the landlord wants a quick resolution to minimize losses. Indeed, having such a system is a plausible alternative to just having a Landlord Association. However, we would suggest that it should be just one pillar in the litigation system, with a Landlord Association offering a more effective method of support for landlords. This is evident from the more efficient systems in operation in Canada and Australia.

Indeed, Australia and Canada have systems in place, which although varying from state to state in some respects all have several common features. These include an established ADR system with compulsory court referral to ADR, as well as legislation defining the relationship between landlord and tenant. Canada also has a court system which is exceptionally efficient, with a form based system which essentially requires a landlord to fill out a form, following which a tenant is soon evicted. Both nations also have established State-level Landlord Associations, which act as a strong support base for Landlords, since they offer insurance protection, tenant screening processes and general information systems. All these aspects mean that Australia and Canada have eviction periods of 44 and 43 days respectively.

The key lesson to take from these other jurisdictions is that a series of mechanisms is required to ensure the efficient functioning of a tenant eviction system. As the table demonstrates, Malaysia does not have a Landlord Association, legislation protective of landlords or an established ADR system. The cumulative effect is that it takes 270 days to evict a tenant. Our perspective is that a Malaysian Landlord Association has the potential to push for action on these issues, to encourage the legislature to enact systems of compulsory ADR and legislation articulating the relationship between landlord and tenant. Regardless as to whether lobbying is successful or not a Landlord Association can also act as the insurance mechanism for Landlord Association, as is the case with the UK, as well as offer a means to screen tenants through a tenant information sharing system. In so

doing the time to evict a tenant can be increased and the ability to effectively screen tenants increases. Overall, this suggests that Malaysia needs a Landlord Association.

Comparison Table of Different Jurisdictions

	Malaysia	UK	Singapore	Australia	Canada
Efficient Courts	No	Yes	Yes	Yes	Yes
Time to Evict	270	115	60	44	43
Established ADR System	No	Yes	Yes	Yes	Yes
Legislation Protective of Landlords	No	Yes	No	Yes	Yes
Landlord Association(s)	No	Yes	No	Yes	Yes
Landlord Association Insurance Scheme	N/A	Yes	Yes	Sometimes	Sometimes
Pros	Opportunity to Establish Landlord Association	Established ADR System Protective Legislation Established Landlord Association – aids in evicting tenants and provides insurance	Efficient Court System Established ADR System	Efficient Court System Established ADR System Established Landlord Association – aids in insurance provision and government lobbying	Efficient Court System Established ADR System Established Landlord Association – aids in insurance provision and government lobbying
Cons	Inefficient Legal System Embryonic ADR schemes No Landlord Association to Lobby	Relatively inefficient court system	No Protective Legislation No Established Landlord Association to Lobby for Extra Protection	N/A	N/A