Problem and Shortcomings of 1997 Landlord and Tenant Law Islamic Republic of Iran

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Abstract: Given the problems with implementation of this law during more them one decade, which attracted judicial procedures' and jurists' attention, this paper outlines some questions which are given answers within three topical domains; some issues in relation to the application scope of the law and effects parties' agreement has on it, parties' claims and rights at the time of eviction of rental places subject to the law and other issues related to key-money under the law are examined and, finally, some suggestions are presented in order to amend some articles of the law in question.

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1- Introduction

Landlord- tenant relations have their own story in our country, dealing with which demands a separate paper. Approval of several lease- related laws such as those of years of 1960, 1977, 1983 and, more recently, 1997 in addition to regulations existing in civil law surrounding lease contracts are indicative of such contracts importance. By taking a close look at said and other laws, we will see effects of circumstances on landlord- tenant relations. It is seen from 1977 law, for example, apparent support of legislator for tenants against landlords. But from 1997 law, we observe a shift in legislator's attitude toward more support for landlords which, in our opinion, signifies lawful protection if investment capitalism in our country in addition to its main reason that is to legitimize lease-related laws regarding important issues such as key-money, lease duration and rent (lease price) because legislator withdrew its support for tenants, viewing them in equal positions to those of landlords within their relations. In other words, legislator revives will rule principle within such relations without considering this matter that, given social conditions like shortage of residential- commercial places, increasing number of tenants and high demand for renting, landlord's domination over landlord-tenant relation is a natural matter.

In any case, 1997 law has restored kingly landlords to their main position although, like any other law, this law has its own problems and shortcomings requiring interpretive explanation and amendment to implement the law correctly.

1. 1997 landlord- tenant law scope of application

1-1. From date of approval and of taking effect

Article 11 of said law provides that places rented prior to approval of this law are excluded from its application scope and, as the case may be, they are subject to regulations governing it; and Article 1 of this law says that "it governs lease of all places from date of taking effect subject to regulations of civil law, regulations contained in this law and terms established between landlords and tenants".

Considering this last Article and according to general rules, this after publishment, that is, on 16.09.1997, and is governing lease contracts concluded from this date on. But seemingly Article 11 provides a specific rule saying that "this law becomes governing over lease contracts as soon as it is approved, not within 15 days after it is published". But this appearance is not considerable; by scrutinizing phrases of said Article, we see it is too implicit to make sense of creating exceptions, but rather it indicates that contracts concluded prior to approval of this law are excluded from its application scope, but this concept that contracts concluded after is not inferred because proving of a thing does not disapprove its contrary. Given Article 1 of this law and general rule of laws implementation for which clause 1 of Article 2 of implementary regulations gives support, it should be said that those lease contracts concluded after this law's date of taking effect are included in its application scope.

1-2. Situation of oral rent contract

Rent contracts are included in application scope of 1997 and 1983 laws, asserting that when a deed under private signature and/or an official document is not drawn up for rent, this does not result in exclusion of rental relation from these laws' application scope, but 1997 law takes an opposite approach. Article 1 of this law merely points to official or under private signature contracts and Article 2 notes some conditions to draw up said contracts for which, given

clause 5 of Article 2 of law implementary code, sanction regarding lack of fulfillment is to exclude from this law application scope. For this reason, a question occurs that whether this lack of mention does not mean not to accept oral rent contracts and, prudently, their invaliding to answer, it must be said that although, today, such contracts are few in number and Lwis Bimyer believes that oral contract is not as invaluable as written one (Hirmandi, 2007: 338), such perception is not correct.

Considering other Articles of this law which go in direction of making regulations governing rental relations more legitimate and given that such a thing has no history in our Religious Jurisprudence and other laws, it must be said that sanction of not to draw up an official or results in revocation of oral rent contract which is its exclusion from the law application scope, as supported by clause 3 of Article 2 of law regulations (Katouziyan, 1997: 47).

1-3. Law governing rent contracts excluded from application scope of mentions law

Rent contracts concluded prior to date of this law's becoming legally binding are subject to 1983 law if they are residential and subject to 1997 Constitutional law if they are commercial according to Article 11 of the law. But main problem relates to rent contracts concluded after this law became binding legally, which are excluded from the law application scope because they are oral or drawn up without observing conditions of this law. In such cases there are some unstable views. In one view, Article 2 of 1997 law has established some requirements in order for rental relations to be included, which would be out of this law application scope if they did not regard those requirements, and naturally, former laws of years of 1977 and 1983, as the case may be, would govern rent of commercial and residential places. In addition, 1997 law contains some exceptional regulations not in agreement with principles governing suits' entertainment, therefore, we should be satisfied with certainly and say that this law does not govern contracts not observing its Article 2 regulations, but, as the case may be, former laws become dominating (Irani Arbati, 2007; Advisory opinion no. 7/5135-20.08.2000: 1). This view is not so considerable, but rather opposite view is stronger, according to which contracts excluded from application scope of 1997 law are subject to civil law and contractual terms and conditions of parties although there is some disagreement on the reasons of this view. Some believe that Article 1 of 1997 law states that rent of all places under official or private signature contracts concluded from the date of the law's taking effect on are subject to regulations of civil law, of this law as well as to contractual terms and conditions; and given that Article 13 of this law has cancelled laws approved in 1977 and 1983 implicitly, if rental relations are not included in this law, they will be subject to civil law and contractual parties' terms and conditions given Article 1 (Irani Arbati, 2007, Advisory opinion no.7/5434- 21.09.2003: 1). This view has been confirmed by members of review commission of National Public Judicial Meetings consisting of high rank judges of Supreme Court although, in their view, 19777 law has not been cancelled, but rather it is not applied to rental contracts after 1997 law became binding legally.

Taking these views together, given the meanings of Articles 1 and 13 of 1997 law, we also believe that 1977 and 1983 laws have been cancelled implicitly, but the reason why mentioned laws continue governing former rent contracts is the order foreseen by legislator in Article 11 of last law, showing respect for previously acquired rights, for this reason, even if a rent contract is excluded from last law's application scope, it will not be governed by former laws.

1-4. Parties' agreement effects on the law inclusion/ exclusion

1997 law considers any explicit/ implicit agreements to escape from being included in said law's application prohibited and ineffectual (Article 30), but given Article 1 of 1997 law, will rule principle is accepted and parties are allowed to formulate their relation desirably by specifying many terms and conditions in rent contract. Now, this question is important whether in case parties do not observe, for example, procedural conditions established by Article 2 in their lease deed, they can establish in respective contract that 1997 law govern their relation, or, in contrast, in cases where those conditions are observed and lease should be subject to 1997 law naturally, they can establish that their lease be subject to 1977 or 1983 laws (as the case may be) or only be subject to civil law and contractual terms and conditions. Considering general rules and will rule principle which, in said law, are accepted as interim conditions, some of terms and conditions may be against imperative rules and rules related to public order, therefore, in this case, they are invalid and ineffectual. For example, Article 2 of 1997 law has been enacted to create security, stability and order within rental relations and contains some rules of civil procedure with exceptional aspects and, for this reason, it has numerated some conditions for rent contracts, thus, in case parties do not observe them, landlords cannot request for eviction of property within 1 week with reference to Article 3 of said law and merely based on making 1997 law govern landlord- tenant relation, but rather they should bring lawsuit to recover for possession given general rules. For another assumption where relations are subject to 1997 law customarily, but parties agree on the matter that their

relations be subject to 1977 law (Irani Arbati, Provisional Opinion no. 7/938-25.04.2005), it will not be accurate to accept that such a rent creates any rights to do business, profession or trade in favor of tenants since provision of Article 10 of last law imperatively states that "To claim any aspect out of above regulations within rental relations is prohibited".

2. Evacuation and related issues

2-1. Motion or petition to region possession of rental premises

Given Article 3 of the law, if lease deed is under private signature, landlords submit evacuation applications and respective premises will be evacuated by virtue of judicial authority's order within 1 week through the sheriffs. Although it appears that tie in judicial authority is redundant in the phrase, main point is that what does it mean by evacuation application? And whether such an application must be in the form of petition or application letter; in practice, judicial procedure considers this phrase signifying application letter, and applicants are required to pay costs of application jus/ like non-financial cases and, then, sheriffs will take steps to evacuate premises on the basis of public prosecutor's or his assistant's orders. Interestingly, there is no need to issue execution writ, to notify the writ and to pay execution costs in relation to evacuation. Moreover, since such orders are not decisions, they can't be reheard although ruling authority can revoke his order and abolish it in cases where it is known that evacuation order was wrong and/ or where lease deed did not meet conditions for being included in said law's application scope. Whole things outlined suggest that legislator aimed Article 3 at facilitating quick evacuation of rental places.

2-2. Parties' claim and rights during evacuation

Although it was said that legislator attempts to facilitate quick evacuation of rental places, such attempts sometimes lead to odd result being considerable. Although we understand legislator's concern about that tenants' vain claims and time-wasting do ruin landlord's time and rights, it does not mean that we should ignore opposite assumption where landlords may ruin tenants' rights, viewing this matter negligently. Note following case:

A tenant living in an apartment located in a remote country took his sick wife to provincial center to be cured in winter. When they return after 2 days, he finds water pipes in his unit broken-accidentally his own and other storey's shared a common water meter - and water- wetted or - destroyed walls of the rooms. During evacuation, the landlord claims that it is tenant's fault incurring 2 million tomans worth damage on object of lease. With reference to Article 4 of said law, therefore, the landlord refrains from giving deposit money back to the tenant, settling it to justice fund and, at the same time, submit petition of demanding 2 million tomans sum, giving certificate of petition submission to execution division which deducts the sum from deposit money and gives the rest to the tenant.

As we see, here the landlord did not settle any money to secure possible damage, having no acceptable proofs to bring the claim from very beginning and most likely, his case will be convicted of being right less. But innocent tenant needing the sum to rent another place will face some problem and, eventually, he/ she may be unable to demand for compensation due to absence of some credit as possible loss.

In any case, from said article appearance, it is inferred that rules of pleading regulation are allocated in this field and landlord needs not to deposit money of possible damage to block tenant's deposit money.

But legislator had better state this new rule by modifying and separating cases where landlords' grounds for demanding compensation or money are based on documents like bills, official or valid documents from cases where there are no notable grounds so that both parties' rights be considered.

2-3. Hardship

1983 law provided that courts shall give a respite to tenant in cases where rental place evacuation would lead to hardship for tenant due to shortage of housing (Mohammadi: 215), not to be conflicting with landlord hardship (Article 9). But there is no rule on hardship in 1997 law. Now, the question is that can a tenant whose relation with landlord is subject to 1997 law make reference to hardship when rental place is to be evacuated and ask for a respite? In this regards, there exist some disagreements. According to one view, Article 13 of said law has made all regulations opposing, including hardship rules, annulled and cancelled. In this regard, legislator's silence is in position of expression, assuming that there is no such a deficient housing that leads to hardship, therefore, given generality of said law emphasizing on quick evacuation of premises, if hardship actions are brought, courts must issue write of attributability or of dismiss. To the contrary, there is another view saying that Article 13 of this law annulled whole its conflicting laws and regulations because, in order to realize conflict, legislator has to have a former ruling opposite to which he issues a rule in new law and, in case of silence, no rule can be issued to cancel former one given general rules, therefore, legislator's silence does not signify cancellation and it is wrong to use exceptional rule of "silence in position of expression" (Bahrami, 2004: 203-216). As a rule, it needs to be said that former rule continues given principle of law existence. On the other hand, rule of hardship is a general one preceding other rules and, here, there will

be no reason for not exercising it, if existence of hardship is obtained.

Eventually, by inducing and considering different Articles of this law, we argue that the first view is stronger because legislator, in all cases he faces tenants' right, removes rules in such a manner that this does not impede evacuation, therefore, given the spirit of this law, it must be said that hardship regulations discussed previously in relation to evacuation topic do not find their way into this law, being cancelled implicitly.

3. Key-money and respective issues

3-1. Different concept of key- money in former laws

There exists no definition of key-money in 1960 and 1977 landlord- tenant laws, rather they dealt with money of acquisition, business or trade. So, some (Katouziyan, 2005: 517) believe that both are the same in Iranian law, but in reality, they are distinct and their meanings should not be confused or mixed. Key-money is some cash the landlord takes from tenant at the onset of lease, independent of lease payment, in order to rent empty place to tenant (Keshavarz, 1995: 18). By definition, key-money can be received solely by landlord or his/ her authorized representative like a tenant with right to assign to the other and the amount of key-money is not influenced by trading reputation, business affluence and guild-related credit, which are influential in determining amount of money of acquisition, business or trade which belongs to tenants. Certainly, these two types of money differ conceptually and basically and in former laws, of course, there was no synonymy between these two types. But in 1997, seemingly, legislator did not distinguish key-money from money of acquisition, business or trade. Under this law, tenant is entitled to take key-money when:

1. Landlord takes some cash as key-money from tenant at the beginning of lease.
2. During lease period, tenant decides to assign his/her share of property profit to the other for remaining period of time.
3. While concluding rent contract, a term or condition is contained in favor of tenant who, now, wants to annul it.

This legislator's stance is due to the fact that Religion Guardian Council announced money of acquisition and business as unlawful religiously and, for key-money solely views of Imam Khomeini set forth in "Tahrir Al-Vassila in agreement with canonic law. So it seems that regulations regarding key-money were derived from Tahrir Al-Vassila to provide mentioned view in 1997 law.

3-2. Taking key-money at the current fair price

Under provision 2, Article 6 of the law, if the tenant is transferred key-money religiously correctly, he/she could demand it at the current fair price at the time of evacuation; however, no standards were provided to calculate current fair price by law; here, the method for determining fair price of marriage portion specified in the Article annexed to Article 1082 of civil law can be used as follows: (Bahrami, 2004: 186).

$$\text{Key-money current for} = \frac{\text{Point at the time of paying key-money back to tenant (evacuation time)}}{\text{Point at the time of taking key- money by landlord (rent contract conclusion time)}} \times \text{source of paid key-money}$$

Now, a question can be raised: In cases where the tenant is entitled to take key-money back at the current fair price, is evacuation conditional on calculation and payment of key-money or should the premises be evacuated so that tenant can demand key-money?

Legally, no explicit rule exist in this regard, and procedures are also unstable. Based on dominant view, since presence of tenant, condition of lease object and type of business influence determination of fair price, evacuation and changed conditions interfere with tenant's rights, in other words, it may not be possible to determine actual, fair price due to evacuation, therefore, it is just that evacuation and key-money payment take place simultaneously in addition to the fact that having evacuated the place, tenant is not able to rent another place without key-money available. On the contrary, based on Articles 3, 4 and 5 of 1997 law, some believe that first the premises must be evacuated, so the tenant can request for discovery of condition of lease object at the time of evacuation and, next, demand key-money at the current fair price. Although each of these two views are advocated by supporters, they have their own problems and that is why key-money is different from money of acquisition, business or trade, on which business affluence, trading reputation and type of activities have no effects.

Taking key-money at current fair price means that inflation effects are considered in discounting of money value so that, at the time of evacuation, despite inflation and increased stores' key-monies, tenant can take some amount of money by which he can rent a similar place (store).

Therefore, based on reasoning of first group, the response of second group that it is possible to maintain status que by discovery is not accurate. In

any case, we believe that from meaning of provision 2, Article 6 of said law, it is induced that evacuation is dependent upon payment of key-money at current fair price, therefore, it is illegal to force tenant to evacuate prior to taking key-money.

3-3. Religiously correct way

Provision 2, Article 6 of law does not specify what means by religiously correct way because, in Religious Jurisprudence, there exists some disagreement surrounding, key-money. But seemingly, legislator mean is to follow contemporary Islamic Jurists' views, especially those of Imam Khomeini in his book "Tahrir Al-Vassila". Like many of other Islamic Jurists, he does not consider money of acquisition, business or trade legitimate, and exceptionally, he accepts key-money as one of rights being created for tenants while making this acceptance dependent on some conditions (Bagheri, 2004: 376; and Kiyani, 2005: 524:1). Lack of mentioned religious source represents some problems with interpretation of law although procedures insist and place emphasis on Religious Jurisprudence absolute certainties, that is, matters agreed upon consensusly by Religious Jurisprudence, or, at least, on dominant views.

On the other hand, some (Katouziyan: 56) argue that term "Religiously correct way" means second return to Religious Jurisprudence well-known and forgetting civil law Article 10 and will rule principle and, to escape from this matter, we inevitably must consider words "religiously lawful" as meaning "legal" because assumption is that our laws are not contradicting Religions law, therefore, we accept that transfer being considered operative by law.

3-4. Estate evacuation without taking key-money back

Can the tenant demand key-money after evacuation if he/she evacuates the estate with consent, but without taking key-money back? In this regard, 1997 law provides no rule. This act of tenant happens to waiving of his/her legal rights given civil law, in which parties' will should be referred to in cases of law silence, so he/she has no right to demand key-money unless he/she proves that he/she had no such an intention and evacuated the estate, for example, at landlord's request or for other forces. Another question is that "What if the tenant pays key-money while a term or condition on lease contract is no right for him/her to take it back?" based on rental contracts subject to 1977 law, such a term or condition is void considering its contradiction with law Articles 15 and 30 and the court issues order of money of acquisition, business or trade payment at the same time of issuing evacuation order. But one may argue the term or condition concerned is considered correct given the acceptance of will rule principle and absence of explicit benefit with regard to this term or condition under 1997 law. Although this statement is correct seemingly, when we pay attention to provision of law Article 10, we see to take any sort of money beyond above regulations is prohibited. Therefore, it appears that this law regulations regarding key-money are of imperative aspects and, in this way, with such a term or condition, landlord and tenant actually exclude the money from being key-money because it is some cash the tenant pays to landlord, but he/she can't get it and/or its equivalent back, therefore, it is some kind of donation rather than key-money; and titles and rules are recognizable on the basis of parties' will rather than of their verbal denomination. So, taking such money, although in the name of irrevocable key-money, is forbidden and parties' agreement on its not being given back is null. Given what has been said so far, of course, tenant can demand original cash, not its current fair price, since it is not of key-money title.

Other discussion relates to cases where lease contracting parties determine some consideration in relation to non-evacuation or dishonor. Given the provision of this law Article 10, is this consideration demandable? Initially, we must know rule of said provision applies to cases regarding key-money, so contenting ourselves with certainly, we argue that taking money, beyond regulations of former articles, as key-money whether by landlords or by tenants is not correct and legitimate. So the article does not include the case in question; and given acceptance by this very law of civil law generalities and of will rule principle and lack of explicit prohibition in this regard, consideration is demandable in the face of dishonor.

But for cases where the tenant violates his/her obligations and the landlord takes some cash from tenant for waiving of a legal right and for his/her estate evacuation, this law seems not to consider taking such money permissible because it ruled merely in relation to possibility of taking money by tenant to waive his/her legal rights and its silence must be interpreted as expression given said provision. Finally, a matter left unsaid in 1997 law is that if tenant pays key-money and, subsequently, the estate is evacuated due to encroachment or dissipation, is he/she entitled to take key-money back or not?

Under 1977 law, as the tenant committed some violations, as the case might be, half of money of acquisition, business or trade was sometimes given back to him/her in return for estate evacuation while sometimes it was not the case. For more recent cases, courts believed that no difference existed between key-money payer tenants and non-key-money payer ones and, in any case, nothing was payable to them (Irani Arbati, 2007, Advisory opinion no.7/5229: 1).

This view can be criticized in that, according to legal principles, separation needs to be made between two mentioned kinds of debt. Possession by landlord

of key-money is fraudulent and there is no reason for its non-payment although money of business is not demandable given Article 19 of the same law since it has lawful basis. Under 1997 law, in which matter of business money is also negated, taking key-money is more accurate in cases where estates are evacuated due to tenants' violations. But should such key-money be calculated at current fair price, too and given back to tenants? Advisory opinion no.7/8375-12.11.1991 of Judiciary Power Legal Office states that "Due to tenants' violations concerning to lease object encroachment and dissipation, they are entitled to demand exclusively what paid as key-money in accordance with issued order, but they have to pay compensation for encroachment and dissipation". Based on this opinion, in such cases, tenants are not entitled to demand key-money at current fair price. To justify this opinion, it can be said that right to obtain key-money at current fair price at the time of evacuation is a suspended and conditioned right, the condition for which is estate evacuation due to expired lease period of time. In other words, not lease contract conclusion and key-money payment, but expiration of contractual lease period of time is the latter condition creating the right for tenants to demand key-money at current fair price; and such a right does not exist if, prior to expiration time, contracts are cancelled and estates are evacuated due to dishonor; and so much is certain that original key-money paid on the first day of lease should be paid back to tenant. This is also supported by non-abundance principle.

4. Conclusions and amendment recommendations

Problems with Article 3:

1- Phrase "Evacuation application" is ambiguous;

2- Adverb "In judicial authority" is additional.

Amendment suggestion: "… and for lease with under private signature deed, within 1 week after submission of request, evacuation will be executed under the order of judicial official concerned by Judiciary Power sheriffs".

Problem with Article 4:

1- Landlords are exempted from paying possible damages on tenants caused by blocking their cash in all cases where the former claims compensation or a sum of money from the latter; Application of this rule interferes with tenants' rights;

2- It is better to use phrase "Motion to demand/ claim compensation" instead of "Motion to demand/ claim injury" although both have synonymous meanings. But it is more appropriate to use word "compensation" given the word "Motion" pertaining to legal, not criminal/ Penal actions and given common use of word "injury" by criminal/ penal actions and in particular, given more generality of meaning of word "compensation" than that of word "injury" (Derakhshannia, 2005: 27).

Corrective suggestion: "… is required to submit either competent court's certification of submission of motion to demand compensation at the claimed amount and necessity of blocking money or tenant's deed to execution division at the same time of returning money. It is up to the competent court to recognize validity of reasons for blocking money or deed of tenant, if necessary, the court urges the landlord to deposit possible damage".

Problem with Article 5:

1- This article solely refers to tenants' claims about contract contents while tenants may claim about what contained in deed such as invalidity or forging, for example, they claim that landlord manipulated lease date.

2- Latter part of the Article has been stated in such a manner as if first the damage must be compensated and then the order be issued while damage compensation is dependent on proving the truth and issuing order.

Corrective suggestion: As a tenant raises some claims about substance or contents of lease deed provided by landlord such as invalidity or foreign and/or claims a right for him/ herself, he/she can bring an action or complaint to a competent court, as the case may be. If an order is rendered in favor of him/her, inflicted damages is compensated by landlord and/or circumstances are restored".

Problem with Article 6:

In provision 2, phrase "Religiously correct way" is ambiguous and is some sort of return to Religious Jurisprudence.

Corrective suggestion: "In case that landlord transfer key-money lawfully to tenant…".

Problem with Article 8:

Word "demand" is expressed additionally in this tenant can force the landlord to pay a sum so that the former waives his/ her legal rights.

Corrective recommendation: "In order to waive his/ her legal rights or to evacuate the estate, a tenant can receive a sum as key-money".

Problems with Article 11:

Phrase "Prior to this law approval" represents this problem that, given Articles 1 and 13 of this law, lease deeds concluded between approval date and taking effect date of the law are subject to which laws.

Corrective suggestion: "Estates rented prior to date of this law's becoming binding legally…".

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