

INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA

COMMENTS ON THE LANDLORD AND TENANT BILL 2018

13 FEBRUARY 2019

Comments by ICPAU

	ISSUE	OBSERVATION	COMMENT
THE LANDLORD AND TENANT BILL 2018			
2	Interpretations "rent"	The clause defines rent to mean the amount paid to a landlord by a tenant to occupy premises and use facilities and services. There are however, other payments that may result from the tenancy relationship which are not in principle rent and thus need to be clearly excluded from the definition.	<p>In bid to provide for clarity we propose to adopt the following definition for the term "rent";</p> <p><u>Proposed Amendment</u></p> <p>Interpretation (1)</p> <p>"Rent" in relation to a tenancy, means the amount paid to a landlord by a tenant to occupy premises and use facilities and services <u>except special deposits and reimbursement of costs, to be made to the landlord under the rental agreement.</u>"</p> <p><u>Justification</u></p> <p>To provide for clarity as the current definition seems to encompass payments for deposits and damages which may arise out of a tenancy relationship but when not in the actual sense rent per se.</p>

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	"special deposit"	Whereas the Bill under clause 32 and in several other clauses refer to the term special deposits, no effort was taken to provide a definition for the same. As such, this may result inappropriate application and lack of clarity in the usage of the term.	We therefore propose to have a definition for the term "special deposit" as below; <u>Proposed Amendment</u> Interpretation (1) "Special Deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises.
	"Court"	We note that the Bill is intended to regulate the conduct and relation of landlord and tenant country wide. As such requiring a tenant or a landlord to seek redress from the chief magistrate's court my compound on the problem of case backlog and in any case for more complicated matters, the High Court would still have jurisdiction over such matters.	We therefore propose to have a definition for the term "Court" as below; <u>Proposed Amendment</u> Interpretation (1) "Court" means a Grade I Magistrate's court.
7	Clause 7(1) Duty to keep premises in repair	The clause provides for an implied term in every tenancy, however, there is a typo graphical error which may change the meaning and intention of the clause	We suggest to delete the words "there," replace it with "it" and delete the words " a very" and replace them with "every" for the clause to read as follows; <u>Proposed Amendment</u> Clause 7(1) "Subject to section 8, <u>it</u> is implied in <u>every</u> tenancy a term that the landlord shall keep the premises maintained in good repair."

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			<p><u>Justification:</u></p> <p>To ensure clarity.</p>
9.	<p>Circumstances where tenant may repair premises</p> <p>Clause 9 (3) provides for a tenant submitting to the landlord a written notice of the repairs carried by the tenant.</p>	<p>Whereas this proposal is a welcome, there is need to ensure prudence and accountability by the tenant. One would wonder why a landlord under clause 8(5) would be required to furnish a tenant with particulars of costs of repairs done including supporting evidence for the same in circumstances of where the tenant damaged the premises but the same requirement is ignored for the circumstances where the repairs are done by the tenant.</p>	<p>We propose a similar requirement for evidence and account of costs incurred in instances of repairs whether by the tenant or the landlord to be the same. We thus propose to amend clause 9 (3) by deleting the words "the costs incurred" and replacing them with "the particulars of the cost of the repairs including the relevant supporting documentation to evidence the cost of the repairs"</p> <p>We further propose to insert immediately after the word "notice" the following words "and evidence of costs of repair"</p> <p>For the clause to read as follows;</p> <p><u>Proposed Amendment</u></p> <p>Clause (9)(3)</p> <p>"Where the tenant carries out repairs under subsection (1), the tenant shall immediately after carrying out the repairs give the landlord written notice of the repairs carried out and <u>the particulars of the cost of the repairs including the relevant supporting documentation to evidence the cost of the repairs</u> and the landlord shall within fourteen days after receiving the notice <u>and evidence of costs of repair</u>, reimburse the tenant for the costs of the repairs."</p> <p><u>Justification:</u></p> <p>This is intended to ensure that since reimbursement are tied to specific costs, refund to the tenant should strictly be based on evidence of costs incurred.</p>

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28	Rent increase to take effect if tenant does not object or negotiate Clause 28	This clause of the Bill provides for rent increase by the landlord and the tenant would be taken to have accepted the increase if the tenant does not object. However, there is no clear procedure or guidance on how a tenant would object.	<p>We propose to include clause 28(2) immediately after the current clause 28 the following:</p> <p><u>Proposed Amendment</u></p> <p>Clause 28(2)</p> <p>"Objections relating to increase in rent shall be in writing within fourteen (14) days after receiving the notice for increase in rent."</p> <p><u>Justification</u></p> <p>To provide for a clear procedure for objection.</p>
29	Decrease of rent in certain case	The clause introduces a very tricky situation which may not be accommodated by the parties intended to target. One wonders why decrease in rent should only be as a result of cessation in provision of certain services. What about decreases resulting from a macro economic perspective that may bring property rates down? In free market economy the invisible hand should be let to operate.	<p>We propose to delete clause 29</p> <p><u>Justification</u></p> <p>Decrease in rent should be guided by macro- economic dynamics the law cannot provide exhaustively for all circumstances that may justify a decrease in rent.</p>
32(5)	Security Deposit	The Bill requires all moneys paid as security deposits to the landlord to be deposited by the landlord in a trust account. Important to note is that the law concerns all landlords and tenants of all sorts without any	<p>We propose to have clause 32(5) to be dropped.</p> <p><u>Justification</u></p> <p>Matters of proof of payment of the special deposit should be left to be handled within the tenancy agreement.</p>

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		<p>significant segmentation; whether by region, rental earnings or otherwise.</p> <p>The requirement of having a trust account is being suggested in a country where the bankable population with formal commercial institutions is estimated at 34% (2018 FinScope Survey).</p> <p>Such a provision may be impractical especially for the landlords in a rural setting.</p>	
33	Assignment of tenancy by tenant Clause 33 The clause provides for assignment of tenancy by a tenant	Whereas this particular clause provides for matters of assignment of tenancy in respect to seeking of consent no further detail is provided to give guidance on terms and conditions that arise after assignment	We do propose insertion immediately after clause 33(2) the following; <u>Proposed Amendment</u> Clause (33) (3) If a tenant has assigned a rental premises to another person, the tenancy agreement continues on the same terms and conditions and, (a) the assignee is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord any of the landlord's obligations under the tenancy agreement or this Bill, if the breach or obligation relates to the period after the assignment, whether or not the breach or obligation also relate to the period before the assignment; (b) the former tenant is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord

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			<p>any of the landlord's obligations under the tenancy agreement or this Bill, if the breach or obligation relates to the period before the assignment;</p> <p>(c) If the former tenant has started a proceeding under this Act before the assignment and the benefits or obligations of the new tenant may be affected, the new tenant may join or continue the proceeding.</p> <p><u>Justification</u></p> <p>To match the respective liabilities to the periods to which they relate.</p>
	Clauses 33 and 36	Clause 33 provides for assignment and Clause 36 provides for the application to assign and the form that should be completed. However, whereas the landlord's consent in assignment of a tenancy and subletting of premises is required, there is no clear provision on how such consent would be communicated.	<p>We propose to include a clause immediately after the current clause 36, clause 37 and re-number the rest chronologically.</p> <p><u>Proposed Amendment</u></p> <p>Clause (37)</p> <p>"Consent to assign or sublet to be in prescribed form Consent to assign the tenancy or sublease the premises by a landlord under this Act shall be in the form prescribed by the Minister by regulations."</p> <p><u>Justification</u></p> <p>To ensure clarity in procedure.</p>

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42(5)	Termination by abandonment	Clause 42(5) provides for circumstances when a tenant would be deemed to have permanently abandoned the premises. However, in Clause 42(5)(a) a tenant is deemed to have permanently abandoned premises when the tenant has been absent from the premise for at least 30 consecutive days without notifying the landlord and the rent has not been paid; Clause 42(5)(b) at least 15 days have passed since the rent was due and rent remains unpaid.....	<p>We propose to join the requirements in Clause 42(5)(a) and (b) by the word "and" for the clause to read as follows;</p> <p><u>Proposed Amendment</u></p> <p>Clause 42 (5) "For purposes of subsection (1), a tenant is taken to have permanently abandoned the premises where -</p> <ul style="list-style-type: none"> (a) the tenant has been absent from the premises for at least thirty consecutive days without notifying the landlord and the rent has not been paid; <u>and</u> (b) at least fifteen days have passed since the rent was due and the rent remains unpaid and it appears to the landlord that the tenant has vacated the premises without the rent being paid." <p><u>Justification</u></p> <p>This would give the landlord sufficient time to conclude whether the tenant has abandoned the premises or not.</p>
46 and 48	Clause 47 Vacation of premises on termination of tenancy and Clause 48 Court order required to evict tenant	Clause 46 and 48 seem to provide for the same aspect of obtaining a court order in circumstances when a tenant fails to vacate the premises on receipt of notice of termination.	<p>We propose either of the clauses to be dropped.</p> <p><u>Justification</u></p> <p>To ensure clarity</p>
55	Record Keeping Clause 55 This should be a clause to provide for	A critical analysis seems to portray a picture of fewer requirements placed on keeping of records. Studies have shown a lot of taxes being lost through tax evasion due	<p>We propose to insert clause 55 and re-number the rest for the clause to read as follows:</p> <p><u>Proposed Amendment</u></p>

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	record keeping.	to lack of appropriate records by the landlords. We then wish to require a clear provision within the law for the landlord's records regarding the tenancy	<p>Clause 55: Record of the payment of rent</p> <p>(1) Every landlord or his agent shall keep a rent book for the premises, in such form as the Minister may approve.</p> <p>(2) The rent book shall contain;</p> <ul style="list-style-type: none"> (a) details of the parties to the tenancy (b) the rented premises, (c) the rent payable, and; (d) a record of all payments of rent made. <p>(3) The landlord or his agent shall sign each entry in the rent book.</p> <p>(4) A landlord who contravenes the provisions of this section commits an offence and is liable upon conviction to a fine not exceeding one month's rent of the rented premises.</p> <p><u>Justification</u></p> <p>To curb the challenge poor record keeping among landlords</p>