

Comments on Decision No. 25 of 2018 on Rental Dispute Settlement Committees and their Procedures

Mohamed Al Marzouqi - Partner, Regional Co-Head of Dispute Resolution - Litigation / Legislative Drafting

m.almarzouqi@tamimi.com - Abu Dhabi

Hany Farahat

a.farahat@tamimi.com - Abu Dhabi, UAE



On 27 September 2018, HH Sheikh Mansour bin Zayed Al Nahyan, Chairman of the Abu Dhabi Judicial Department, issued Decision No. (25) of 2018 ('Decision') concerning Lease Dispute Resolution Committees ('Committee') and the Procedures followed before them. The Decision came into effect on 14 October 2018 and will be published in the Official Gazette.

The Decision introduces a number of new procedures, largely by way of exception from the general rules, to expedite and facilitate proceedings before dispute resolution committees. It repeals Decision No. (9) of 2010 on rental dispute settlement committees and their procedures.

In the interests of streamlining procedures to ensure a speedy disposal of rent cases, the Decision sets out a number of important principles which apply before and during proceedings, as clarified below:

- 1. Appointing an Expert to give an Oral Opinion at the Hearing without a Report and entering his Opinion in the Minutes of the Hearing (Art. 3, Para. 2)**
Article 3, Paragraph 2, of the Decision states: 'The Committee may appoint an expert to give an oral opinion at the hearing without a report. His opinion shall be recorded in the minutes of the hearing.'
Appointing an expert to give an opinion at the hearing without a report is not a new procedure but it was not previously applicable before the Committee. Indeed, Article 89 of the Law of Proof in Civil and Commercial Transactions provides, 'The Court may appoint an expert to provide an oral opinion at the hearing without a report; in which case, the opinion shall be entered into the minutes of the hearing.'
- 2. A Rent Case Shall Not be Entertained Without a Tenancy Contract that has been Registered with the Municipality (Art. 6, Para. 1)**

Article 6, Paragraph 1 of the Decision states: 'No rent case shall be entertained without a copy of the tenancy contract and then only after verifying that the tenancy contract has been registered with the Municipality.'

This same principle is affirmed in Clause 1 of Circular No. 17 of 2018 dated 4 June 2018 where the Undersecretary of the Judiciary Department states: 'No rent case shall be entertained without a copy of the tenancy contract and then only after verifying that the tenancy contract has been registered with the Municipality.' This principle was previously affirmed by Decision No. (4) of 2011 on the Rules and Procedures of Registration of Tenancy Contracts in the Emirate of Abu Dhabi.

The law is strict in that no rent case may be entertained with a tenancy contract that has not been attested or registered with the Municipality. This restriction arises from a need to unify procedures and cooperate with other government agencies to establish a well balanced regime in the Emirate. Such regime will protect the rights of parties to tenancy contracts while discouraging unlawful accommodation. Hence, tenancy contracts which have not been registered with municipalities will not be recognised by the Committee.

The Decision is however completely silent on an equally important issue, namely the nature of contracts not registered with the Municipality despite the conflicting decisions previously emanating from the Cassation Committee on the admissibility of a claim filed with an unregistered tenancy contract. The unifying principle laid down by the Court of Cassation's Full Bench was that a tenancy contract with a term of up to four years would not render the claim inadmissible if the tenancy contract had not been registered (Cassation No. 56-2016 [Commercial] - 23 January 2017).

The claim was one brought before government agencies involved in the supply of services such as gas, electricity and communications, and not a claim before the Committee. An unregistered contract would cause suspension of all dealings between the landlord and such agencies. Hence, in the case of an unregistered contract with a term of up to four years, the Court of Cassation's approach in determining a claim as inadmissible, is based upon neutral, objective criteria.

3. A One Time Notice, Served by Affixation without Inquiry, Following a Refusal of Service, (Art. 6, Para. 3)

Article 6, paragraph 3 of the Decision applies when the Claimant is a landlord. A one time notice is served by affixation without inquiry, following a refusal to accept service at the demised premises with no apparent distinction between an individual, company or establishment. On the other hand, if the claim seeks to compel the tenant to vacate and surrender the demised premises to the landlord, notice shall be effective in accordance with the Civil Procedure Code.

4. Tenancy Contracts Registered with the Competent Department of Municipalities are Execution Deeds (Art. 11, Para. 4)

In line with the foregoing considerations and in the interests of speeding up the enforcement of tenancy rights, tenancy contracts have been ascribed the status of an execution deed. The landlord can obtain the execution deed from the Committee on the same day by paying five percent of the tenancy contract to compel eviction for non payment of rent or recover rent arrears or utility costs (water and electricity). The tenancy contract must be registered with the competent Department of Municipality of Abu Dhabi. This process will make it easier for the landlord to obtain an execution deed. Previously, landlords were subjected to a lengthy legal process to obtain an enforcement notice from the Committee.

5. Order on Petition for Inspection (Art. 16)

The Decision introduces a new procedure for the landlord to inspect the property in the event that the tenant has violated the terms of the lease. Prior to filing a substantive case, the landlord can submit a petition to the Judge which must include the facts of the case, and its grounds together with supporting documents. The judge can issue his order on the day following the submission at most and the judge does not have to give reasons for his order unless it conflicts with an earlier order. An order for inspection is not subject to review under a grievance procedure.

It is understood that an order for inspection is not available to a tenant in the event of a breach of tenancy obligations by the landlord such as a failure to provide maintenance work on the demised premises for which the landlord is responsible. That option should preferably be allowed to enable the tenant to recover the cost of maintenance not carried out by the landlord.

6. Performance Order to Compel Eviction for Non Payment of Rent or Recover Rent or Utility

Costs (Water and Electricity) - Landlord and a Performance Order to Recover the Deposit - Tenant (Art. 17)

As an exception to the general rules, the landlord may seek a performance order to compel eviction for non payment of rent or recover rent arrears or utility costs (water and electricity). The landlord shall direct the above requests to the tenant, either separately or combined, at least five days before applying for the order. In accordance with Article 17:

- the tenant may seek a performance order to recover his deposit after the expiry of the tenancy contract subject to the same rules as applicable to the subject matter of the request;
- a decision denying the order must be reasoned;
- the tenant or landlord shall be served with the order issued against them either in person or at the demised premises pursuant to Article 6 of the Decision, once by affixation without inquiry, following a refusal of service;
- the landlord or tenant may file a grievance against the order within 15 days after it is served upon them;
- the landlord or tenant may appeal the order under the Tenancy Law. Time for appeal runs from the expiration of the time limit for filing a grievance; and
- a tenant or landlord waives their right to file a grievance if it proceeds with an appeal directly.

“The provisions aim to resolve disputes between landlords and tenants quickly and save time in the First Instance Committee, the Appeal and Cassation Committee.”

The key provisions of the Decision in question are outlined above. The provisions aim to resolve disputes between landlords and tenants quickly and save time in the First Instance Committee, the Appeal and Cassation Committee. Before the Decision was enacted, landlords were subjected to a lengthy legal process to obtain an enforcement notice from the Committee. The Decision will contribute to expediting the court process and minimising the time spent by the Judiciary on such matters.