

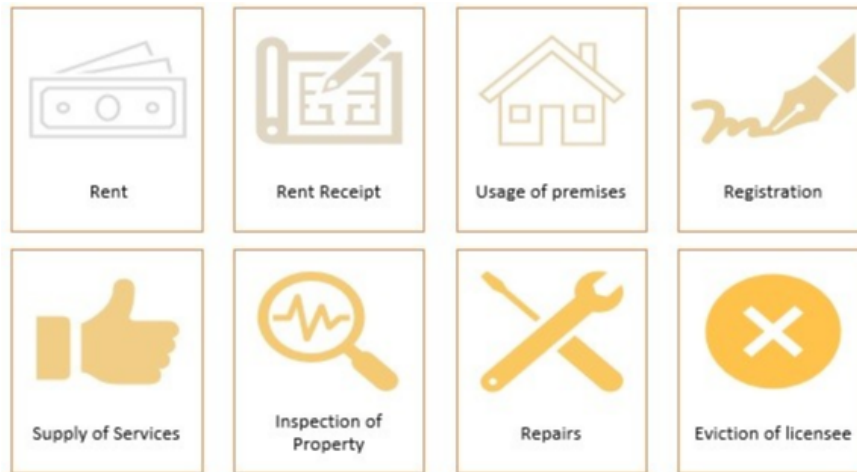


TOP 8 POINTERS TO REMEMBER BEFORE YOU LET OUT PROPERTY

Many people shift from one city to another for job, for business or for better livelihood. A decent place to live is very important during those times and most of the people prefer rental premises.

While renting a property, parties should be aware about the provision of rent control act of the respective state where the property is situated. The objective of the rent control act is to assure that neither the landlord's nor the licensees are exploited by other. This article analyses the duties of landlord and failing which landlord may become liable for certain penalties under Maharashtra Rent Control Act, 1999 ("Act").

To ensure a harmonious relationship, parties should explicitly draw out the agreement and establish mutual understanding with respect to rent, security deposits, duration, lock-in period, premises usage, notice period, termination etc. in the written format.



RIGHTS AND DUTIES OF LANDLORD:

1. **Rent:** The landlord retains the right to decide the rent and increase the same at the rate of 4% per annum. Similarly for improvement or structural alteration of the licensed premises, the rent can be increased at a rate of 15% if 70% of licensees give their consent in writing. Further, landlord can increase additional 25% per annum rent for particular structural maintenance and repairs specifically carried out under Maharashtra Housing and Area Development Act, 1976. However, the improvement or structural alteration do not include repairs which the landlord is bound to undertake.
2. **Rent Receipt:** It is mandatory to provide rent receipt to licensee. In case a landlord fails to do so, a penalty is levied on the landlord.
3. **Usage of premises:** Landlord can impose the usage of premises on the tenant i.e., the tenant cannot use or permit to use residential property for commercial purpose.
4. **Registration of agreement:** Section 55 of the Act states that any agreement for leave and license or letting of any premises should be in writing and registered as per the Registration Act, 1908 and it is responsibility of landlord to register such agreement. However, as per Section 17 of Registration Act 1908, if the rental period is less than 12 months then the registration of leave and license agreement is not compulsory, however, it is advisable to register the agreement. Nowadays, many people prefer to register agreement online. In Maharashtra online registration can be done on website <https://efilingigr.maharashtra.gov.in/ereg/>.
5. **Supply of essential service:** The landlord cannot cut off or withhold the essential supply or services to the licensee. Essential supply or services includes water supply, electricity,

lights in passages and on staircases, elevators or sanitary services, etc. If the landlord cut off essential services, the licensee may approach the court and the court may direct the landlord to restore such supply and services. If the landlord fails to comply with the court order, the court shall levy penalty as prescribed in the Act. It is also mentioned in the Act that, “withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut-off by the municipal authority or any other competent authority.”

6. **Inspection of property:** The landlord can inspect the licensed premises with prior notice to the licensee.
7. **Repairs:** It is responsibility of landlord to keep the premises in good conditions. If the landlord neglects to make any repairs, which he is bound to make within a reasonable time after a notice of 15 days is served upon him by licensee, licensee may carry out repairs and deduct the expenses of such repairs from the rent payable to landlord or otherwise recover such amount from him. Provided that the recoverable amount in any year should not exceed 1/4th of rent payable by the licensee for that year.
8. **Eviction of licensee:** A Landlord is not allowed to recover the possession of the licensed premises till the time licensee pays rent on time. Also, landlord cannot file a suit for recovery of licensed premises on the ground of non-payment of rent, until the expiry of 90 days after service of written notice by landlord in this regard.

PENALTY UNDER THE ACT

Any contravention by landlord, he is punishable as under:

Landlord guilty of	Penalty
Charging excess rent	Imprisonment up to 3 months or fine up to Rs. 5,000 or both
Rent agreement not registered	Imprisonment up to 3 months or fine up to Rs. 5,000 or both
Residential property used for commercial services	Imprisonment for up to 6 months or Rs. 10,000 fine, or both
Fails to provide rent receipt	Fine up to Rs. 100 for each day of default
Not providing essential services	Imprisonment up to 3 months or fine up to Rs. 1,000 or both

Even though the Act does not specifically provide any provisions with respect to lock-in period, generally parties include a lock-in provision in the agreement which then implies that neither party can terminate the agreement during lock-in period unless permitted. Party terminating the agreement during lock in period will have to bear certain consequences like payment of additional amount as a compensation. In addition, the landlord may forfeit the security deposit. However, in case either party makes default or breach any term of the agreement, then the non– breaching party can terminate the agreement even in lock- in period.

Bafna Motors Pvt Ltd vs Amanallua Khan[1]

In this case the issue about arbitrability of disputes related to leave and license agreement was considered. If parties are disputing payment of rent recovery of possession of any immovable property, or relating to the recovery of the licence fee, charges, or rent thereof, then Small Causes Court has exclusive jurisdiction under section 41 of the Act and the dispute is not arbitrable. However, in this case the claims were pertaining to refund of security deposit and claim of damage to equipment etc. which though arose during the course of license agreement did not pertain to recovery of rent or possession of property etc. The licensee had already handed over the possession of the property and also paid the rent. Thus, this dispute was held to be arbitrable and not exclusively restricted to the Small Causes Court.

Mrs. Patricia Lopes vs. Ms. Tarun Bisht and another, eviction application no. 65 of 2020

In this case, applicant was the owner of the licensed premises. The leave and license agreement was executed between applicant and respondents on 01.12.2018 for the term of 3 years i.e., from 01.12.2018 to 30.11.2021. It was contention of the applicant that the respondents were irregular and delayed in making payment of license fee from the month of January 2019. Therefore, the applicant served termination notice dated 10.03.2020 upon the respondents and called upon to handover the possession of the premises. The respondents had agreed to the termination of leave and license agreement and also agreed to vacate the premises on 15.04.2020. Due to the situation of Covid-19 pandemic, the applicant granted additional time to vacate the premises on humanity grounds. The respondents in this period

were paying the license fee belatedly. After unlocking 1.0, the respondents had not vacated the premises.

The hon'ble court held that as per Section 24(b) of the Act, failure of the respondents to deliver the possession of the premises to the applicant, shall be liable to pay damages at double the rate of license fee for the delayed possession.

CONCLUSION:

This Act provides protection for licensees against eviction by landlord without cause. Similarly, the landlord can recover possession, if they require the premises for their bona fide purpose. This Act does not apply to any premises belonging to the Government or local authority, Bank or any Public Sector Undertaking or any Corporation established under central or state act.



For any feedback or response on this article, the author can be reached on charusheela.vispute@ynzgroup.co.in.

About Charusheela Vispute, Advocate

Charusheela Vispute is experienced in litigation and non- litigation, having specialisation in property and testamentary matters. By qualification she is Bachelor of Arts and Bachelor of Law from Mumbai University.

[1] Bombay High Court: ARBITRATION APPLICATION

NO.340 OF 2019 on 5th May 2022

NOTE: The article reflects the general work of the author on the date of publication and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.