

The Jordan's Legal Regulations of Landlord's Obligation to Guarantee Tenant not to be Obstructed Using Leased Properties

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Abstract

Landlord's obligations to guarantee tenant not obstructed occupying the leased property is considered as one of the most important obligations that must be applied by lessor as defined in Jordan's Landlords and Tenants Law as well as the Civil Code. Thus, a number of legal responsibilities lie with lessor in the case of violating his / her obligations either preventing tenant from using appropriately the leased property by legal and financial status or under other legal conditions. The present study aims to discuss legislator's point of view in terms of achieving the justice between the interests of both landlord and tenants as well as providing the necessary proposals to address any legal dilemmas come up with the application of this lease.

Introduction

The lease occupies a prominent position in our contemporary life because such legal contract has its close relevance to our social affairs and regulates the relationship between tenants and lessors. This lease enables also poor class financially to find appropriate accommodations because poor people are unable to pay the high costs of housing construction. The lease provides also the means by which members of the community are able to use some movables that they cannot purchase or acquire. Conversely, the rent contract is financially important to owners of the wealth who may be reluctant to invest their own money and thus they can lease their properties to those who can invest them through the lease.

Lease is a legal contract that the lessor is accordingly obliged to allow the lessee to benefit from the dwelling or properties for a specified period and lessee should pay the known rent ⁽¹⁾. Lease is a designated contract that is dedicated to the benefit of leased property. This contract can be described as a consensual contract that is contracted as soon as the consensual agreement between the lessor and the lessee. In addition, lease is an ongoing contract whose implementation takes a certain period of time. Lease is a binding netting contract for the two parties and arranges reciprocal obligations on them ⁽²⁾. Both parties must comply with their commitments in this legal contract. The tenant is obliged to pay the rent, maintain the leasehold and guarantee to reforms hidden defects caused during the period of leasing. The lessor is also obliged to ensure that he / she must not prevent the tenant from using the leased properties or not disturb tenant from benefit of dwelling as specified according to lease. Such obligations are called 'personal responsibility of the lessor not to disturb tenant from using leased properties physically and legally.

The lessor's obligation to refrain from preventing lessee from using the leasehold property is a commitment to achieve an objective. However, this is compatible with the lessor's obligation to enable the lessee to use the leased property in a quiet manner; in return the tenant should pay the agreed rent. The lessor is obliged to ensure that he / she must guarantee any obstruction caused by him / her personally or the lessor's follower. These obstructions of the use of leased property can be financial in both sides or based on legal acts or reasons. The financial guarantee of the lessor cannot be extended to other part unless they have agreed otherwise.

While the financial obstructions are the acts of the lessor or his followers that can disrupt the use of the leased property, the legal obstructions therefore can be claiming objector a right in the leased property that can therefore disable the tenant's normal use. The Jordanian legislator has regulated the provisions of the guarantee of personal liability under the title of the obligation to maintain the leased property in articles 684 and 685 of the Civil Code. The aim of this research is to focus on lessor's guarantee lessee not to be obstructed in the use of the leased property.

1 -Clause No. 658 of the Jordan's Civil Code

2- For more details about lease properties : Dr. Tawfiq Hassan Faraj, *Aqid- al - Ijar (Lease)*, Al- Dar al-Jamiya, Beirut 1984, p. 13. Dr. Khamis Khader, *Al- Oqoud al- Madaniya al-Kobra (The Great Civil Contracts)*, Dar Al-Nahda Al-Arabiya, Edition 2, 1984, p. 59. Dr. Abdul-Razzaq Al-Sanhoury, *Al-Waseet Fi Sharih al- Qanon al – madani al – Jadeed (Al- Waseet in Explaining the New Civil Law(, Rent and Lending)*, Volume I, Manshorat al- Halabi, Beirut 1998, p. 4.

Research problem:

This research aims address the following questions:

- 1- To what extent has the Jordanian legislator through Civil Law and Jordan's Landlords and Tenants Law be successful in regulating the lessor's commitments to his personal liability?
- 2- To what extent have Civil Law and Jordan's Landlords and Tenants Law achieved the balance between two parties or have been biased towards one party at the expense of another party?

Research Methodologies:

The present study aims to answer the questions mentioned above by employing the analytical approach. The researchers have sought to collect and discuss the relevant legal texts of the Jordanian Civil Code and Jordan's Landlords and Tenants Law regarding the lessor's guarantee to his personal liability in the case of he or his follower obstructs lessee the use of the leased property.

Research Plan:

This study has been designed to as follows:

1. Guarantee Tenant not to be Obstructed Using Leased Properties
 - 1.1 Financial Obstruction Caused by the Lessor
 - 1.2 Legal Obstruction Caused by the Lessor
 - 1.3 Legal and Financial Obstruction Caused by the Lessor's Follower
2. Legal Consequences and Conditions of Personal Obstruction Caused by the Lessor
 - 2.1 legal Conditions
 - 2.2 Legal Consequences of the Lessor's Guarantee to Personal Obstruction

1. Guarantee Tenant not to be Obstructed Using Leased Properties

The researchers aims to address the guarantee tenant not to be obstructed using leased properties by discussing three points: financial obstruction of tenant by the lessor, legal obstruction of tenant caused by the lessor and legal and financial obstruction of tenant by his follower.

1.1 Financial Obstruction Caused by the Lessor:

Article 684 of Jordan's Civil Code provides that 1- the landlord shall not obstruct tenant in a way he cannot benefit from the leased property properly during the period of the lease. Landlord should not make a change in the leased property which could obstruct tenant using the leased property. Landlord should also comply with his commitments not to make any change that affect the agreed benefit of the leased property according to lease. The guarantee of the lessor shall not be limited to works issued by him or his follower but such guarantee shall extend to any damage based on a legal reason issued by any other tenant or by any other one has the right in the leased property determined by lessor⁽¹⁾.

The above article has made it clear that the lessor is obliged not to prevent the lessee from using the leased property appropriately whether by any financial or legal reasons. Therefore, any obstruction caused by lessor must be considered as legal liability in which lessor must guarantee. The lessor must also guarantee tenant any obstruction caused by other tenants or owners of rights in this the leased property⁽²⁾.

The financial obstruction in the lease caused by lessor can be divided into two sections: firstly: the financial obstruction which is based on purely financial works. Secondly: financial obstruction that is based on legal actions. However, the researchers seek to discuss each section separately as follows:

Section (1): financial obstruction which is based on purely financial works:

Article 684 of the Jordan's Civil Code stipulates that the legislator has stated that the lessee should not be prevented or obstructed by lessor or his followers from using the leased property. The financial obstruction which is based on purely financial works can takes two main forms:

1 - Article (751) of the Egyptian Civil Code.

2 - Dr. Tawfiq Hassan Faraj, op . cit, p. 559, Dr. Hussam al-Din Kamel al-Ahwani, Lease Contract , Edition 3, 1998 / p. 110.

- 1- The benefit of the leased property can be disrupted in a way that makes it unusable.
- 2- Making a change in the leased property

As to the benefit of the leased property can be disrupted in a way that makes it unusable: As has been stated before, the legislator did not permit the lessor to take any obstruction that prevent partly or completely the lessee from the use of the leased property during the lease period. For example, lessor is not allowed to cut off water, electricity and telephone from the lessee to force him to leave the leased property or to prevent him for using roof of the house. The lessor breaks in the leased property without the permission of the lessee. The lessor leaves his cattle to graze on the leased land or dump the dirt or rubbish from the upper floor to the lessee's lower floor⁽¹⁾.

Moreover, the obstacle of the tenant's use is not limited to the leased property itself but also includes its accessories. In order to determine these leased accessories, according to the decision No. 48/81 of the Jordan's Court of Cassation, in order to Jordan's Court of Cassation can specify accessories that follow the leased property must interpret the lease itself. However, if its terms and words of the lease are clear, court must interpret these terms and words. Otherwise, Court must seek to explore the common intent of the contractors of the lease by employing the current custom or how the contractors have carried out their contract⁽²⁾. In a recent decision of Jordan's Court of Cassation stipulates that the lease must regulate the relationship between two parties in that case in case of litigation and dispute. Since the lease has specified the accessories only the heating and the water tank. Therefore, car parking is not included in the lease. In the case of Solicitor of The tenant's attorney claimed that the tenant uses the garage as a joint benefit, this lawsuit should be rejected⁽³⁾.

Jurists have differed regarding between the lessee's competition to the lessor's craft or trade. Does such competition can be considered as a financial obstruction or not? Some jurists claim that lessor's obligation must be limited to enabling the tenant to obtain a certain profit. For example, if someone leases a shop to a person, he can practice the same profession and business in a shop adjacent to the tenant's shop because lessor has the freedom and right to use property as he likes⁽⁴⁾. Thus, according to this opinion, lessor cannot be deemed as disrupted to the right of the lessee. However, this rule is subject to two conditions: Firstly, the lessor should not use his right to harm the lessee. If he does so, he can consider despotic in using his right. Secondly, the lease must not stipulate that lessor or tenants has the right to practice their profession and they should not prevent from competition in business and trade.

Researchers argue that this opinion is sound because freedom of competition in the trade is guaranteed by law. Such right cannot be voided only by the law too⁽⁵⁾. Conversely, without legal basis, some jurists claim that the lessor must not engage in a similar trade as the tenant's trade. In this case, lessor can be considered as disrupter to lessee's trade⁽⁶⁾.

Some examples can be set to judicial applications for the violation of lessor to lessee's use of the leased property. For example, according to one of the legal decisions of the French Court (RN), if the lease has stipulated that lessee is prevented from starting a trade other than the stipulated trade therein, this does not mean that the lessor's implicit obligation to be refrained from competing the lessee's trade which the lessor committed not to engage other trade⁽⁷⁾.

Moreover, the 5th Beirut Court of Appeal ruled that if the lessor has leased a part of the premises that he occupied. It has been proved that the lessor is always harassing the tenant to impel him to evacuate the leased property. For example, the lessor cause a delay in tenant's opening of the shop in the morning or closing it early or extinguishing the lights during the presence of customers, According to article 553, the lessor incurs full liability because he has breached his obligations and he must refrain from anything that would deprive the lessee of his rights to use leased property⁽⁸⁾.

1- Dr. Al- Senhoury, op . cit. p. 300, d. Toufic Hassan, op . cit, p. 562, d. Khamis Khadr, op . cit. p. 773, d. Munther al-Fadl, Dr. Al-Fatlawi, The Named Contracts, al-Thaqafa Press, Amman, 1993, p. 257, Muhammad al-Zu'bi, Mu'tah Research and Studies, Volume V, Second Issue, 1990, p.165.

2- Jordan's Court of Cassation, (48/81), 28/2/1981, Journal of the Bar Association, p. 1095

3- Jordan's Court of Cassation, (48/81), 28/2/1999, Journal of the Bar Association, p. 2343.

4 - Dr. Al- Senhoury, op . cit., p. 317, Dr. Hossam El-Din, op . cit, p. 115, d. Munther al-Fadl and Dr. The author of Fatlawi, op . cit, p. 260.

5- Jordanian jurisprudence refers to this as a prohibited competition and is intended to prohibit the carrying out of a specific activity either by the text of the law or by agreement and is different from the unfair competition. For more detail on competition Dr. Aziz al-Ukaili, Explanation of Commercial Law, Part I, Dar al-Thaqafa, 1998, p. 209

6 - Dr. Toufic Hassan, op . cit, p. 562, d. Khamis Khadr, op . cit, p. 776

7- French Court of Cassation, November 9, 1984 , Dr. alouz 49 p. 178, Dr. Al- Senhoury, p. 320 margin 3.

8 - The Fifth Beirut Appeal, Decision No. (4) on 5/1/1968, Ruler (75) p. 13, , Dr. Tawfiq Hassan, p. 560 margin 1.

According to the decision of Jordan's Court of Cassation "the failure to deliver water and electricity to the leased property that can deprive the tenant of the benefit of leased property and its exploitation. Accordance with the provisions of articles 661 and 662/2 of the Civil Code, this gives the tenant the right to annul the lease contract and to vacate leased property because he is unable to exploit leased property's benefit. In addition, lessor does not deserve the rent of the leased property according to articles 665 and 668 Civil Code because the leased property's benefit is not enabled as a result of the lessor's default and failure to carry out his obligations⁽¹⁾.

2-Making a Change in the Leased Property

It can be noted that the text of Article 684 provides that landlord's obligation to Guarantee tenant not to be obstructed using leased properties can be also achieved through making a change in the leasehold during the lease period. Such change can completely or partially impair the leasehold's benefit. Thus, the lessor should make no change during the period of the lease contract. The lease shall not be subject to any change except as required by the maintenance works. According to the provisions of Article (681), the landlord is required to repair what is caused by a defect in leasehold which affects the leasehold's intended benefit. If he fails to do so, the lessee may terminate the contract or obtain a court's permission which authorizes him to reform and therefore he can get full refund from the lessor accordingly. However, if the defect that the lessor is obligated to fix is known as a simple or urgent matter that cannot be tolerated or the tenant immediately asks to fix this defect, the tenant may repair it and deduct its expense from the rent.

It is also not permissible for the lessor to demolish part of the leased property or close the stairs or close the windows completely or remove the kitchens and bathrooms or change the arrangements of the rooms in the rented house. If the leased property is a land, it is not permissible for the lessor to build on the leased land or to obtain some of its benefits without the tenant's permission. Likewise, the landlord must make no change in accessories' leased property. In all these cases, the landlord is considered as disrupter and he must guarantee all these disruptions. The change that is not allowed is the change that impairs the normal use of leased property.

Some of these judicial applications, the Mixed Court of Appeal stipulated that in the lease, the lessor can states that he retains right to change the leased premises, such as building a new floor, or converting laundry rooms into rooms etc. However, such change shall not prejudice the tenant's use of the leased property; otherwise, the rent shall be reduced or the lease must be canceled in addition to appropriate compensation that matches with these changes⁽²⁾. Jordan's Court of Cassation has stated that change in the leased property alone is not sufficient to judge to vacate but it must be proven that there is tort caused to lessee⁽³⁾.

2. Legal Obstruction Caused by the Lessor

In such a case, obstructions shall be verified if the lessor gives a third party a right that conflicts with the tenant's right. As if the lessor gives the leased property's benefit to another lessee that make the leased property's benefit imperfect to the original lessee or the lessor makes possessory lien that require to transfer the possession of the leased property to the mortgagor creditor. This is contrary to the tenant's use of the leased property. Obstructions caused by lessor can be also achieved if the lessor gives the other person a personal right, such as the buyer's right to the leased property if the rental date is not earlier than the date of sale as well as if the lessor has leased the leased property to another person on a date earlier than the date of the current tenant⁽⁴⁾.

Article 684/2 of Jordan's Civil Code states that the lessor's guarantee shall not be restricted to his works carried out by him or his follower, but this guarantee shall extend to any damage based on a legal reason issued by any other tenant or any person entitled to the right by lessor". It is noted in the above examples that the lessor's obstructions are based on legal actions. They are two kinds of obstructions: those obstructions of the lessor issued by himself to give a right to others that conflicts with the right of the lessee. This is seen as a financial obstruction issued by the lessor. Other obstructions caused by others to use this right and this are based on a legal reason issued by third parties. Therefore, researchers point out that personal behavior based on legal actions is mixed with the obstructions of third parties. However, there is no practical importance in distinguishing between these types of obstructions⁽⁵⁾.

1- Jordan's Court of Cassation, / (1130/90) 6/4/1991, Journal of the Bar Association, p. 460.

2- Dr. Al- Senhoury, op . cit, p. 311 and after, Dr., Mohammed al-Zu'bi, op . cit, p. 167, Dr. Munther al-Fadl and d. Al- Fatlawi, op . cit / p. 257 d. Toufic Hassan, op . cit, p. 562 and after.

3- Jordan's Court of Cassation, No. 58/79, 25/2/1979, Journal of the Bar Association, p. 888.

4- Mixed Appeal, January 14, 1936, p. 48, p. 76, Dr. Al- Senhoury, op . cit, p. 321, Margin 5.

5- Al- Senhoury, op . cit, p. 302.

1.3 Personal Obstructions Caused by Lessor Legally Recognized in Jordan.

Essentially, the lessor should guarantee his personal obstruction or by his follower if this obstruction causes the tenant's benefit to be wholly or partially damaged. However, Jordan's Civil Code, Law of Owners and Tenants No. (11) Of 1994 and Amended Law of Owners and Tenants Of 2000 stipulated clearly that some obstructions by lessor that are authorised to do so after certain conditions had been met. If the lessor fails to meet these conditions, he will be liable for a legal guarantee. Article 683/1 of Jordan's Civil Code has stated that the lessor may prevent the tenant from any action leading to sabotage or alteration of the leased property such as putting machinery and equipment that may harm or diminish the value of the leased property. Article 996/1 has also stated that the lessee shall not prevent the lessor from carrying out the necessary work to maintain the leased property. Law of the owners and Tenants stipulated that the following cases are allowed such as the case of demolition of the property with aim of reconstructing it Article (9 / A), raising the existing building Article (6 / A), emptying stairs leading to the surface Article (6 / b) and the state of evacuation of the building due to big damage (Article 11) the state of evacuation of the land (Article 11)¹.

Researchers point out that the legislator's aim not to consider these cases financially obstructed by the lessor is to achieve the balance between the interests of the lessor and the tenant and not to deprive the lessor entirely from the maintenance and exploitation of leased property as well as continuing the use of this property through the demolition of the old property and rebuilding it and achieving benefit from the rent of this building. These cases meet with the need of the lessor and tenant by giving him the right to return to the leased property or getting compensation in most cases.

1.2 Legal Obstruction Caused by the Lessor based on Legal Reason

Legal obstruction caused by the lessor means that the lessor claims that he has a right over the leased property. Such a claim can impair the use of the leased property by the lessee. For example, if someone leases a property that does not belong to him such as curious person's lease. In this case, the lease contract must be suspended unless the owner approves this lease, thus the lease contract becomes effective. However, if the curious person has become the owner of the leased property for any reason such as inheritance or purchase it from the real owner or by right of preemption, he cannot not ask the tenant to vacate the leased property based on such reasons or by claiming that bargain has changed from the curious person to the owner. If he does so, the lessee may pay this request based on the guarantee to personal obstruction⁽²⁾. The leased property may be subject to prescription such as such as renting a non-owned property that was outside the limits of the settlement but he obtains the proprietorship of the leased property for a period of fourteen years and he hand over the leased property. After one year from the lease, the holder became the owner of this property⁽³⁾. He cannot return the leased property from lessor by claiming that he became the owner of it because the acquisition of prescription is due to the beginning of possession and then it shows that the lessor has rent his own property. Therefore, the lessor is a guarantor to his actions based on a legal reason. Then he is not permitted to pay back to the one who owes the guarantee.

The personal obstruction based on legal reason can be existed if the landlord claims that he is a holder as has been explained in the previous example. Also, the landlord can claim that he has another right such as access right to a person who leases land to another. This requires that the landlord must guarantee to this right if it has been proved the access right is dedicated to another person. If landlord has become the owner of this neighboring land by purchasing it, he cannot adhere to the fixed access right of this land which he has lease it even if this right is derived from the seller because the lessor is guarantor of his personal acts based on a legal reason that conflicts with the lessee's right to use .

In addition, the personal obstruction can be existed if the lessor obstructs to the lessee in part of the lease property claiming that this part is not included in the lease⁽⁴⁾. In all these cases, the lessor is obstructed based on legal reasons because it is depended on a right, whether this right is financial or personal. The Court of Appeal of Beirut states that in this regard, if one rented a shop with a license to sell smoke and the landlord later transferred the license to another shop on the pretext that it was not mentioned in the lease, the tenant is entitled to request a reduction of the allowance⁽⁵⁾.

1.3 Legal and Financial Obstruction Caused by the Lessor's Follower

1 - for more details Law of Owners and Tenants No. (11) 1994 and amended by the Law of Owners and Tenants of 2000.

2- Al- Senhoury, op . cit, p. 302 and after, Dr. Khamis Khadr, op . cit p. 774, Dr. Tawfiq Hassan, p. 565 and after, d. Mohammed al - Zuabi op . cit p.160.

3 - Al- Senhoury, op . cit. p. 302 margin 3.

4- Dr.Tawfiq Hassan, p. 565 and after.

5- The Appeal of Beirut Agur - No. (66) 21/1/1955 Bulletin 1955 p. 249, Dr. Tawfiq Hassan, op . cit p. 566 margin 3.

Article 288 of the Jordan's Civil Code provides that no one is asked about the actions of others. However, upon request of the injured party, if the court observes a justification, it can obligate the party that harms the other one to ensure the warranty guarantee. 1- A person who has been obliged by law or by agreement to control a person in need of supervision due to his or her disability or mental or physical condition, unless he proves that he has done the duty of censorship or care as well as the damage was unavoidable even if he performed this duty with due care, the court has the right to obligate this party to guarantee the warranty. 2- Whoever who has the power to control a person who causes the damage even if he is not free to choose, if the harmful act was issued by the follower in the event of performing his duty or because of it, he court has the right to obligate this party to guarantee the warranty. To whom who guarantee someone who sentenced can get full refund from him.

According to the previous legal text, it has become clear that it is not possible to question the person because of the act of his follower unless his act causes tort and the follower's act was during his work at his sponsor. The relationship between the sponsor and his followers because of proving legal liability is based on two conditions: 1- dependency relationships 2- the mistake has been carried out during performing the function or because of it. Dependency relationship consists of two elements: the actual power and the supervision¹.

The Jordanian legislator also states in Article 684/2 that "the lessor's guarantee shall not be limited to the works issued by him or his followers, but shall extend to any damage based on a legal reason issued by any other tenant or from any person who has received the right from the lessor.

Who are the followers of the lessor? It is noted from the text of Article (684/2) that the meaning of followers here is wider than the meaning of the follower in the tort liability. According to the text of article (288), follower is any person entrusted by the lessor with a work related to the leased property or anyone is engaged in leased property based on a right determined by lessor. The reason behind the act of follower is as a result of interference of the landlord. Without such interference, the follower cannot cause an act that infringes the tenant's use. Followers are those who assists lessor in his obligations and practicing his rights such as servants, concierge, the supervisor of farm, employees, workers and craftsmen, friends, guests and relatives. Lessor's followers are also those who entrusted by the lessor with a work related to the leased property such as the contractor and the engineer if he are entrusted with the necessary repairs to save the rented property. Lessor's follower can also be defined as anyone can act lessor's behalf such as guardian, trustee, creditor and mortgagee and agent⁽²⁾.

Finally, inheritors (al- Kalaf al –Aam) and creditors (al- Kalaf al –Kas) are considered as followers of the lessor. For example, tenant who receives the right from the lessor. In this case, the lessor shall be asked if any of his followers cause an obstruction to lessee even if this obstruction is deemed as financial. However, it is conditional to lessor to be asked for follower's act that the obstruction must be caused during his work as a follower to lessor.

A question here can be raised about the availability of the two elements of dependency: the actual authority and supervision. Has the lessor the right of the actual authority to the contractor or the engineer or the other tenant? When those people can be considered as followers until the lessor guarantee their financial obstruction or they cannot be considered as followers and then the lessor is not asked to what they act financially and interrupts the use of the tenant. The researchers argue that according to the definition of the followers, anyone who is has been entrusted with a work by lessor connected to the leased property or has been present in it on the basis of a right determined by the lessor³.

It has become clear to us that the followers is indeed should be treated as the lessor. Thus, the lessor guarantees follower's financial acts and legal obstruction based on legal reason. Appurtenance here is of a special kind that differs from Appurtenance that is based on tort liability.

Another question arisen as to whether the lessor is liable for the thefts of the tenant? Principally, the landlord is not liable for the thefts that occur to the lessee because these thefts are considered as financial acts issued by third parties. The lessor to be asked he must be obliged to appoint a concierge for the building and there is negligence from this gatekeeper. As a result of concierge's negligence, the thefts have happened to the

1 - Dr. Abdul Razzaq Al-Sanhoury, Al-Waseet in Explaining Civil Law, Sources of Commitment, Volume II., Halabi Publications, Beirut 1998, pp. 1143. Dr. Nuri Khater and Dr. Adnan Ibrahim, Sources of Personal Rights, Dar Al-Thaqafa, Amman 2000, p. 521. Ander Sultan, Sources of Obligation in Jordanian Civil Law, University of Jordan Publications, Amman 1989, pp. 364.

2 - Dr. Al- Senhoury, op . cit. p.p 324-325, Dr, Tawfiq Hassan, op . cit p. 568, Dr. Hossam El-Din Kamel El-Ahwany, op . cit, p. 16, Dr. Mohammed Al - Zuabi op . cit p.168.

3 - Dr. Al- Senhoury, op . cit, p. 324

lessee. If concierge has stolen, the lessor shall be liable has as a financial obstruction issued by one of his followers⁽¹⁾.

2. Legal Consequences and Conditions of Personal Liability Caused by the Lessor

This chapter aims to address legal consequences and conditions of personal obstruction caused by the lessor as follows:

2.1 legal Conditions

For the lessor to guarantee his personal or followers' obstruction whether this obstruction is based on a legal reason or is financial based on purely financial acts or legal actions, there are four conditions⁽²⁾:

Firstly: obstruction must be occurred actually

It is required for the lessor to guarantee tenant not to be obstructed using the leased property that that he or one of his followers causes actual obstruction of the use of the leased property. This means that the mere fear or expectation of obstruction is not sufficient to make a guarantee of the lessor

If the financial obstruction is based on purely financial works, it is stipulated that the lessor or one of his followers actually prevents the tenant from fully or partially benefiting from the rented property, such as the lessor cuts the water or the electricity.

The mere threat is not sufficient to lessor's guarantee. The financial obstruction based on legal acts, as if the lessor sold the leased property and the lease does not apply to the purchaser's right, the guarantee is only realized only if the buyer asks the tenant to vacate the rented property. However, if he does not demand eviction, the financial obstruction is not applicable. Personal obstruction can be based on legal reasons such as if the lessor has become the owner of the leased property, the personal obstruction is also not applicable only if the tenant requests to vacate the rented property based on his new capacity.

Secondly: the personal obstruction should occur during the rental period.

Lessor's obligation to guarantee is a continuous and is generated upon the conclusion of the lease and ends with the termination of the lease. The personal obstruction before the lease contract is not required guarantee such as threatening to cutting electricity when person who rented a house for the residence with condition that he lease will begin six months later. The personal obstruction after the termination of the lease is also not considered as a guarantee.

Personal obstruction must therefore take place during the lease period. In other worlds, when the right of the tenant is already in place. A lease may be also extended automatically⁽³⁾ or the lessor should consent the lease to be extended implicitly or frankly⁽⁴⁾. The lease may be extended by agreement even after the end of the tenancy contract if the lessee remains in the leased premises within the period granted to him by the judge. In all these cases, the lease remains effective and the lessor's obligation to guarantee lessee not to be obstructed using the leased property.

Even if the lease contract is terminated and the decision of eviction is issued, the landlord cannot execute this decision by himself but he must implement it by legal means, otherwise he is considered as a disrupter. According to French Court of Cassation decision, if the lessor obtains a decision to evict the tenant, he cannot implement such decision directly or indirectly because this is considered as an act of compulsion and an attack on the tenant⁽⁵⁾.

The Egyptian Court of Cassation also stated that "the lessee shall not claim compensation for the acts of personal obstruction by lessor to the use of the leased property if such acts have occurred after the contract of his lease because his right is a personal right arises only when the right to use of leased property is suspended. If the

1- Dr. Al- Senhoury, op . cit, p. 326 and after, Dr. Tawfiq Hasan, p. 571 and after

2 - Dr. Al-Al- Senhoury, p. 304 and after, Dr. Khamis Khadr, op . cit, 775, Dr. Tawfiq Hassan, op . cit p. 586 and after, Dr. Muhammad al-Zu'bi, p. 161 and later, Dr. Hossam Eddin , op . cit, p.111.

3 - It should be noted here that under the amended law of the Law of Owners and Tenants for the year 200 that the legal extension does not include only the tenancy contracts that were conducted before the entry into force of this law and for a period ending on 31/12/2010.

4- Article 707/2 of the Jordanian Civil Code.

5 - French Court of Cassation No 20/1/1926, Dr. Sufq Hassan, p. 587 Margin 1.

alleged personal obstruction was obtained after the lease, the claimants have no right to ask for compensation⁽¹⁾.

Third condition: personal obstruction should lead to not to use the leased property.

In order to personal obstruction to be legally considered, the landlord's acts must lead to prejudice completely and partially the tenant's use of the leased property.

If the landlord demolished a part of the leased house, this prevents the use of the house. If the lessor rents a house adjacent to the first tenant's house to the ironsmith, this is considered as a personal obstruction to the tenant's use of the house because this interrupts the lessee's use. If the lessor has mortgaged the leased property officially, this does not lead to disturbing the use of leased property. Therefore, this act is not considered as personal obstruction that should be guaranteed. However, the judge has the right to assess if this act interrupts or not the use of the leased property⁽²⁾.

The Mixed Court of Appeal ruled that "if the lessor demolishes parts of the property in which the rented flat is located in and this interrupts the use of the flat, the lessor shall be liable for this personal obstruction⁽³⁾. This court also stipulated that if the lease is contracted during the completion of building the property and the tenant is willing to rent the flat, he is satisfied with any damage caused by the continuation of construction work in the rest of the property⁽⁴⁾. In addition, In a Jordan's Court of Excellence has stated that the change in the leased property alone is not enough to judge the evacuation of this property but it must be proven that the damage was happened⁽⁵⁾.

The fourth condition: the lessor's works are not based on his fixed right

Until the personal obstruction to be existed, the lessor must not be based on his actions to his fixed right. If he has this right, his work shall not be regarded as subject to a guarantee. The lessor may derive his right from the lease itself, as if he states the right to use the rented surface of the leased property. However, he can derive his right by the law such as entering the leased property for the necessary maintenance works⁽⁶⁾ and also he can derive his right under a court order in the case of has is appointed as a custodian of the leased property after the dispute between lessor and the lessee.

The Egyptian Court of Cassation ruled that .if the lessor appoints a guard, he is not considered as a disrupter to the tenant. However, he can be under questioning as he is responsible as custodian for his account⁷. The same court has stated that request to evacuate the leased property based on the termination of the lease is not seen as personal obstruction but this is the lessor's right conferred to him by the law⁽⁸⁾.

If the preceding four conditions are met, the lessor is liable to his personal obstruction that requires his guarantee. The lessor's bad intention is not required whether he has a bad intention and realizes that his actions are considered to be prejudicial or he has a good intention and believes that his actions are considered to be lawful. Thus, both cases require his guarantee⁽⁹⁾.

2.2 Legal Consequences of the Lessor's Guarantee to Personal Obstruction

Section I: Legal Consequences of the Personal Obstruction Stipulated in the General Rules.

Article 685 of the Jordan's Law provides that If personal obstruction caused depriving the lessee of the use of the leased property in accordance with the lease, the lessee can ask for annulment or reduction of the lease with the guarantee of tort caused to him. This article gives the tenant the right to request the annulment of the contract and the reduction of the rent with the compensation in both cases for the damage. According to general rules, the tenant has the right to request a stop of personal obstruction and demand for in-kind implementation if it is possible⁽¹⁰⁾.

Firstly: In Rem Execution

- 1- The Egyptian Court of Cassation No 22/3/1645, Appeal 37, p. 14 /, Anwar Talebh, Lease Contract in the Light of the Cassation Court, University Publications House, p. 62
- 2 - Al- Senhoury, op . cit, p. 306.
- 3 - The Mixed Court of Appeal January,14, 1926, Dr. Al- Senhoury, op. Cit. p. 306, Margin 1.
- 4 - The Mixed Court of Appeal , 13 January 1937, p. 49, p. 68, Dr. Al- Senhoury op. Cit. P. 306, Margin 1.
- 5 - Jordan's Court of Excellence No. 58/79 on 25/2/1979 Journal of the Bar Association, p. 888.
- 6- Article 681 of the Jordanian Civil Code.
- 7 - The Egyptian Court of Cassation , March 23, age group 4 No. 13, p. Al - Sanhoury. Cit. P. 307, Margin 3
- 8- The Egyptian Court of Cassation ,2/3/1975 Appeal 474, p. 40 referred to by Anwar Taleb, op. Cit, p.58
- 9 - Khamis Khodr, op. Cit, p775.
- 10- Dr. Al- Senhoury, op . cit, p. 329 and beyond, Dr. Tawfiq Hassan, p. 597 and beyond, Dr. Muhammad al-Zu'bi, p. 179 and beyond.

If a financial obstruction is based on a legal reason arises from the lessor, the lessee may resort to the court to stop this obstruction. This is in rem execution based on the article (355/1) of the Civil Code⁽¹⁾. According to article (356/2) of this law, If the lessor or his follower performs an action that nullify wholly or partially the leased property's benefit such as blocking the windows or cutting off the light or closing air to the leased property, the lessee has the right to oblige the lessor to make the obligation. In case of urgency, the lessee has the right to ask the judge to appoint a guard to make these commitments at the expense of the lessor⁽²⁾.

If the lessor has set up some facilities that blocked the light or air and remove these facilities by in rem execution is very expansive, in this case, Article 355/2 of the Civil Law stated that the judge has the right to not issue a decision to remove these facilities by in rem execution. However, he has the right to reduce the rent or the void the lease on the condition of the compensation. Moreover, the tenant has the right to refrain from paying the rent so that the lessor is forced to in rem execution. According to article 203 of the Civil Code, in the binding contracts of both parties, if the counterparty's obligations are due, each contracting party may refrain from implementing his obligation if the other contracting party fails to perform his obligations. This is the exceptio non adimpleti contractus.

Beirut Court of Appeal stipulated that if the landlord has placed debris in front of the leased property that prevents the tenant from benefit of the shop, the tenant has the right to ask for the removal of debris⁽³⁾.

Secondly: the Reduce of the Rent

In the case of in rem execution is not possible, and the tenant does not wish to terminate the lease then his right is limited to the request to reduce the rent in proportion to the benefit. Accordingly, the Fourth Court of Appeal of Beirut stated that if the lessor allow to establish a that affect the tenant by its heat that damage the tenant's goods, the tenant has the right to request the removal of the damage by means of wall-sealing with a heat-insulating material. This is in addition to reducing the allowance⁽⁴⁾.

Thirdly: the annulment of the lease.

The tenant may not resort to in rem execution or demand for reduce rent but he can resort to a request to annul the contract and his request can be refused. Especially, if the lessor is ready for in rem execution and the court is not obliged to answer the request for annulment of the lease. In both cases, the court evaluates the loss of benefit because of this personal obstruction⁽⁵⁾.

Fourthly: Compensation

The lessee may claim compensation for the damage caused to him by the lessor's obstruction. The right can be proven to the lessee even if he has demanded for in rem execution or the annulment of the lease or the reduction of the rent. The lessee is entitled to compensation because the lessor is wrong in all these cases for breaching his obligation imposed by the lease. However, the liability here is liability out of contract or contractual responsibility. Dr. Mohammed Al-Zu'bi has considered this responsibility as a tortious responsibility based on the text of Article 256 of the Jordan's Civil Code, which states that any damage caused to the other party requires the guarantee of causer even if causer has not reached yet puberty⁽⁶⁾. The researchers argues that the correct evidence to this case is the text of Article 658, which states that if the personal obstruction causes depriving the lessee from the use of the leased property in accordance with the lease, he may request the annulment of the lease or the reduction of the rent with the guarantee of the lessee's tort.

The researchers agree with al-Zu'bi that the guarantee that is sentenced by the court must be consistent with the damage and tort of the tenant based on article 360 of the Civil Code⁽⁷⁾. We also agree with him in the case of excuses that are made by lessor in accordance with article 361 of the Civil Code⁸. The lessee is entitled to

- 1- Article 355/1 provides that The debtor shall be compelled, after his excuses, to execute what he has committed to perform in kind whenever it is possible.
- 2- Article 356/2 states that if the debtor does not work, the creditor may request permission from the courts to do it at the expense of the debtor or to execute it without permission if it is necessary.
- 3 - Beirut Court of Appeal 20/3/1969 Hatem 99 p. Tawfiq Hassan, op . cit p. 600 margin 1.
- 4- The Fourth Beirut Court of Appeal 23/1/1969, Hatem, p. 99 . Dr, Tawfiq Hassan, op . cit p. 600 margin 1.
- 5- Al- Senhoury, op. Cit, p.332, Tawfiq Hassan, op. Cit, p 600, Dr. Mohammed al – Zuabi, op. Cit p. 183.
- 6- Mohammed al – Zuabi, op. Cit, p. 184.
- 7- Article 360 of the Jordan's Civil Code stipulates that if the execution is in kind or the debtor insists on refusing to execute, the court shall limit the amount of security required by the debtor, taking into account the damage caused to the creditor and the intransigence that the debtor has appeared to be.
- 8- Article 361 of the Jordanian Civil Code provides that a security is only warranted after the debtor's warning unless otherwise provided in the law or contract.

compensation only after the excuses according to the text of Article 362 of the Jordanian Civil Code⁽¹⁾.

The tenant may be entitled to compensation with in rem execution, as in the case of renting a property adjacent to the tenant's property, although there is a requirement not to compete. The lessee may request a suspension of this competition if the lessor is able to stop this competition either by preventing the second tenant from carrying out the work or by canceling the rent of other tenant. If the lessor has executed his obligations in rem execution but the tenant has damaged because of this competition, the tenant may be entitled to compensation for such damages and the compensation shall be limited to the direct and foreseen damages in accordance with the contractual liability unless the lessor has committed a fraud or a serious error that requires the compensation of all these direct damages⁽²⁾.

Section II: The Consequence of Personal Obstruction Based on Special Rules.

The special rules that stipulated in the Landlords and Tenants Law refer to some personal obstructions that are allowed but under certain conditions. If these conditions are associated with the lessor's actions, the lessor is not considered as a disrupter from the legal points of view based on Article 61 of the Jordan's Civil Code. However, if the lessor breaches these conditions, he shall be deemed as disrupter and therefore he must guarantee his personal obstructions.

Article 6/A of the Landlords and Tenants Law provides that the owner is allowed to build on the surface of his leased property if there is no agreement otherwise. In this case there is no penalty on the owner either if he wants to use the stairs for the construction according to Article (6 / b) which stated that the owner has the right to abandon the leased stairs leading to the surface of his property if he wishes to build on that surface on the condition that he has obtained a building permit. In addition, the surface does not have another stairs equal to that stairs in its use to reach the surface. The tenant's leased stairs uses must obtain compensation equivalent to five years calculated in accordance with this law. Article (6 / C) stipulated that the construction on the surface in a manner that should not damage the tenant or reduce the use of leased property substantially. Article (6 / D) stated that the provisions of this Article shall apply to leased properties before the coming into force of this Law.

It is clear that the legislator has given the owner the right to build on the roof of his property and grant him the right to abandon the stairs for the construction and that under certain conditions. Moreover, the legislator did not give the tenant's stairs the option to getting compensation or returning to the stairs after finishing construction on the surface of the property³. The researchers do not agree with Professor Mohammed al-Zoubi in giving the right to the tenant's stair the option between the return and compensation. The researcher also point out that the opinion of the legislator is more appropriate because the evacuation of stairs because of there is no other stair to the surface is equal to that stairs in its use.

After the building on the surface, this stairs is the way leading to this new building. Thus, if we gave the tenant the option to return, then the lessor cannot exploit the new construction. The compensation is also determined in this case by the law. The owner cannot reduce the damage to the tenant's stair or that damage is not worth for this compensation.

Article 9/A of the Owners and Tenants Law stipulates that:

- A- The landlord shall have the right to evacuate his property if he wishes to make a change, reconstruction or demolition in which the property constitutes a part of building if the following conditions are met: 1 – the building have been constructed for at least forty years. 2 - The lease has been in effect for twelve years. 3. That the existing building cannot stand to increase more floors according to the provisions of the regulation. 4 – Lessor must obtain a legal license to build. 5 - The landlord must notify the lessee by notary public before six months. If in the property or in a part of the property that is indented to be demolished is more than one tenant, the provisions issued by the eviction under this article may be executed. The

1- Article 362 of the Jordan's Civil Code stipulates that there is no need to excuse the debtor in the following cases:

1. If the performance of the obligation becomes impossible or ineffective by the debtor.
 2. If the place of obligation is compensation resulting from an unlawful act.
 - 3 - If the place of obligation to respond to something that teaches the debtor that he is stolen or something he received without a right and he knows it.
 4. If the debtor declares in writing that he does not want to fulfill his obligation.
- 2- Dr. Al- Senhoury, op. Cit., p. 333 and beyond
3- Dr. Mohammed Zoubi, , op. Cit, margin of 90.

- lessor must obtain tenants' written consent to vacate his property. Such approval shall be considered an enforceable act.
- B- In clause (5) of the preceding paragraph, the judicial notice indicates that the owner shall inform the tenant by the notary public whether he chooses the compensation that he is entitled to or return to the leased property after remodeling by paying the equivalent rent within two months from the date of notification. The right to return is restricted by the same use for a similar purpose that does not contradict the requirements of the regulations. In the case of the tenant fails to answer the notification addressed to him during the specified period, he shall be deemed to have chosen the compensation.
 - C- If the tenant chooses to get compensation for the damage caused by the eviction and he has not agreed with the owner regarding the amount of compensation, either of them can file a claim for assessment of compensation in Jurisdiction Court.
 - D- If the tenant chooses to return to the property in the new building, which has been licensed for construction, and he is unable to do so because the owner did not make this construction within three years from the date of the license's validity in such a way that the lessee can work or refuse the owner to return the tenant to the property despite its completion or change of nature or the owner of the property has the right to.
 - E- The lessee can file a claim in Jurisdiction Court for compensation of the damage caused by the eviction.
 - F- The landlord shall notify the lessee through the intermediary of the justice that he has completed the construction of the new building and that the tenant must give his desire to return to the property within thirty days from the date of notification of the notification.
 - G- If the tenant expresses his desire to return to the property within the period specified in paragraph (e) of this article, the landlord and the tenant shall arrange a new lease agreement on the terms agreed upon. In case of disagreement, either of them shall have the right to file a claim.
 - H- If the tenant renounces the return to the property or the payment of the estimated fee, he has the right to claim compensation.

The penalty is either compensation or return. If the tenant chooses to return and is unable to do so for the reasons stated in paragraph (D) of this article, he may claim compensation by instituting. However, if he chooses to return but is deprived of it, or is exempt from payment of a leased property allowance, then his right to claim any compensation is waived and the owner is entitled to claim damages and damages. However, if he chooses compensation and is not agreed upon between him and the owner, either of them may file a claim with the Jurisdiction Court for his assessment.

The amendments to Article 9 of the Landlords and Tenants Act, 2000, include the following:

- 1 - The Jordan's legislator did not force the owner to be built within three years.
- 2- The Jordan's legislator exempts the lessor from depositing the compensation due in advance with Jurisdiction Court.
- 3 - The Jordan's legislator left the compensation to the court after it was determined by the text of the law.
- 4 – The Jordan's legislator has considered the right of return to property must be done in agreement with lessee if they did not agree to resort to the court to determine the similar rent.
5. The Jordan's legislator has decided that if the landlord has refused to return to the property or to pay the similar rent assessed by the court, his right to compensation has been lost and the owner has been given the right to claim compensation for the damage caused to him.

Conclusion

In this paper, the researchers have discussed the issue of ensuring lessor's personal obstructions, whether financial or legal ones in accordance with Jordan's civil law. They have come to the conclusion that the Jordanian legislator provided for the legalization of the lessor for his financial and legal obstructions together in articles 684 and 685 of the Jordan's Civil Code. They also have stated that in some detail the forms of these obstructions in its two types.

However, the researchers have emphasized that the cases of personal obstructions that the Jordan's legislator authorized in Law of Owners and Tenants No. 11 of 1994, as amended by the Owners and Tenants Law of 2000. This latter law has allowed personal obstructions in certain cases under certain conditions.

However, this law aims to a balance between the interests of the lessor and the lessee. However, it is excessively concerned with the landlord's interest at the expense of the lessee's interest in his last amendment to the Landlords and Tenants Act 2000. In the previous law, the tenant has the right to return in some cases. He was deprived of the right in the light of the new law that has stated that how to estimate the compensation due to the tenant in the previous law, the amended law force him to file a claim with the court. The researchers have argued that the bias of the new law in favor of the lessor at the expense of the lessee's interest.

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