

Landlord-Tenant Disputes: Towards the End of Court Litigation through Alternatives¹

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The rental housing market is one of the most flourishing shaped by continued growth in demand generating an increase in number of landlord and tenant conflicts by 20% in 2016, most of them can be resolved out of Court to save time and money according to Residential Tenancies Boards. Therefore, the purpose of this paper is to analyze the alternatives to judicial proceedings to prevent and handle conflicts, from pre-contract signing action to options once the lease agreement is signed. These substitutes have been compared by using Multi-Attribute Decision Making and ranked from the most appropriate to the least relevant alternative. The main findings of this paper are that appropriate clauses, mediation, arbitration and adjudication are alternatives resolving disputes meet more or less well both parties' expectations. Based on compensatory and non-compensatory models, appropriate clauses alternative is the most effective way for both landlord and tenant to prevent conflicts since it is the first step in the rental process.

Key words: Landlord/tenant disputes, lease agreement, causes of disputes, contract terms, rights and responsibilities, alternatives, court litigation

INTRODUCTION

As a lease agreement is a contract and a legal arrangement by which both the landlord and the tenant are legally committed to respect the various clauses and terms, we might think this could prevent and resolve conflicts that may occur. However, the number of conflicts continues to increase, especially the court proceedings by 25% in 2015 according to a study conducted by ANIL (the National Agency for Housing Information).

Most of the time, the complainants automatically initiate legal proceedings to solve the dispute. However, most of these court actions often result in unnecessary expense and waste of time for both sides and could have been avoided. Mentalities must change, court proceedings should not be seen as the only recourse anymore in case of conflict

Both the landlord and the tenant must use alternatives before hiring a lawyer. In fact, several alternatives exist, as effective and successful as lawsuits, being more beneficial for the parties

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especially in terms of cost and time. Among these substitutes, a well drafted lease agreement, mediation, adjudication and arbitration must be considered first and we will demonstrated why.

The objective of this paper is to:

- 1) explore how a lease agreement can be used to avoid disputes between landlords and tenants, and
- 2) analyze the possible legal alternatives to Court litigation for handling conflicts and defending the interests of both the landlord and the tenant.

METHODOLOGY

A. Feasible Alternatives & attributes

To achieve this objective, this paper will deliver a generalized approach mainly based on lease agreement between the landlord and the tenant, without any intervention from a real estate agency and taking into consideration rental agreements established under State law. This paper will suggest actions to help avoid litigations and handle disputes by suggesting tips to make a rental agreement even better.

The feasible alternatives to handle conflicts are:

- Appropriate clauses
- Mediation
- Arbitration
- Adjudication

Among them, appropriate clauses as one pre-contract signing action and three feasible alternatives after signing the lease agreement and for avoiding Court litigation. The post-contract signing alternatives are: mediation, arbitration and adjudication. These alternatives will be addressed and are alternative dispute resolution methods. These four alternatives will be studied and analyzed taking into account different elements: the observation of model rental agreement and understanding of the important lease agreement clauses and terms, the study of the rights and responsibilities of the landlord and the tenant. The most frequent and common disputes, correlate them with the lease of agreement, its potential failures or errors and omissions.

In order to compare and assess those alternatives, these attributes are used:

- Time
- Cost
- Degree of control by parties
- Satisfaction

- Confidentiality
- Relationship & Communication
- Degree of certainty of reached result

B. Development of the feasible alternatives

- **Appropriate clauses**

As a contract, a lease agreement must contain and integrate important clauses, both clauses required by the law and optional clauses adapted to each situation. Because some disputes result from omissions or poor drafting of the lease agreement and lead to misunderstandings between the two parties or to a poor rights protection, the content of the contract is a key element to consider firstly which helps reducing and managing any conflicts that may appear. Therefore, appropriate clauses can be seen as an alternative to resolve disputes between the landlord and the tenant.

Before studying what clauses can help, it is important to understand what are the most common disputes. Indeed, we found recurring disputes that could be considered on landlord's and tenant's interests. From the landlord's interest, damage to property, non-payment of the rent, late payment, holdover issues or subleasing are at the origins of the main conflicts as they are causing prejudice to the landlord.

In fact, the landlord has the right to get his property back in more or less the same condition as when he rented it, be informed if repairs are needed and have a reasonable access to the property, set the rent and collect it on the due date, end a tenancy in certain circumstances. Hence, these rights are reinforced through the tenant's obligations which are: keep the property in good condition, repair any damages if you are responsible for them, inform the landlord if maintenance is needed, pay the rent on time etc.

On the other side, retention of security deposits, invalid reason for eviction, failure to repair the property due from the landlord, invasion of privacy are the main reasons why tenants come into conflict with the landlord. Indeed, the landlord has the duty to return the security deposit on time, repair and maintain the property and respect privacy.

As we have a full understanding of the most common factors of conflicts and the roles and responsibilities of both the landlord and the tenant, we can now identify the appropriate clauses to include in the contract. By comparing several lease agreements, we have identified the mandatory clauses and we have observed that some of them include specific clauses that could be very helpful and relevant in relation to the conflicts previously mentioned.

First, it is most important that the landlords comply with law, sometimes they fail by omitting mandatory clauses which may later lead to misunderstandings between the two parties,

conflicts and prosecution for non-compliance with the law. The mandatory clauses are the following: resident's and cosigner's names who are financially responsible for payments and accountable in case of failure to pay the rent. The rent clause is one of the most important one and should comprise details such as the rent amount, due date, late fee rules and rent liability so that there is no confusion of who is liable and accountable. Another important clause is the security deposit by clarifying the condition to be returned and hence encourage both the tenant to respect his commitment and avoid causing any damages and the landlord to return the deposit when conditions are met. The renters' insurance is a clause the landlord must include to mitigate the risk to be sued if something goes wrong. We can also mention the maintenance and repair clause within which the protocol is explained, who is responsible for repairing damages caused, what you cannot do of repairs without the agreement of the landlord. By giving such details, it allows a better understanding of what you risk in case of non-compliance and hence reduces the likelihood of conflicts appearing.

Another tip to avoid disputes between landlords and tenants through the lease agreement is to adapt and customize it rather than following a standard and pre-made template. In fact, adding specific rental terms and requirements according to your situation and expectations will make your contract stronger and even better. This is an alternative to handle conflicts as it is a helpful way to mitigate the risk of potential omissions, solve problems before they arise and provide a rule book to help managing disputes. Among these clauses, if landlords are not opposed to subletting, it is recommended to add sublet clause explaining that their approval is required before starting the subletting. If landlords are very concerned with the well-being of their tenant's neighbors, they could include a disturbance clause in which they can state certain hours during which the tenant should not disturb neighbors. If landlords want to save time, they can add the automatic lease renewal clause that automatically renews the lease based on the same rental terms. If the tenant has a job involving frequent and sudden professional transfers, he can negotiate with the landlord to add the buy-out clause allowing the lessee to break the contract without penalty as long as the tenant comply with lease termination within 60 days. Hence, it avoids conflicts relative to penalty fees.

The outcome of a lease agreement including the clauses required by law and customized clauses is a precise, detailed and tailor-made written contract allowing the conflict risk mitigation. In fact, as it is a complete contract taking time to be written, it forces the landlord to think clearly about how to comply with law and what he really wants from the tenant. This contract allows both parties to have a real awareness of their responsibilities and rights and thus, encourage them to fulfill their commitment in the interests of everyone. Therefore, the other benefit of this full and tailored contract is saving money by avoiding them to hire a mediator or a lawyer. Moreover, as this contract is customized according to the situation and the reciprocal interests of both parties, it has a positive effect on relationships since the cooperation and agreement are involved.

- **Mediation**

Mediation is a legal alternative for handling conflicts between landlords and tenants as it is an alternative dispute resolution method. In fact, mediation is a voluntary and cooperative procedure that can be used by both the landlord and the tenant when they failed to reach an agreement on themselves. Therefore, conflicts still exist after signing the lease agreement and most of the time these conflicts and disagreements come from non-compliance with the contract.

This method is very helpful for the parties because it can be undertaken for many types of conflicts: damage to property, failure to pay rent or late payments, no property maintenance, discrimination, invalid reason for eviction etc.

Mediation resolves disputes by trying to find an acceptable compromise through a third party as known as the mediator. The mediator is neutral, must have enough experience and above all, must have specific knowledge in property rental. He cannot be imposed to the parties, therefore the landlord and the tenant must agree on the mediator and hence hire him by contacting public offices and associations for mediation programs or dispute resolution center. Once selected, the mediator has a key role to play by supporting and encouraging parties to consider each other's respective interests and at the end of the joint session, reach an agreement and compromise that is acceptable for both parties. Sometimes mediation is partially successful or unsuccessful and, if so, the landlord and the tenant can go to court to having a decision made by a judge or a jury. However, in most cases (a success rate of 90% according to studies conducted by the Real Estate mediator Jim W. Hildreth and by Jacquie Joyce from the Property Mediators) mediation leads to a successful negotiation.

Therefore, the outcome of mediation, more specifically at the end of the joint session, is a Resolution Agreement which is an amendment to the lease agreement that could be written and signed by all the participants of the mediation in which both parties agree to respect this agreement. The Resolution Agreement reaffirms the lease agreement by strengthening rights and responsibilities of both the landlord and the tenant.

As a whole, the outcome provided by mediation is an agreement for handling and ending the conflict and this, by providing many benefits we can measure according to six dimensions which are: time, cost, confidentiality, satisfaction, control over decision and relationship. Indeed, the mediation allows both parties to reach an agreement quickly, in a short period of one to two days, and save money compared to Court remedies and intervention. Moreover, another important element of mediation procedure is confidentiality and privacy which means that no-one is publicly seen as a 'loser'. Another benefit of mediation is that landlord and tenant are really involved in the agreement, have control and play an active role by making decisions, participating in agreement setting. This aspect makes a significant contribution to parties satisfaction of reaching a settlement acceptable to both landlord and tenant as it is a win/win outcome. Another outcome of mediation is maintaining good relationships between

the landlord and the tenant which means less stress and increases the likelihood of compliance with the agreement negotiated during the mediation.

- **Arbitration**

As mediation, arbitration is an alternative dispute resolution. This procedure can be used when negotiations, conducted during the mediation, did not reach an agreement or a partial agreement. Sometimes, lease agreements specify which method will handle potential conflicts and when arbitration is recommended, the contract indicates how the arbitrator will be appointed, most of the time by the Tenant-Landlord Commission. Hence, the appointed arbitrator has expert knowledge in the real property lease.

This procedure is a helpful alternative for the landlord and the tenant to resolve the dispute especially when no agreement and compromise can be negotiated. This involves the intervention of an independent third party having the power to impose a decision. In fact, both the landlord and the tenant are bound by the decision reached by the arbitrator.

Therefore, the outcome of arbitration is a binding decision provided by the arbitrator to formally resolve the dispute. Hence, both landlord and tenant are sure to get a result at the end of arbitration. Moreover, the other benefit of arbitration is that this alternative method is like a lawsuit but less formal, ensuring privacy, and involving low costs and less time for the parties. However, if one of them wants to challenge the arbitrator's decision through the courts, it will be more expensive and longer. Another advantage is that arbitration is easy to plan than litigation through its flexibility.

- **Adjudication**

Adjudication is another alternative dispute resolution used if the landlord and the tenant do not agree at the end of the mediation, hence the case is sent to adjudication method with the approval of both parties. The arbitration and adjudication process are very similar. However, unlike arbitration, the adjudication has the advantage of being able to assess several issues at a time.

The adjudication supports the dispute resolution through a third party, the adjudicator, who will settle the conflict between the landlord and the tenant through a legally binding decision. To do this, the adjudicator will fully investigate, use his knowledge and balance the testimony provided by the landlord and the tenant.

The outcome of this method is the adjudicator's report which is sent to the landlord and the tenant. The advantage for them is that they have a degree of control and can accept or reject it within 21 days. If both accept it, the decision becomes legally binding. The outcome of

adjudication is a binding decision to handle the conflict very quickly, around thirty days, for a low cost; preserving the privacy and addressing several issues and disagreements.

DOMINANCE (PairWise Comparison)						
Attributes	Appropriate clauses vs Mediation	Appropriate clauses vs Arbitration	Appropriate clauses vs Adjudication	Mediation vs arbitration	Mediation vs Adjudication	Arbitration vs Adjudication
Time	Worse	Better	Better	Better	Better	Worse
Cost	Better	Better	Better	Better	Better	Worse
Degree of control by parties	Better	Better	Better	Better	Equal	Worse
Satisfaction	Equal	Better	Better	Better	Better	Equal
Confidentiality	Better	Better	Better	Better	Better	Equal
Relationship & Communication	Equal	Better	Better	Better	Better	Equal
Degree of certainty of reached result	Equal	Worse	Worse	Worse	Worse	Better
DOMINANCE	MAYBE	YES	YES	YES	YES	NO

C. Acceptance criteria of the feasible alternatives

After using the table above, I can now see the most appropriate alternatives based on the attributes and conclude that I eliminate the option Appropriate Clauses vs Mediation and Arbitration vs Adjudication. The rest of the paper will mainly focus on two alternatives: appropriate clauses and mediation having a strong dominance over arbitration and adjudication in terms of time, cost, satisfaction, confidentiality and relationship.

DOMINANCE (PairWise Comparison)				
Attributes	Appropriate clauses vs Arbitration	Appropriate clauses vs Adjudication	Mediation vs arbitration	Mediation vs Adjudication
Time	Better	Better	Better	Better
Cost	Better	Better	Better	Better
Degree of control by parties	Better	Better	Better	Equal
Satisfaction	Better	Better	Better	Better
Confidentiality	Better	Better	Better	Better
Relationship & Communication	Better	Better	Better	Better
Degree of certainty of reached result	Worse	Worse	Worse	Worse
DOMINANCE	YES	YES	YES	YES

Attributes	Appropriate clauses	Mediation	Arbitration	Adjudication
Time	Short	Short	Long	Medium
Cost	Free	Low	High	Medium
Degree of control by parties	High	High	Low	Low
Satisfaction	High	Medium	Low	Low
Confidentiality	Private	Private	Private/Public	Private/Public
Relationship & Communication	Preserved	Preserved	Destroyed	Destroyed
Degree of certainty of reached result	Medium	Low	High	High

FINDINGS

A. Analysis and comparison of the alternatives

Once the feasible alternatives are compared by using the non-compensatory model, we now need to compare them by weighing the different variables through compensatory models. To achieve this, those alternatives must be turned into dimensionless values by using a base 1. Hence, we obtain a “relative weighting” which is a scoring model for each option.

Attributes	Time			Cost				Degree of control by parties	
	Short	Medium	Long	Free	Low	Medium	High	Low	High
Value									
Dimensionless value	1	0,5	0	1	0,67	0,33	0	0	1

Attributes	Satisfaction			Confidentiality		Relationship		Certainty of result		
	Low	Medium	High	Private	Private/Public	Preserved	Destroyed	Low	Medium	High
Value										
Dimensionless value	0	0,5	1	1	0	1	0	0	0,5	1

Attributes	Appropriate clauses	Mediation	Arbitration	Adjudication
Time	1	1	0	0
Cost	1	0,67	0	0,33
Degree of control by parties	1	1	0	0
Satisfaction	1	0,5	0	0
Confidentiality	1	1	0	0
Relationship & Communication	1	1	0	0
Degree of certainty of reached result	0,5	0	1	1
TOTALS	6,5	5,17	1	1,33

The last step of the compensatory model is the “Additive Weighting Technique” enabling us to rank attributes in order of importance. Then the sum of each option tells us what is the perfect and the most appropriate alternative having a score closest to 1 which is the normalized weight to reach. Then, the ranking order of the attributes is the following: satisfaction, degree of control by parties, cost, time, degree of certainty of reached result, relationship and confidentiality.

Attributes	Step1	Step2			Appropriate clauses		Mediation		Arbitration		Adjudication	
	Relative Rank	Normalized Weight (A)			(B)	(A) x (B)	(C)	(A) x (C)	(D)	(A) x (D)	(E)	(A) x (E)
Time	4	4/28	=	0,14	1,00	0,14	1,00	0,14	0,00	0,00	0,00	0,00
Cost	5	3/28	=	0,18	1,00	0,18	0,67	0,12	0,00	0,00	0,33	0,06
Degree of control by parties	6	2/28	=	0,21	1,00	0,21	1,00	0,21	0,00	0,00	0,00	0,00
Satisfaction	7	1/28	=	0,25	1,00	0,25	0,50	0,13	0,00	0,00	0,00	0,00
Confidentiality	1	7/28	=	0,04	1,00	0,04	1,00	0,04	0,00	0,00	0,00	0,00
Relationship & Communication	2	6/28	=	0,07	1,00	0,07	1,00	0,07	0,00	0,00	0,00	0,00
Degree of certainty of reached result	3	5/28	=	0,11	0,50	0,05	0,00	0,00	1,00	0,11	1,00	0,11
SUM	28		SUM	1,00	SUM	0,95	SUM	0,71	SUM	0,11	SUM	0,17

B. Ranking order or the alternatives from “best” to “worst”

At this point, the “Additive Weighting Technique” and its ratio scale enable us to say how much better or worse each option is compared to the others. The relative weighting chart shows a great gap between appropriate clauses and the last two options arbitration and adjudication. Indeed, both arbitration and adjudication having a score under 0.50 which make them be “failures”. Appropriate clauses are 6,5 times better than arbitration and 4,9 times better than adjudication. However, the scores of appropriate clauses and mediation are relatively close to each other, appropriate clauses are 1.26 better than mediation.

To conclude, we can say that the ranking is: Appropriate clauses > Mediation > Adjudication > Arbitration.

C. Performance monitoring

To monitor the performance of the recommendations suggested in this paper, the first thing to do is to use statistical records for landlord-tenant disputes as sources to see if the alternatives I advise are good or not. In fact, as appropriate clauses seem to be the most effective resolution method, comparing the number of conflicts that appear after signing a standard and incomplete lease agreement to how many conflicts arise after both parties have signed a tailored and clear contract is the most relevant way to monitor the performance. Concerning mediation arbitration and adjudication, as post-contract signing alternatives, their performance can be monitored by conducting landlord and tenant surveys to assess their level of satisfaction after using these alternatives and compare their performance with each other. At last but not least, a Pareto analysis can be used to analyze that those attributes I have selected are the root causes why court litigation tends not to be the most appropriate solution to meet the parties’ expectations and interests.

CONCLUSIONS

This paper was undertaken to answer the following two questions:

- 1) explore how a lease agreement can be used to avoid disputes between landlords and tenants

A lease agreement is a crucial element in the rental process being very helpful in preventing conflicts from arising and if so, serving as a baseline for handling disputes through its content. Needless to say, mandatory clauses are very helpful to avoid disputes relative to non-compliance with the law or abusive clauses. However, simply using a standard lease agreement template with only mandatory clauses is definitely not enough. Because every landlord and tenant have needs and expectations which vary according to each situation, hence a lease agreement must be customized through appropriate, specific and optional clauses adapted to each case. They avoid potential conflicts between the two parties by forcing them to think carefully about what they decide to allow or not in addition to mandatory clauses, what they promise to respect and if not, what will be the penalties; by making them aware of their responsibilities and rights in detail.

- 2) analyze the possible legal alternatives to Court litigations for handling conflicts and defending the interests of both the landlord and the tenant.

The court is still considered by both the landlord and the tenant as the ultimate way for resolving conflicts while it remains binding on both parties. However, alternative resolution methods exist having a high degree of success to handle disputes through the intervention of a third party to find a compromise and bring an end to the conflict. Moreover, those alternatives are more advantageous than court litigation as they are cheaper, faster, preserve more the confidentiality of both parties and their relationship than court litigation does.

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