

THE IMPLICATIONS OF LEGISLATIVE RENT CONTROL ON HOUSING DELIVERY IN LAGOS STATE

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Abstract

Access to affordable housing is an intractable problem confronting the city of Lagos, leaving many residents with spiraling housing costs. This housing challenge dictated the intervention for the Lagos State Government through the promulgation of rent control laws. It is against the backdrop of such interference that this article examines the implications of rent control on the private housing market within the socio-economic reality of society. Using the doctrinal research method, the article argues that rent control is an essential policy that seeks to alleviate the plights of the tenants from urban real estate markets such as Lagos. However, it finds that human behaviour and socio-economic considerations play a significant role in determining functionality of Law and as such legal consideration devoid of economic and social factors can neither prevent nor resolve conflicts arising out of tenancy relationships. It also finds that statutory intervention by way of rent control laws has some negative implications on housing delivery, especially when private landlords largely drive housing investment.

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The article concludes that the desired results of a sustainable private housing market can be achieved through moderate rent control laws that allow investors to recoup fair returns on their investment.

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1. Introduction

Various authors have proffered different views on the subject matter of rent control. It has been defined as a drastic form of statutory intervention to provide tenants with continued occupational rights subject to the due termination of their leases.¹ Rent control also functions as a standard ceiling placed on the rent that a landlord can charge.² The actual schemes of rent control might vary from one place to another and has often been used as a policy instrument to tackle the problem of inadequate housing; affordability of the existing housing stock which are some of the intractable problems confronting cities and urban areas globally, including Nigeria.³ In Lagos State, in particular, the trend of

¹ W. Tucker, 'How Rent Control Drives Out Affordable Housing.' (1997) *Cato Policy Analysis* No. 274, p.15; K. Basum, and P. M. Emerson, 'Efficiency Pricing, Tenancy Rent Control and Monopolistic Landlords.' (2003) *Economica* 70, 223 – 232.

² It also allows a landlord to set rent freely when letting to a new tenant but subject to the tenant's right not to accept and preventing the landlord from raising the rent or ejecting the tenant. See K. H. Carlson, 'Rent Control Made Simple' Available at <<http://www.caltenantlaw.com/LARSO.htm>> Last accessed October 19, 2020.

³ A.K Otubu, 'Legal Overview of Housing in Public and Private Enterprises' *Management and Legal Policies, Issues in Public and Private Enterprises*. Available at <<https://scholar.google.com>> last accessed 20/12/18; J. M Quigley and S. Raphael. 'Is Housing Unaffordable? Why Isn't It More Affordable?'(2004) 18(2) *Journal of Economic Perspectives*: 191-214.

housing deficit over the years with urbanization has resulted in a chaotic and exploitative environment in landlord and tenant relationships.⁴ Perhaps, this housing challenge presents a huge investment opportunity for global real estate investment interests in the housing market with the tendency of skyrocketed increment in rent.⁵ Hence, the need to ensure affordable housing has become a substantial policy concern by government in the face of limited funding for social housing.⁶

While it is generally conceded that social and economic circumstances made it necessary for the government to intervene in the housing market during and after the First World War owing to the wanton destruction caused by war, such intervention in modern time is not without criticism. The propriety of the state's intervention in the rental sector and the use of rent control as a policy instrument, in particular, has therefore been a subject of discussion and arguments.⁷

With this background, this article examines the implications of rent control on housing delivery in Lagos State. The study is limited to

⁴ E.O Akingbehin, 'Lagos State Rent Control and Recovery of Residential Premises Edict (No. 6) 1997: Six Years After', (2004) Vol. 25, *JPPL*.p.112.

⁵ T.O Elegbede, *et al*, 'An Appraisal of the Performance of Private Developers in Housing Provision in Nigeria (Redan as a Case Study)' (2015) Vol. 2, Issue 1, *Int'l Journal of Advances in Chemical Eng., & Biological Sciences* p.8.

⁶ One of such ways of ensuring affordable housing is regulation in the form of land use restrictions and rent control laws. See L. Lambie-Hanson, 'Effects of Vacancy Decontrol on Berkeley Rental Housing' (2008) Vol. 21, *Planning Journal*, p. 12; S. Malpezzi, 'Housing Prices, Externalities, and Regulation in U.S. Metropolitan Areas'. (1996) 7(1) *Journal of Housing Research* 209-241.

⁷ I. O Smith: "The Scope and Application of the Concept of Statutory Tenancy in Nigeria: A Critical Appraisal". cited in *Essays on the Nigerian Law of Landlord and Tenant*, (ed.) Oretuyi et al, (1996) *Law Centre, Lagos state University*, vol. 111, P.65.

an appraisal of relevant provisions of the Rent Control and Recovery of Residential Premises Edict No 6 of 1997 (now repealed); the Lagos State Tenancy Law 2011 and their implications on sustainable housing delivery with a view to redefining a progressive course for Lagos.⁸ These sections include those touching on the standardization of rent, advance rent provisions, offences and penalties. The choice of Lagos is based on its unique characteristics of being a commercial hub of Nigeria with conscious efforts of government at various times to repeal and enact new rent regulations in tune with modern times.

This article further isolates the former law for analysis based on the fact that, except for the difference in the arrangement of sections and its provisions on the increment of standard rent payable, its impacts on rental housing were similar in material effects with its predecessors now repealed. While the latter Law is worthy of consideration on the premise that, apart from being an extant legislation on landlord and tenant relationship; it is an improvement on the earlier Law as it relates to social security situation of both landlord and tenant.⁹

⁸ See, ss. 3 and 4 of Rent Control and Recovery of Residential Premises Edict No 6 of 1997 (now repealed) and ss. 4, 5, 28, 37 of the Lagos State Tenancy Law 2011.

⁹ The 1997 Edict is the 11th interventionist policy legislation in what used to be originally and exclusively a contractual relationship between the landlord and tenant. See M. S Banire, 'The Social Security Significance of the New Rent and Recovery of Residential Premises Edict No 6 of 1997'. June (1998) Paper presented at the seminar on Rent Control organised by the Department of Private and property Law, University of Lagos p.1; It is the view of this writer that discussing previous Laws under each heading will only make the discussion in this article repetitive and monotonous. However, where necessary, reference shall be made to the previous laws.

The article finds that stiff rent control laws can hamper housing delivery in Lagos State, in view of the bottlenecks being encountered by the investors in accessing funds to finance rental housing; nearly non-existence of local materials which make investors heavily rely on foreign building materials amongst others. The findings of this article are drawn from existing literature and not based on any direct empirical findings. The article concludes that the desired results of a sustainable private housing market can be achieved through moderate rent control laws that allow investors to recoup fair returns on their investment. Consequently, the article proffers some constructive suggestions for Lagos' policymakers in setting the right incentives for Landlords and Tenants capable of striking the right balance between social fairness and economic efficiency.

To achieve the objectives of this article, it is divided into six parts: Part one is the general introduction. Part two gives a brief account of rent control in Lagos State. Part three embarks on the analysis of various justifications for the State intervention in the private rental market. Relying on the existing literature, the article in part four examines some relevant provisions of the repealed Rent Control and Recovery of Premises Edict No.6 1997 and the Tenancy Law 2011 which are deemed to have implications on the sustainable housing in Lagos State. Part five draws some lessons from Lagos Experience. Part six is the conclusion with an attempt at giving some policy pointers towards improving the Laws.

2. Brief Historical Overview of Rent Control in Lagos State

An appreciation of the evolution of rent control serves as a template in understanding the philosophy behind its retention as a

dominant policy instrument. This article takes a brief foray into the *DELSU Law Review*, Vol. 7 2021 280
historical antecedents of rent control as it is essential for a broader understanding of its justifications.

By way of history, the era of statutory intervention in the rental market dates back to the 1920s when Profiteering Rent Ordinance was introduced to Nigeria and applied only to Lagos.¹⁰ With the introduction of regionalization and federalism, the 1920 ordinance was re-enacted verbatim into laws of the various regions, and the same trend continued to date with very few variations.¹¹ In 1968, with the creation of twelve states out of the four regions, each of the twelve states inherited all the existing laws of the region, out of which it was created.¹²

Subsequently, as more states were created, the various enabling acts provided for applicable laws in the old states were applied *mutatis mutandis* in the new states.¹³ In Lagos State, due to its

¹⁰ No. 8 of 1920.

¹¹ These regional Laws are: Recovery of Premises Ordinance Cap. 113 Laws of Eastern Nigeria 1965; Recovery of Premises Law Cap. 110 Laws of Western Nigeria 1963; Recovery of Premises Law Cap.113 Vol. 3 Laws of Northern Nigeria, 1963; Recovery of Premises Ordinance Cap.176 Laws of the Federation 1958 for Lagos, and subsequently there was The Rent Control (Lagos) Amendment Act 1965. Later, Lyttleton Constitution came into force in 1954 and introduced federalism. See also T. Ajala, 'Security of Tenure under the Rent Control and Recovery of Premises Legislation-Dead or Alive?' cited in *Essays on the Nigerian Law of Landlord and Tenant*, (ed.) Oretuyi et al, (1966) Law Centre, Lagos State University, 44 at 46.

¹² Ibid.

¹³ One similar trait of all these States' legislations are generally aimed at placing restrictions on rent increases and providing security of tenure for tenants through anti-eviction measures. See for example, Recovery of Premises Act No. 45, 1945 adopted in Lagos State as Cap 118 Laws of Lagos State, 1973; Rent Control and Recovery of Residential Premises Law, Cap R6 Laws of Lagos State, 2003; Rent Control and Recovery of Residential

burgeoning population, resultant of the effect of the civil war and oil boom in 1970, scarcity of accommodation in the State became a natural consequence, which led to the war of attrition between landlords and tenants.¹⁴ This development generally degenerated into sharp practices and increased the cost of land and rentable apartments in the State.¹⁵

Sequel to the foregoing, past governments of Lagos State, both military and civilian, had at various times demonstrated the conscious political will to arrest arbitrary rent by shylock landlords.¹⁶ Before the enactment of the extant Tenancy Law in 2011 in Lagos State, arbitrary rent increases, unlawful ejection of tenants, lengthy and unending litigations between landlords and tenants were rampant in the State;¹⁷ a rent control law was introduced in 1973 coupled with the cumulative effect of the

Premises Law Cap 31 Laws of Abia State, 1994; Rent Control and Recovery of Premises Law Cap 102, Laws of Cross River State, 1979; Rent Control and Recovery of Premises Law, Cap 124, Laws of Akwa Ibom State, 1966; Recovery of Premises Law Cap 114, Laws of Niger State 1989; Recovery of Premises Law Cap 108 Laws of Ondo State, 1978; Rent Control and Recovery of Premises Law Cap 145 Laws of Oyo State, 2000; Recovery of Premises Law Cap 109 Laws of Rivers State, 2002; Rent Control and Recovery of Residential Premises Law, Cap 124 Laws of Sokoto State, 1996; to mention but a few. See, I.O Smith, 'Tenancy Law in the Social Context: A Review of the Lagos State Tenancy Law, 2011' (June 2013), Vol. 31, *JPPL*, pp.1-26 at 2.

¹⁴ E.O Akingbehin *supra* note 2 at p.112.

¹⁵ I.O Smith, *supra* note 7.

¹⁶ E.O Akingbehin, 'Innovations Associated with the Provisions of the Tenancy Law of Lagos State', (2013) Vol.30, *JPPL*, p.92.

¹⁷ See, I. O Smith: 'Rent Control in Lagos State, An Evaluation of the Rent Control Provisions under the Rent Control and Recovery of Residential Premises Edict 1997' cited in *Essays on the Nigerian Law of Landlord and Tenant*, ed. Oretuyi et al, (1966) Law Centre, Lagos State University, pp. 25-39 at 27.

aftermath of the civil war in Nigeria.¹⁸ This Law was, however, repealed in 1976.¹⁹ The main objectives of the 1976 rent control law were similar to those of the 1973 Law.²⁰ The 1976 Law has witnessed several amendments over the years.²¹

In 1985, the federal government declared a period of economic emergency due to the Nigerian economy's inflationary trend at the time.²² Consequently, in keeping tide with the reality of time, the Lagos State government suspended the provision of 1976 Law, which empowered the court to fix standard rent for the whole period of the economic emergency.²³ Notwithstanding, the trend of violation of rent control provisions continued unabated. In 1996, the Lagos State government revisited the area of rent control in the State by enacting the Rent Control and Recovery of Residential

¹⁸ I.O Smith posited that, the inability of tenants in occupation of residential accommodation to pay the cut throat rent demanded by landlords led to a floodgate of abuses of the common law right to distrain for rent coupled with an arbitrary demand by the landlords and his agents to insist on more than one year advance rent. The absence of defined legislation on security of tenancy provided an opportunity to terminate tenancy without legitimate motivation. See I. Smith, *ibid*.

¹⁹ In its place, Rent Control and Recovery of Residential Premises Law No.9 of 1976 was enacted.

²⁰ The main objectives of this law was *inter-alia*, to control the rent of residential premises, establish the rent tribunals for determination of standard rents, provide for security of tenancy, restriction on ejection and distress for rent, and for other purposes connected therewith. See the preamble of the Rent Control and Recovery of Residential Premises Law No.9 1976 as contained in Cap.167 Laws of Lagos State 1994 now repealed.

²¹ See Edict No.10 of 1976, Edict No.14 of 1977, and Edict No.23 of 1978.

²² See Generally, the National Economic Emergency Powers Decree No. 22 of 1985.

²³ I.O Smith, *supra* note 17.

Premises Edict.²⁴ This Edit was later repealed with the enactment of the extant Tenancy Law 2011.²⁵ The Lagos State Tenancy Law 2011²⁶ (hereinafter referred to as "the Law") is in furtherance of the modern trend in tenancy relationship. The Law details the rights and obligations of parties to tenancy agreements. It regulates the

²⁴ The Edict applies to residential accommodation with annual rental value as at 1996 not more than N250, 000:00. The Edict classifies the types and categories of residential accommodation, zones Lagos State into areas and fixes standard rents and terms of tenancy agreement applicable in such areas. The Edict also excluded certain prime areas like Victoria Island, Ikoyi and Lekki from its scope. See, generally s. 1(5) of the Edict, No.6 of 1997.

²⁵ This writer contends that the absence of concrete policy on housing despite the population explosion in urban centres like Lagos provided an opportunity for exploitation of the tenants by the landlords and thus affects the fidelity of enforcement of the Edict.

²⁶ The Lagos State Tenancy Law 2011 which was passed by the State House of Assembly and assented to by the Governor of Lagos State on 24 August 2011 repealed the Rent Tribunals (Abolition and Transfer of functions) Law 2007. The law covers both residential and commercial accommodations. It seeks to introduce new legal concepts in tenancy law and consequently broadens the horizon of its jurisprudence by enacting new rights and obligations under tenancy agreements and the procedure for recovery of premises. Also, the Law creates a new genre of crimes specific to landlord/tenant relationships. The Law applies to all premises within Lagos State, be they business premises or residential premises subject to a few exceptions. It also excludes Apapa, Ikeja GRA, Ikoyi and Victoria Island from its operation. It is the writer's view that, to include such areas may unwittingly subsidize foreign buoyant companies, while greatly discouraging tenanted building investment. This consideration of the law is in tandem with moderate rent control policies. This a model recommended by the writer as appropriate theory for rent control. See, I. A. Adedokun, 'Theoretical Foundation of Rent Control: A Critical Appraisal' Unpublished Seminar Paper presented to the Faculty of Law, University of Lagos on the 15/03/18 in partial fulfillment of an Award of M.Phil/Ph.D, pp 1-41 at p.12.

relationship between Landlord and tenant, including the procedure
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for recovery of premises and purposes connected thereto.²⁷

From the various titles of the previous rent control laws and the current Tenancy Law, it is beyond doubt that the enactments were all meant to serve two main purposes viz; -the regulation of rents obtainable over rented apartments and -secondly, the provisions of security of tenure to the tenants. Akingbehin²⁸ rightly posited that the justifications for such interventions are anchored on two main normative objectives viz: global right-based objective and vested right-based objective.

3. Justifications for the State Intervention in the Private Rental Market

Sound housing policy requires an understanding of the consequences of any phenomenon which may affect the stakeholders in the rental markets. In the context of private rented housing market, government has taken many types of action that may be explained on an economic, ethical and political basis. These actions include rent control.²⁹The justifications for this action are analysed under the global right-based objective and vested right-based objective.

3.1. Global Right-Based Objective

²⁷ See the Long Title to the Tenancy Law No. 14 of 2011.

²⁸ E.O Akingbehin, *supra* note 2 at 114.

²⁹ Y. Gary, 'Rationales for Tenant Protection and Security of Tenure' (1989):5 *Journals of Law and Social Policy*. 35-60. Available at <<http://digitalcommons.osgoode.yorku.ca/jlsp/vol5/iss1/3>> last accessed 12/09/2020.

By global rights-based approach,³⁰ the government often justifies rent control as a means of guaranteeing a citizen's socio-economic and cultural right to shelter. The shelter provides psychological stability to individuals by affording them personal space and privacy. Such personal space is vital for the processes of procreation and upbringing of children, which are indispensable for the human family to thrive as the essential fulcrum of society.³¹ Accordingly, the right to adequate shelter is universally recognized at the international level and over one hundred national constitutions across the world.³² The African Charter on Human and People's Rights also states in its preamble that the satisfaction of economic, social, and cultural rights is guaranteed for the enjoyment of civil and political rights.³³ Being a signatory to International instruments on Economic, Social, and Cultural Rights, any government in the world, including Nigeria, can be compelled

³⁰ Global rights objective is a template for a just society built on the fundamental principles of human right. See further <<http://www.globalrights.org>>. Last accessed 20/10/200.

³¹ This assertion is founded on the Personhood theory of Property espoused by Radin. The theory posits that residential tenants attach substantial value to their leased property, because it resembles their homes. From her analysis she opines that rent control that keeps rents below market levels, which permits a tenant to stay in her or his home, may be justified in order to permit the tenant's personhood to flourish. See, M.J Radin, 'Property and Personhood' 1981-1982 *Stanford LR* 957-1015.

³² The above assertion resonates in Article 25 of the Universal Declaration on Human Rights 1948 which declares thus: *Every man has the right to a standard living adequate for the health and well being of himself and his family including food, clothing, housing, medical care and necessary social services.*

³³ See African Charter on Human and People's Rights Enforcement and Ratification Act, Cap 10 LFN 2004.

At the national level, the right to housing is recognised in the constitution.³⁴ Although the constitution ousts the Court's jurisdiction on matters relating to the provisions of chapter two, including the right to housing,³⁵ it serves as a barometer to assess the government's performance in power. In its implementation, though the State found it difficult to provide housing for every citizen, yet, it has devised appropriate mechanisms to protect the housing rights of the people and ensure that any possible violation of these rights by landlords or his agents is prevented.³⁶ The above justification flows from the welfare theory of rent control.³⁷

³⁴ This position is reinforced under the Fundamental Objectives of State Policy which compels the Nigerian State “to provide suitable and adequate shelter for all citizens”. See, Constitution of the Federal Republic of Nigeria 1999 (as amended) in 2010 and 2011, s. 16(2).

³⁵ Ibid, s. 6 (6) (c).

³⁶ Various Rent control Laws in the states of the federation are replete of this. Closely tied to this provision are the various Rent Control and Recovery of Residential Premises Laws and Edicts in different states in Nigeria, which serve to give meaning and significance to the existence of a right to housing. See, E. Chegwe, ‘The Right to Housing in the Context of Nigeria’ (2014) *AGORA International Journal of Juridical Sciences Law and Human Rights Practice No.1*, pp. 11-23.

³⁷ The welfare theory of rent control posits that the most important reason for intervening in a market is efficiency; intervening is justified if economic efficiency is improved. If a market operates efficiently, society’s welfare is maximized. In other words, improving social equality between citizens is a second legitimate reason for the government to intervene in a market in a bid to enhance the welfare distribution. The resulting distribution of welfare in such a situation however does not need to be such that society or politicians are comfortable with it. See, K.K. Barr, ‘Rent Control in the 1970s: The Case of the New Jersey Tenants’ Movement’ (1977), 28 *HASTINGS LJ* 631-36.

3.2 Vested Right-Based Objective

Justification for State intervention in regulating rent chargeable finds expression in vested right-based objectives. The vested right-based objective is hinged on the maxim *quid quid plantatur solo solo cedit*. This justification restates the principle of seising and possession whereby all Land belongs to the Lords, that is, the State in modern time, while the state grants possessory rights to the tenant for a term specified in the form of a certificate of occupancy. The fictional Lessee, that is, landlord as an allottee of State land is well aware that his interest in the allotted Land is subject to regulation as his property right is not absolute. As Becker points out thus: *Fee simple absolute is a misnomer; it is neither simple nor absolute....It is not absolute because the central incidents of ownership are always conditional..*³⁸

The above justification implies that the title to rental units does not include the right to be free from various forms of regulation, including some forms of rent control. In a succinct form, the Land Use Act, for instance,³⁹ vested the allodial rights of ownership in Land in the State. It further prohibits absolute ownership of land by individuals.

Situating the above justification within the context of the rental market, excess demand for rental accommodation with insufficient supply could lead to an arbitrary increase in rent, and unjust eviction. Thus, the State justifies its intervention by placing restrictions on rent increases when it becomes apparent that the

³⁸ L.C. Becker, 'Rent Control is Not a Taking' (1989) 54 *Brook. L. Rev.* 1215 at 1216.

³⁹ S.1 of the Land Use Act 1978 CAP 202 LFN 1990; CAP 203 LFN 1990/L.5LFN 2004.

public interest demands intervention in the process of supply and demand through rent control legislation. The interventionist posture was restated by Oputa JSC (as he then was) in *Oduye v. Nigeria Airways Ltd*⁴⁰ thus:

...the general principle of the Rent Acts has always been to guard against the social and economic evils generated by the shortage of housing and the greed and rapacity of some landlords who increase rent and try to evict tenants who refuse and are unable to pay higher rents demanded.

4. Legislative Intervention and Its Implications for Housing Delivery in Lagos State

In addressing the legal initiatives for the delivery of housing, it is imperative to consider the effort of legislature in regulating the relationship of landlords and tenants in Lagos State. A prefatory point to know about Nigeria is that the law of landlord and tenant is constitutionally a residual matter as it is neither in the exclusive nor concurrent legislative list. The constitutional implication therefore is that State laws apply to landlord and tenant relationships. Consequently, individual States are empowered to enact their regulations in Nigerian States and in the federal capital territory; the national assembly can legislate on rent control applicable in the territory.

Having discussed the normative principles underpinning the government's justification of rent control, this article turns in the next segment to an examination of implications of rent control on housing delivery in Lagos State. This is done through the analysis of some of the relevant provisions of the Rent Control and

⁴⁰ (1987) 2 NWLR (pt.55).

Recovery of Residential Premises Edict, No. 6 of 1997 and the Lagos State Tenancy Law 2011 under the following sub-heads: Standardization of Rent, Payment of Advance Rent, Arbitrary Increase in Rent and Offences and Penalties.

4.1 Standardization of Rent

Fixing of standard rent is not a new phenomenon as conscious efforts have been made over the years to standardize rent.⁴¹ One perfect justification for this policy is premised on the assumption that, the bargaining between landlord and tenant is often unbalanced, both in terms of information and ability to understand economic affairs. To counteract this asymmetry, regulation may be seen as a way of prescribing a standard form of contract that everyone has to follow so as to prevent the tendency of exploitation of tenants by the landlords. Many Systems of tenancy rent control may be seen in this light.

The introduction of standard rent at various times was however seen by landlords as unjustifiable intrusion of their property rights who held on tenaciously to the sanctity of freedom of contract; a right which they considered inalienable and faltered by the State without justification.⁴² The consequence of such government

⁴¹ See, I. O Smith, *supra* note 17.

⁴² Rent control measures may be challenged on the ground that it violates landlord's property rights under the national Constitution and International conventions. See, s.43 of the 1999 Constitution (n.34); Art.1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms; Art. 14 of the African Charter on Human and Peoples' Rights as domesticated in Cap 10 LFN, 2004; Rent Control Laws No.5 Cap 122. Laws of Lagos State, 1973 now repealed. See, I.O Smith, *Landlord and Tenant Law in Nigeria: Principles and Practice* (Ecowatch Publications, Lagos-Nigeria, 2018) p. 287.

intervention was the scarcity of accommodation with ripple effect of rent gouging as landlords went underground to negotiate higher rents above the prescribed standard rent. The situation left the prospective tenants in Lagos State with two options but apparently with one choice between the illusory 'state accommodation' at a standard rent which was not available and the real accommodation available at a higher rent.⁴³ This paper argues that, by prescribing the rules of engagement in tenancy relationship, the doctrine of freedom and sanctity of contract is therefore altered and reordered. One implication of such alteration on housing delivery is that strict control has the tendency of retarding investment in rental units. Investors would therefore prefer to invest in alternative venture and convert the existing stocks to hotels, warehouses, etc which are not ordinarily subject of rent control.

To reduce the ill-attendant with standardization of rent, the 2011 Law removes the ceiling on amount of rent payable by omitting the provision of standard rent. This article posits that such intentional omission by the legislature in setting standard rent is based on the reality on ground. By allowing parties to agree on rent payable at the inception of tenancy while discouraging advance payment beyond the period prescribed by law accords with potential effect of moderate rent control policies and in consonance with socio-economic reality of society.

4.2 Payment of Advance Rent

The 1997 Edict made provisions for the maximum advance rent which may be paid or received in respect of different categories of accommodation.⁴⁴In similar vein, although the Lagos Tenancy Law 2011 has no provision for standard rent to be paid by tenants, but

⁴³ Ibid.

frowns at the payment advanced rent above the statutory period. It is thus an offence punishable by way of imprisonment or fine to pay or to receive advance rent for any period above six months or one year as the case may be.⁴⁵

However, the restriction of maximum advance rent payment by prospective tenants has the tendency of limiting the quantum of rent recoverable following a project's waiting period. The adverse implication of this policy on housing delivery is that, the maximum of one-year rent collectable could limit the liberation of funds from

⁴⁴ See, *supra* note 24. The Edict also made it unlawful for a landlord or his agent to demand and/or receive from an incoming tenant, and for an incoming tenant or his agent to pay to the landlord a rent in excess of six months for categories of accommodation as contained in the Order made pursuant to the Edict. While for the sitting tenant, the tenant must not pay in excess of three months. See s.4. Lagos State Rent control and Recovery of Residential Premises Edict No. 6 of 1997.

⁴⁵ Under the 1976 Edict which criminalized only the receipt of rent by the landlord, tenants had the opportunity of not only taking the advantage of protection of statute, but could also sue to recover the excess of rent extorted by the landlord. See generally s.4(4) of the repealed Rent Control and Recovery of Residential Premises Law of Lagos State, 1976; The penalty for violating this provision was a fine of One Hundred Thousand Naira or three (3) months imprisonment under the new Law. See generally s. 4 of the Tenancy Law 2011 that modified the 1976 position to the effect that both the giver and taker are now punishable under the new Law. This writer opines that the decision of Ugandan court in *Kiriri Cotton co. Ltd v. Dewani* (1960) AC 192 at 204 would have been adopted to safeguard the interest of tenant who would strive to pay the excess amount to the Landlord in order to keep his accommodation. In *Kiriri Cotton's case*, Per Lord Denning, in interpreting a similar provision of the Ugandan Rent Restriction Ordinance of 1949 which also contained no provision for the recovery of such premium, held that the tenant could recover excess rent paid from the landlord. The court reasoned that the penalty for breach of the provision was on the landlord who received the excess rent and not on the tenant who submitted to the demand to pay excess rent.

the project which could be ploughed into replication of further units just as it limits the extent of amount available for periodic repayment of loans.⁴⁶ Previous research findings identified renting of houses instead of buying as a significant phenomenon in the housing market.⁴⁷ A new approach towards adequate provision of rental housing entails borrowing from financial institutions on parametric terms.⁴⁸

Arising from the foregoing, since the private sector delivery hinges more on profit potentials than the public, the tenancy Law should be carefully designed not to worsen the delivery situation in a market already characterised by low investment yield to investors; doing so, will expose the investors to high financial risk. With a possible shortfall in lending for development of rental accommodation, real estate investors would look more in the direction of housing for sale for lump sum recoupment of capital, where rents could be high enough to compensate for development efforts.

4.3 Arbitrary Increase in Rent

The interplay between the demand and supply has occasioned a

⁴⁶ A. S Afolayan ‘Sustainable Urban Rental Housing Delivery and the Challenge of Tenancy Law 2011 in Lagos, Nigeria’ *Department of Estate Management, University of Lagos, Nigeria*. Available at <https://www.researchgate.net> last accessed 23/10/2020.

⁴⁷ The ultimate goal of owning a rental property is to make profits with little additional effort. See N. Wickramaarachchi, “Determinants of Rental Value for Residential Properties: A Land Owner’s Perspective for Boarding Homes. (2016) Vol. 12, Issue 1, *Research Journal of the Sri Lanka Institute of Architects*. p.10.

⁴⁸ A. S Afolayan, *supra* note 46 at 11.

regime of extremely high and unreasonable rent charges, with attendant agency and legal fees/commission. This development has placed the tenants and prospective tenants at the mercy of the typical Lagos Landlords, now increasingly becoming like the fabled shylock.⁴⁹ The Tenancy Law 2011 employed a rent control device which seeks to curb unreasonable increase of rent by landlords.⁵⁰ The Law frowns at unreasonable increase in rent by the landlord, and subject to any agreement to the contrary, an existing tenant may apply to Court in the prescribed form, for an order declaring that the increase in rent payable under a tenancy agreement is unreasonable.⁵¹

In determining the reasonability of rent, the Court shall issue a hearing notice to the landlord and shall consider the application based on the factors listed in section 37(2) of the Law in reaching the conclusion that rent increase is unreasonable.⁵² If satisfied that the increase in rent is unreasonable, the Court may make an order that the increase in rent is changed to a specific amount.⁵³ Pending the determination of the matter, it shall be unlawful for a landlord, notwithstanding the provisions of any law, to eject a tenant from the premises.⁵⁴

⁴⁹ Lagos State Tenancy Law 2011: The Brief. Available at: <<http://ainablankson.com>>. Last accessed 12/02/2020.

⁵⁰ S. 37(1) Tenancy Law 2011.

⁵¹ The Law enables a sitting tenant to apply to court for an Order, declaring that the increase in rent in respect of the tenancy is unreasonable. *Ibid*.

⁵² These factors are as follows: (a) the general level of rents in that locality or a similar locality for comparative analysis (b) evidence of witnesses of both the tenant and the landlord (c) any special circumstances relating to the premises in question or any other relevant matter. *Ibid*.

⁵³ *Ibid*, s. 37 (3).

⁵⁴ *Ibid*, s. 37 (4).

In this regard, the provisions of the Law are commendable for addressing a fundamental factor in the imbalances endemic in the relationship of landlord and tenant. It establishes a sound social policy of non-exploitation of a vulnerable party to a contractual relationship. Smith, however, rightly asserted that there are reasons to suggest the provisions are impotent.⁵⁵ A complaint by the tenant of any unreasonable rent increase is "subject to any agreement to the contrary."⁵⁶

It is the writer's view that this *proviso* provides a cheap escape route for landlords. It is a social fact that when entering into a tenancy agreement, the tenant is at the mercy of the landlord for apparent reasons, and more often than not, executes the said agreement as a mere formality.⁵⁷ More so, the possibility of the Court reaching a just-decision on the appropriate rent payable by the tenant appears too remote where an evaluation of evidence is done by the Magistrate or the Judge without an assessor on the Bench. The issue of applicable rent is a question of fact which ought to be determined by an estate valuer, the cost of which may be too high for the contesting tenant to bear. Absence of the provision for the physical assessment of the premises by the Court is also a bane to a just determination of appropriate rent payable. Consequently, the Court may reach an arbitrary decision, and thereby disappoint the reasonable expectation of the applicant. The surest way out and in extending the socio policy protection of the

⁵⁵ See, I. O Smith, *supra* note 13 at p.12.

⁵⁶ The opening paragraph of *supra* (n.27).

⁵⁷ As a result of shortage of accommodation in metropolitan Lagos, tenants enter into any form of tenancy agreement either in desperation to have shelter over their heads, or in an attempt to outwit other prospective tenants with whom they are in competition.

Law, the Law should make provision for the appointment of an estate valuer, the cost of which is to be borne by the government.⁵⁸

4.4 Offences and Penalties

The Lagos State laws prescribed provisions on offences and penalties.⁵⁹ Specifically, these provisions on offences relate to rent control, contravention of the provisions on maximum rent, or violation of an order of a tribunal or relevant Court with jurisdiction. The penalty ranges from the imposition of fines or terms of imprisonment or both.⁶⁰ This paper finds no reported case of this provision in any law report since 2011. However, while such penalties prescribed may prove to be a deterrent to deviants generally, it would appear that where the statute has criminalised violation of its provisions by either the landlord or tenant and imposes penalty on both of them for payment or receipt of illegal rent in violation of an order of the tribunal or Court, the said provisions of the statute on offences and penalties become ineffectual against the *participes criminis* neither of whom may be willing to report commission of such offences.⁶¹

⁵⁸ This was the case under the repealed Edict which was cited as the Rent Control and Recovery of Residential Premises Edict No. 6 of 1997 (also called Rent Edict) with effect from the 21st day of March 1997. The most striking provision of the Edict was the involvement of Estate Surveyors and Valuers in determining the standard rent payable on residential accommodation in each of the zones into which Lagos State was delineated and stipulated in relations to size of room, number of rooms, facilities provided, and locations.

⁵⁹ The offences and penalties provisions are contained in ss. 3, 4, 29 and 33 of the Edict and *supra* (n.27) s. 4.

⁶⁰ *Ibid.*

⁶¹ For the criminalization policy of both 1997 Edict and the 2011 Tenancy Law, see s. 4 of the 1997 Edict and *supra* (n.27) s.44, respectively. See also detailed analysis on note 45 *infra*.

Under the 1997 Edict, only the receiving landlord of illegal rent was in violation of the Law; the Edict thus appeared to be discriminatory in punishing the landlords for accepting excess rent and excepting from punishment tenants who offered to pay excess rent without any coercion. The tenancy law 2011 has, however, makes it an offence punishable by imprisonment or fine to pay or to receive advance rent for any period above six months or one year as the case may be.⁶² The position of the Law, for example in criminalising all these acts has been commended as it constitutes a progressive development in curtailing the incidence of such criminal acts.⁶³

However, the writer contends that as laudable as the criminalization policy may appear, in the face of exorbitant charges for land allocation, the cost of delivering housing units, commencing with the cost of securing a piece of land; and with the staggering amount associated with procuring a certificate of occupancy payable by property owners to the Governor, the government lacks moral right to criminalise investment drive of landlords who are in legitimate business to maximize profits on their investment through the provisions of private rental housing.⁶⁴ Such an interventionist

⁶² The penalty for violating this provision is a fine of One Hundred Thousand Naira or three (3) months imprisonment. The decision of court in *Kiriri Cotton co. Ltd's case* would have been adopted to safeguard the interest of Tenant who will always do everything possible to keep his accommodation thus pay excess amount to the Landlord. See, *supra* note 45 for more detail.

⁶³ E.O Akingbehin, *supra* note 4 at p.126.

⁶⁴ One of the major complaints against rent control legislation has been on ground of infringement on the landlord's right of his property which includes the right to make the desired profit from investment on his property. See I .O Smith, *supra* note 42, p.280.

posture of government is tilted unjustifiably against the landlords as if the government is at war with property owners and property investors without providing corresponding social security inform of social housing. Any drastic enforcement of the criminal sanction against the landlord may thus have a negative impact on housing delivery: it may drive away many landlords from investing in the building industry and create even more shortages of houses with the resultant further rises in rents. It must be emphasized that landlords deserve returns on their investment in housing and therefore be allowed to profit. Any rent control legislation that does not recognise this is bound to create more problems than it sought to solve

5. Lessons from Lagos Experience

As earlier analysed in this article, the implications of rent control on housing delivery in Lagos state would undoubtedly advise against their use for redistribution purposes. As shown in this article, the findings from Lagos State example indicate that no rent control legislation will ever work no matter how beautifully worded its provisions may be where there is a shortage of accommodation to meet the very high demand by the populace.⁶⁵ Most of the earlier laws on rental housing are not reputed to have achieved substantial success as could be attested to by their eventual repeal.⁶⁶ Banire, for instance, attributed the ineffectiveness of previous rent control laws to the fact that statutory intervention

⁶⁵ Government cannot continue to under estimate the importance of social security particularly housing, in the scheme of people's survival. Smith aptly put it thus: "a person who is fortunate to get accommodation after a long arduous search for it will rather abide by the living law rather than by any legislation in existence". See I.O Smith, *supra* note 17 at 39.

⁶⁶ M. S Banire, *supra* note 9.

alone is not sufficient to monitor rental relationships.⁶⁷ Hence, Law *DELSU Law Review Vol. 7 2021* should only play a part alongside other economic and social factors²⁹⁸ in effecting a change in society. Admittedly, there is no gainsaying that various rent control legislation in Lagos state may have been a hallmark of a welfarist ideology.⁶⁸ However, to achieve the welfarist ideology, regulation should be devised to encourage a market that offers a win-win situation to all parties likely to be affected in the use and transaction of interest in real property. Therefore, the policymakers need to understand the overall impacts of relevant rent control Laws on housing delivery not to exacerbate the problems of the poor that the Law is primarily intended to protect.

6. Conclusion

This article has examined various justifications underpinning the State intervention in the private housing market. It identified and highlighted some of the relevant sections of the Rent control and Recovery of Premises Edict No.6 1997 and the Tenancy Law 2011, which provisions are deemed to have implications on the delivery of housing in Lagos state. These sections include those touching on the standardization of rent/payment and receipt, unreasonable rent increase, advance rent provisions, offences and penalties provisions. The main finding is that statutory intervention by way of rent control laws has some negative implications on housing delivery; it can exacerbate the risks of construction lending capacity; retards investment in the housing market. To this end, the article posits that landlord deserves social security and fairness requires a reasonable rate of return, too, particularly given the high cost of building construction and the risks entailed in investing in an asset that has a large sunk of cost. Thus, it is doubtful whether

⁶⁷ M. S Banire, *supra* note 9.

⁶⁸ E.O Akingbehin *supra* note 4 at p.124

the government can legislate effectively on controlling the rent of private accommodation when prices of other variables like land, the perfection of title, and building materials are left adrift with the geometrical progression of an inflationary trend.

By way of recommendation, the best option for the government in the face of acute shortage of housing is to tackle the problem of inflation in order to improve the value of money and regulate prices of building materials through import incentives and other measures aimed at developing local materials for building purposes. Otherwise, the Law on tenancies, no matter how beautifully couched, would become like a ceremonial instrument without the force of application in the face of the more compelling social factors and economic realities of the Nigerian environment. In all, the paper called for a bottom-up approach involving the enactment of all-encompassing moderate rent regulations that will enhance the rental housing market's efficiency to ensure a mass influx of investors in the rental market.