

Contents

- 1) Tenant-Landlord Rights in Singapore
- 2) Renting out private residential properties (URA)
- 3) Tenancy Disputes & Remedies
- 4) Illegal use, who is liable?
- 5) New on illegal renting
- 6) Six common terms in tenancy agreement

Tenant-Landlord Rights in Singapore

What is a tenancy?

A tenancy has the legal effect of transferring an interest in land from the landlord to the tenant. It means that for a certain term at a determined rent, the tenant has exclusive possession of the premises. Typically, the duties of the landlord and tenant are found within the terms of the tenancy agreements. A breach of any of these terms potentially leads to the termination of the tenancy, resulting in several types of remedies available for both landlord and tenant.

Types of Tenancy in Singapore

In Singapore, tenancy takes the form of leases or licenses.

A lease is not the same as a license. A lease gives the tenant a proprietary interest in the land. A license is only a personal arrangement between two parties, where the landlord has given the tenant a personal permission to use the premises for a short period of time.

A lease offers the tenant the common law rights of assignment to a third party (depending on the property) and is capable for binding a third party. Further, if the tenancy takes the form of a lease, a tenant may sue in an action for nuisance or trespass. A licensee does not have such rights to assign the premises to a third party, nor sue for nuisance or trespass.

Special restrictions apply to the renting out of Housing and Development Board (HDB) flats, such as a minimum occupation period.

Generally, a lease **should not be less than 6 months in duration**. (please refer to the URA circular below)

The Tenancy Agreement

It is important to know the terms within the tenancy agreement. Most tenancy agreements will contain terms that give the tenant quiet enjoyment and exclusive possession. Hence, the landlord must allow his tenant to occupy the premises exclusively, without any intrusions and disturbances from outsiders. The landlord cannot grant a lease of his premises on terms that effectively or substantially negative the utility of the grant. For example, if a landlord leases a store space to a tenant within a shopping mall, he must not prevent the entry of customers into the building.

Similarly, a tenant will have responsibilities under the tenancy agreement too. For example, a tenant has to pay regular rent and may have to agree not to assign the lease to another person. He may also have to bear the costs of any repairs which may be necessary in the course of the tenancy. Should there be water leakages, faulty electrical appliances, or peeling paint, either the landlord or tenant may bear the burden of repair, depending on their negotiations. Hence, the tenancy agreement sets out the duties of the landlord and tenant at the start of the tenancy, and prevents such disputes from arising.

Ending a tenancy early

A tenancy may be terminated only when either the landlord or tenant gives the appropriate notice to quit the tenancy. The appropriate period for notice to quit should correspond with the length of the tenancy period, and may be inferred by the frequency of rent payment. For example, for a tenancy where rent is paid monthly, the appropriate period of notice should be one month. The common minimum notice period is 30 days. To be safe, check your tenancy agreement.

If you are a tenant, you should not end the tenancy prematurely without notifying the landlord. If you wish to surrender his lease, you have to obtain the consent of your landlord. While the landlord is not obliged to accept the surrender, he may request for monetary compensation from you.

To guard against the premature termination of a tenancy by your tenant, some landlords request for a security deposit equivalent to an additional month's rent. Landlords have to establish the parameters of the tenancy agreement with the tenant and find out the likelihood of a premature termination of the agreement.

Evicting Tenants

Where a tenant has breached the terms of the tenancy agreement, such as by his failure to pay rent, a landlord may forfeit the tenancy and re-enter the premises to evict his tenants.

What does forfeiture entail? It means that the landlord can obtain possession of the premises either by effecting a peaceable entry by himself, or by process of law through an application to the court.

Generally, forfeiture will not be invoked unless the tenant fails to pay up despite being given opportunities to do so. To re-enter the premises, the landlord needs to make a formal demand for the tenant to leave the premises. If the tenant does not submit, the usual practice is to invoke the services of a solicitor to issue a writ of summons for possession, and begin legal proceedings for taking possession.

To do this, the landlord should make sure that he has expressly stipulated a right of re-entry in the tenancy agreement. The landlord must also serve a notice, under s18 of the Conveyancing and Law of Property Act, specifying the breach complained of, the compensation sought, and the remedy to be undertaken by the tenant.

However, a tenant may also apply to the court for relief against the forfeiture of his lease. As forfeiture is an extremely harsh remedy, courts will give the tenant a reasonable time of an additional 4 weeks for the tenant to pay rent.

One solution for the landlord is to exercise his right to distress under the Distress Act. The right to distress is a remedy for the arrears of rent where the landlord must apply for a writ of distress, where he can claim up to 12 months' arrears preceding the distress application. It is important to note that the landlord should act on the matter swiftly and not take his own time in claiming the arrears. After which, a notice of seizure of goods and writ of distress must be sent to the defaulting tenant. If the tenant does not reply within 5 days, the landlord may exercise his option to sell off the goods.

As there is no comprehensive law governing landlord-tenant relations, much depends on the tenancy agreement. There is no one set of legal process for evicting tenants. As a matter of precaution, always review the terms of a tenancy agreement before entering into one.

This article was written by Emily Koh.

Source: <https://singaporelegaladvice.com/law-articles/tenant-landlord-rights-singapore/>

Renting out private residential properties (URA)

Private residential properties must be rented out for periods of at least six consecutive months. They may not be used for short-term rentals on a daily or weekly basis. In addition, property owners must meet the following conditions when renting out their properties.

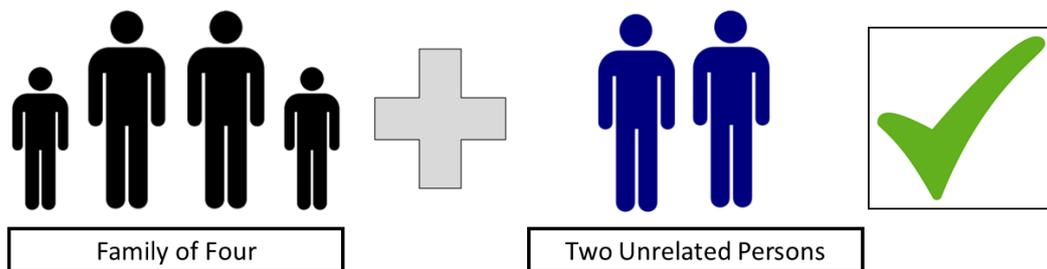
- Any internal partitioning works carried out on the property must not compromise the nature of the property as a single self-sufficient residential unit with essential features such as a living/dining area and kitchen
- With effect from 15 May 2017, the maximum number of unrelated occupants that may be accommodated in a property is six.

Frequently Asked Questions

1. We are a family of four who intend to rent out part of our home. What is the maximum number of additional persons that we can accommodate?

The occupancy cap of six applies to **all persons** residing within your home. Therefore, you may accommodate up to two additional persons.

The only exception in which the occupancy cap does not apply is when a private residential property is **entirely** occupied by the same family unit.



2. Who does URA consider as unrelated persons?

Any persons who are not part of the same family unit are considered as unrelated. However, domestic workers and caregivers hired by a family will be treated as part of the same family unit.

3. How about multi-generational families, are they subjected to the occupancy cap?

Multi-generational families, including any domestic workers and caregivers that may be hired to serve in such families, are considered as part of the same family unit. Private residential premises occupied by a family unit, which may have more than six persons, will not be subject to the occupancy cap.



4. Are employees of the same company considered related occupants, and therefore exempted from the occupancy cap?

No, employees of the same company are not considered related occupants and will therefore be subjected to the occupancy cap.

5. What if I have already signed a tenancy for seven or eight persons before 15 May 2017?

If you have already signed a tenancy for seven or eight persons before 15 May 2017, it may run its course until the cut-off date of 15 May 2019. This will apply to all tenancies regardless of their contracted end-date.

Source: <https://www.ura.gov.sg/uol/buy-property/about/leasing/residential.aspx>

What if I have a tenancy dispute or complaint in Singapore?

Landlord-tenant disputes are one of the most common forms of disputes in Singapore. However, it is unclear how parties can seek to resolve such disputes in Singapore. This guide will provide a general guideline as to the rights of landlords when faced with such disputes and what parties can do to resolve such disputes.

Commonly seen landlord-tenants disputes include:

Failure of the tenant to pay rent

The tenant is usually obligated to pay rent in exchange for his use of the premises under the lease. The lease usually specifies that the rent will be payable periodically, for example, payable by the first day of every month. The landlord has the right to demand for the payment of the rent due under the lease.

Legal recourse for the landlord when his tenant fails to pay rent:

- Sue for the breach of contract (lease)
- Obtain an order to recover possession of the premises
- Re-enter the premises and forfeit the lease
- Exercise the right to distress and seize goods to sell

Damage caused to premises during tenancy period

There is usually a clause in the lease that states the tenant is not to damage the property for the duration of the lease. It is advised that potential tenants should ensure that the premises are in good condition before entering into the contract. This is because, in the event that there is any damage to the property and the tenant reports it, the landlord may claim that the premises had been damaged by the tenant during the rental period.

Legal recourse for the landlord when his tenant causes damage to the premises:

- Sue for the breach of contract (lease)
- Obtain an order to recover possession of the premises
- Re-enter the premises and forfeit the lease

Refusal to leave the premises after termination of tenancy agreement

A common landlord-tenant dispute arises when the tenant refuses to leave the premises as agreed, after the termination of the tenancy agreement. When a tenant continues to stay and occupy the premises after the tenancy agreement has been terminated, this is called a 'holding over'.

The landlord can either charge the tenant with (a) double the amount of his rent until he leaves or (b) with double the value of the premises which the tenant stayed in during the period of occupation. The landlord need not give any notice to the tenant of such charges against him.

Sublet of premises or assignment of lease to third party

It is very common for landlords to discover that their tenants sublet the premises or assign their lease to a third party despite an express clause in the tenancy agreement that the tenant is absolutely not allowed to do so or not allowed to do so without consent. The landlord should not withhold consent on purpose or without valid reason when the tenant seeks consent under the lease to sublet the premises.

Sue for breach of contract

As a tenancy agreement is a contract between the landlord and tenant, the failure of the tenant to follow any of the clauses in the agreement would be a breach of the contract

The obligations to pay rent, ensure the premises are in good condition, not to sublet without consent and to leave the premises after termination of the agreement are generally provided for in the tenancy agreement. Therefore the landlord will have the right to sue the tenant if the tenant fails to fulfill those obligations. The burden lies on the landlord to prove that the tenants had failed to fulfill those obligations. If it is found that the tenant had failed to fulfill those obligations, the Court will award damages based on actual losses suffered by the landlord.

Obtain an order or judgment for the recovery of possession of the premises

The landlord has the right to apply to the Court to obtain an order or judgment for the recovery of the premises when the tenant has (a) failed to pay rent that was due for 21 days and above; (b) caused damage to the property; and (c) sublet and assign without consent and got paid more than what should be paid for the sublet or assigned portion. After the Court has made an order, the landlord can use the order to take back his or her possession of the premises rented out.

Failure to pay rent:

In the case of a tenant failing to pay rent, the landlord must send the tenant a notice of demand in writing. The landlord must include his name and address in his notice of demand and serve it on the tenant at the premises which he had rented out. Landlords are advised to use registered mail, to prevent the tenant from claiming that he was not given any notice. To stop the landlord from applying a court order, the tenant has to pay the landlord for rent owed after receiving notice using registered mail at the landlord's address.

Damage caused to the premises:

When a tenant has wrongfully caused damage to the property, the landlord may obtain an order from the Court to seek compensation from the tenant.

Subletting of premises:

The landlord has the right to apply to the Court to obtain an order or judgment for the recovery of the premises, if the tenant sublets the premises or assigns the lease to a third party and receives rent which (a) exceeds what may be recoverable for that portion or (b) it exceeds 110% of what needs to be paid to the landlord in total.

The order or judgment for recovery of possession is generally not enforceable against the sub-tenant. However, it will be enforceable against any sub-tenant if the court is satisfied that the tenant was prohibited by the terms of his tenancy agreement from subletting or the sub-tenant has used the premises for illegal or immoral purposes.

Re-enter the premises and forfeit the lease

The landlord generally has the right to forfeit the lease for the non-payment of rent or when damage is caused to the premises. The lease will be terminated upon the landlord's re-entry of the premises.

If the lease did not expressly reserve the right of the landlord to forfeit the lease, the law will take that the right has been provided for in the lease if:

- for the failure to pay rent, the rent or any part of the rent owed has been in arrears for 30 days and above; or
- for the damage of property, if the lease is for more than 7 years and registered on land title

The tenant may apply to the court for relief against forfeiture of his lease when the landlord is proceeding with an action to enforce his right of re-entry or forfeiture. For the non-payment of rent, the tenant may only do so if he pays all the rent he owes and for the costs of the legal action taken by the landlord. If the tenant does so, the lease will be continued without any new lease being created.

Exercise the right to distress to seize goods to sell

The landlord has a right to apply to the court for a writ of distress to claim up to 12 months' arrears of rent owed to the landlord before the distress application. The landlord should act on the matter swiftly and not take his own time in claiming the arrears, for example, waiting until the tenant owes him rent for almost 12 months before making the application. Do note that the landlord does not have the legal right to personally seize the tenant's belongings when the tenant fails to pay rent.

After the application is granted, a writ of distress will be granted and the **Sheriff**, an enforcement officer of the Court, will be able to seize any moveable property, such as furniture, found by him on the premises.

The writ of distress and notice of seizure of goods must be sent to the defaulting tenant to notify him of the seizure and the sale of his goods. He should pay the amount due within 5 days. Alternatively, he may apply to court for an order to restrain the sale of his goods. If the tenant does not reply and pay the amount due or obtain an order to restrain the sale, the landlord may then exercise his option to sell off the goods. The money from the sale of goods will be first used to pay the Sheriff and then used to pay the landlord for the rent owed to him.

Other forms of resolving landlord-tenant disputes

Mediation

Parties can attempt to mediate when face with disputes, and mediation can be attempted at a Community Mediation Centre (CMC). The CMC provides mediation services for landlords and tenants for disputes involving:

- Disagreement on living arrangements;
- Utterance of unacceptable words;
- Display of unacceptable behaviour or conduct; and
- Interest-free monetary matters based on verbal agreement involving less than S\$5000

Advantages to mediation:

- It is private and confidential. Parties' identities and matters discussed will not be revealed to anyone outside of the mediation session.
- It saves time as it usually lasts for a few hours and can be completed within one or two sessions.
- It saves money as there is no charge for the mediation service. There is only an administrative fee of \$5 which will be borne by the complainant.
- It is flexible, informal and creative. Parties are encouraged to come up with their own solutions that are mutually beneficial.
- It seeks win-win solutions by meeting the interests of both parties.
- It preserves post-conflict relationships.

File a claim at Small Claims Tribunal

If mediation does not work, the parties can file a claim with the Small Claims Tribunal. Filing a claim at the small claims tribunal can be done without a lawyer, and is usually more cost-efficient for claims below \$10,000. The small claims tribunal has the ability to hear any claim relating to disputes arising from a tenancy lease of residential premises that does not exceed two years. Most forms of landlord-tenant disputes, such as claims for deposits and unpaid rent, are resolved here.

To file a claim at the Tribunals, a party is required to pay a lodgment fee. The applicable lodgment fees are as follows:

	Not exceeding \$5,000	Exceeding \$5,000 but not exceeding \$10,000	Exceeding \$10,000 but not exceeding \$20,000
Consumer	\$10	\$20	1% of claim amount
Non-consumer	\$50	\$100	3% of claim amount

After a claim is lodged or filed, the Tribunals will fix the claim for a consultation/mediation before the Registrar. The Registrar will mediate the claim, to assist parties in resolving the dispute. The Tribunals will generally fix the consultation/mediation within 10 or within 14 days from the date of filing of the claim. If a claim is not settled at the consultation before the Registrar, it will generally be fixed for hearing within 7 or 10 days from the date of consultation. If the claim is fixed for Hearing before the Referee, the Referee may also explore the possibility of settlement, before adjudicating the claim.

Source: <https://singaporelegaladvice.com/law-articles/what-if-i-have-a-tenancy-dispute-or-complaint-in-singapore/>

Are Landlords, Tenants, and Agents liable for Sex Trade in Condominiums/HDB flats?

In recent years, there has been an increase in the number of illegal brothels inconspicuously operating out of residential apartments (refer to the news below) in the heartlands, and frequently in Housing and Development Board flats. If such a situation should arise, would a landlord, tenant and agent of such premises be liable? How can landlords, tenants and agents prevent themselves from being unwilling parties to such illegal activities happening within their premises?

How may a landlord, agent or tenant be liable?

A landlord, agent, or tenant of any premises may be liable for allowing their premises to be used as an unlicensed brothel unless he is able to prove that he has no knowledge under section 148 of the Women's Charter.

Notably, in a case where the tenant has subletted the premises, which has been used as an illegal brothel, the law further presumes that the tenant had knowledge of the premises being used as a brothel unless he is able to prove otherwise that he had no such knowledge. The rationale for this presumption rests on the fact that the tenant is the only authorised person to access and occupy the premises after the landlord has handed over the keys to the tenant. As such, if the premises are being used for vice activities, the tenant

must have known of it and/or sanctioned it, unless he is able to prove otherwise.

Under the law, a first-time offender may be fined up to S\$3,000 and/or face imprisonment not exceeding 3 years. Repeat offenders may be fined up to S\$10,000 and/or face imprisonment not exceeding 5 years.

Therefore, once a landlord, agent or a tenant becomes aware of illegal sex trade being conducted in the premises, he has a duty to report such vice activities to the Police.

What are some of the precautions that may be taken?

Generally, prior to renting out, a landlord and/or the agent would have requested for the identification documents, job(s) and place(s) of employment of the would-be tenant(s). By conducting such due diligence, the landlord and/or the agent would generally have discharged his/her duty of care.

As for tenants, they are advised to comply with their tenancy agreement and only permit authorized occupiers (as listed in their tenancy agreement) to reside at the premises so as to ensure that their rented premises are not being misused as an illegal brothel.

This article was contributed by Ms Koh C-u Pinn, who is a Director at Arielle Law Corporation.

Source: <https://singaporelegaladvice.com/law-articles/are-landlords-tenants-and-agents-liable-for-sex-trade-in-condominiumshdb-flats/>

Tenant who sublet Woodlands condo and Yishun HDB flat to prostitutes jailed and fined

PUBLISHED THE STRAITS TIMES
AUG 10, 2016, 8:51 PM SGT

SINGAPORE - A 26-year-old tenant from China rented out his condominium apartment in Woodlands to three prostitutes in April and May, a district court heard.

But the sex workers, also from China, refused to open the door to policemen after the condo's estate manager reported her suspicion of vice activities, forcing officers to break into the unit.

The next month, the tenant and two of the prostitutes were again nabbed in an anti-vice raid at a Yishun flat. This time, the sex workers had also overstayed in Singapore.

On Wednesday (Aug 10), the tenant, Dong Bin, was jailed for three months and fined \$12,000.

He pleaded guilty to two charges of living on the earnings of a prostitute, and one count of permitting a place to be used as a brothel. Two similar charges were considered in sentencing.

Dong earned \$6,300 in total from his vice-related activities.

The court heard that Dong rented a Woodsvale Condominium unit in Woodlands Drive 72 in April, knowing that it was to be used as a brothel.

A compatriot, who was known to him as Zhang Ge, had asked him to rent a home anywhere in Singapore. Zhang Ge said he would recommend prostitutes from China to Dong, so he could sublet the rooms to the sex workers for vice activities.

For each unit that he rented, Zhang promised to deduct \$2,000 from Dong's debts to him. Dong was also promised at least \$40 a day, if he helped Zhang to collect the rental from each prostitute.

Dong leased the Woodlands condo with his details, and the particulars of a friend. He paid \$2,400 in rental, and signed an agreement with the owner and property agent.

Zhang gave him \$4,800; Dong handed over the agreement and house keys to him.

Zhang rented the rooms out to the three prostitutes, aged 21, 23 and 37, for \$100 day.

But on May 26, suspecting vice activities due to the number of people entering and leaving the unit, the estate manager called the police.

Three prostitutes admitted to providing sexual services and were arrested on suspicion of having breached immigration laws. Officers seized more than 100 unopened condoms, and lubricants.

Dong was also called up for investigations and was later released.

But just four days later, he rented a unit at Block 665 Yishun Avenue 4 for \$2,600 a month, again at Zhang's behest.

For permitting a place to be used as a brothel, Dong could have been fined \$3,000 and jailed for three years. For living on the earnings of prostitution, he could have been jailed for five years and fined \$10,000.

The identity of Zhang has not been established.

6 Common Terms in Tenancy Agreements & What They Mean

While a potential tenant or landlord has the freedom to negotiate the specific terms in their tenancy agreement, there exist several common terms for such agreements. As a potential tenant or landlord, it is useful to have knowledge of such terms and what they mean. The following article provides a guide on the obligations these common terms impose on a potential landlord and tenant.

1. Clause stating the obligation to pay rent

A clause to pay the agreed rent is a common express clause in tenancy agreements. Notably, rent need not always be in the form of money but could also be by way of services rendered.

Such a clause is commonly worded as: “The Tenant hereby agrees with the Landlord to pay the said rent at the times and in the manner aforesaid”.

2. “Quiet enjoyment” and “exclusive possession” clause

Leases usually have a clause for “quiet enjoyment” or “exclusive possession”. Generally, this imposes upon the landlord an obligation to give the tenant the freedom to exercise his right of occupation as well as the full benefits of such occupation. Accordingly, a tenant who has exclusive possession of the premises can keep strangers, and even the landlord, out of the premises.

An example of such a clause is as follows: “That the Tenant ... *shall peaceably hold and enjoy the said premises during this tenancy without any interruption by the Landlord or any person rightfully claiming under or in trust for the Landlord.*”

3. Diplomatic clause

A diplomatic clause, which is usually found only in tenancy agreements for a lease of 12 months or longer, allows for the termination of the lease before its expiry at a fixed time (or times) or upon the occurrence of specified event(s). A diplomatic clause is especially important for foreign expatriates whose stay in Singapore might be of an indefinite length. Such a clause protects the tenant in the event that he cannot stay in Singapore anymore (e.g. if he is transferred out of Singapore or if his company terminates his employment during the tenancy). By invoking the diplomatic clause, he need not pay the agreed monthly rent for the duration of the tenancy that is unoccupied.

A diplomatic clause is usually expressly drafted to be exercisable by the tenant only. Nevertheless, if the lease does not specify which person can exercise the option, it may only be exercised by the tenant.

A diplomatic clause should generally specify the following:

1. What counts as sufficient notice to the landlord.
2. The compensation that the tenant must provide if insufficient notice was given.
3. The reimbursement that the tenant must provide in respect of the brokerage fees incurred by the landlord for the unexpired portion of the tenancy.

Exercising the diplomatic clause

Generally, the tenant must show documentary evidence of his company transferring him to another country or that of his cessation of employment to invoke the diplomatic clause. Other conditions for the exercise of the diplomatic clause may be agreed upon and incorporated into the tenancy agreement.

Once the tenant is aware of such transfer or cessation, he should show proof to the landlord as soon as practicable to ensure that sufficient notice is given within the notice period as stipulated in the tenancy agreement.

4. 'Good and tenantable repair and condition (fair wear and tear and acts beyond the control of Tenant excepted)'

In tenancy agreements, a clause that imposes upon the tenant an obligation to keep the premises in "*good and tenantable repair and condition*" is commonly worded in. Generally, this means that the tenant is obligated to keep the premises in good condition. Such a clause is often followed by a caveat – "*fair wear and tear and acts beyond the control of Tenant excepted*". This serves to qualify the tenant's obligation by limiting his liability to compensate the landlord for damage that was *not* caused by reasonable usage or normal aging. Accordingly, if the damage was not because of "fair wear and tear", the landlord can retain the security deposit (or a part of which) as compensation or otherwise request the tenant to arrange for repairs to be made.

It should be noted that what counts as "fair wear and tear" cannot be generally defined since it is fact-specific. Generally, it would be unreasonable for a landlord to withhold the security deposit or ask for a replacement of a door, the repainting of a whole house or the re-tiling of the whole floor simply because of a few scratches caused by normal usage or aging.

5. Clause forbidding 'alterations or additions' to premises

A tenancy agreement will usually provide that the tenant cannot make any alterations or additions to the premises without the landlord's consent. Essentially, the tenant should not change the structural nature of the premises, unless expressly sanctioned by the landlord. For example, a tenant should not remove fixtures or pull down the premises. Other examples include the unauthorized installation of air-conditioning units or doors.

6. Right of re-entry clause

A right of re-entry clause gives the landlord the option to **forfeit the tenancy** and re-enter the premises when the tenant has breached the terms of the tenancy agreement, specifically, when the landlord has failed to pay rent. Notably, the right of re-entry for breach of the agreement to pay rent is implied in all leases for land governed by the Land Titles Act.

An example of such a clause is as follows: "... if the rent hereby reserved shall not be paid for _____ days after its due date or if there shall be a breach of any of the conditions, covenants or stipulations on the part of the Tenant herein contained, *the Landlord shall be entitled to re-enter upon the said premises* and thereupon this tenancy shall immediately absolutely determine but without prejudice to any right of action of the Landlord for damage or otherwise in respect of any such breach or any antecedent breach".

Source: <https://singaporelegaladvice.com/law-articles/6-common-terms-in-tenancy-agreements-what-they-mean/>