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ALTERNATIVE DISPUTE RESOLUTION MECHANISMS TO RESOLVE LANDLORD-TENANCY DISPUTES IN MALAYSIA

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ABSTRACT

Due to the escalating house prices that are becoming increasingly unaffordable for many Malaysians, the private residential tenancies sector has now become a rapidly growing sector that provides an alternative avenue to homeownership. There is a lack of specific laws and institutions to regulate the relationship between landlords and tenants. Therefore, both parties often face challenges in resolving disputes which may result in eviction and thus, cause hardship. This article seeks to propose alternative dispute resolution (ADR) solutions for resolving disputes between landlords and tenants. It will explore the advantages and disadvantages of ADR as an appropriate dispute resolution mechanism. The dispute settlement mechanism for the private residential tenancies sector must be specifically designed, as litigation may not offer a win-win solution that is acceptable to all parties. Hence, it is crucial to explore potential alternative mechanisms that are speedier, more cost-efficient, and capable of preserving the relationship between the parties involved. This research employed the doctrinal method, analysing statutory provisions, court decisions, newspaper reports, ministry policy papers, and journal articles to support the use of ADR in resolving landlord-tenant disputes. Practices in New South Wales and Ireland were examined to identify best practices. By examining the benefits of ADR and the challenges faced in court actions, this article proposes that disputes between landlords and tenants can be amicably resolved using the ADR mechanism, especially in its recourse to mediation. The findings of the present study have indicated that mediation offers a practical and effective solution for resolving landlord-tenant disputes. It promotes fairness, efficiency, and relationship preservation in the private residential tenancies sector.

Keywords: Alternative dispute resolution (ADR), mediation, private residential tenancies, landlord-tenant disputes, tenancy disputes, alternative dispute resolution in Malaysia.

INTRODUCTION

In Malaysia, the law governing tenancy are scattered and can be found in various legislations, namely in the Contracts Act 1950, National Land Code 2020, Distress Act 1950, and the Civil Law Act 1956. Under the National Land Code 2020, the tenancy is known as “Tenancy Exempt Registration” (TER) which refers to any rental arrangement for a term not exceeding three years and can be created in writing or orally. Unlike lease, tenancy does not require registration with the land office and does not require compliance under Section 206(2) to 212 of the National Land Code 2020. There are two classes of residential tenancies, namely, the public and the private sectors. The differences between these two classes refer to the landlord who offers and provides the rented housing unit to the tenant. Public residential tenancy refers to the tenancy offered by government agencies, large corporations, or private equity funds. The examples can be seen in the *Projek Perumahan Rakyat (Disewa)* under the Transforming & Empowering Data Usage in Housing (TEDUH) programme run by the Ministry of Housing and Local Government or Kementerian Perumahan dan Kerajaan Tempatan (KPKT), residential tenancy provided under the Kuala Lumpur City Hall or Dewan Bandaraya Kuala Lumpur (DBKL) and other local governments such as municipal councils or city councils such as the Majlis Bandaraya Ipoh and Majlis Bandaraya Pulau Pinang. Another example of public residential unit is the government quarters offered to government civil servants, subject to certain requirements being fulfilled.

In the private sector, tenancy is based on the rental relationship between the individual landlord and the tenant. The provision of rental accommodation under the private sector can be categorised under two broad categories. Firstly, the private owner who has one or two houses with completed or uncompleted loan/financing repayment. Secondly, under speculative holdings, speculators purchase the properties for the purpose of flipping it in the future. There is no legal limitation on the numbers of houses that a person can purchase (with exception to low-cost housing and purchase by a foreign citizen). Hence this situation allows for the creation of private tenancy with individual landlords. The rental in this sector is based on market price determined by the landlords, and depends on factors such as the landlord's monthly commitment for repayment instalments, internal cost, and projection of profit (S. Ismail, 2022).

Tenancy can be created either formally or informally. Under formal tenancy, both parties enter into a written tenancy agreement and are endorsed on the register document of title in accordance with the requirement under the National Land Code (2020). The endorsed tenancy will give extra legal protection to the tenant. If a tenancy is not endorsed, the existing tenancy will not bind the successor of the rented premise if the ownership changes (Yong et al., 2022). Furthermore, Suffian (2012) has argued that the tenant will receive legal protection under the law of contract only if the tenancy is endorsed. Her argument was supported in *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor* [1995] 1 MLJ 71 and *Then Kok Leong v. Low Kim Hai* [1983] 1 MLJ 187.

Nevertheless, endorsement of tenancy is rarely practiced. In this regard, Yong et al. (2022) have identified three reasons. Firstly, this practice is not mandatory, and it will impose financial cost on the landlords. Secondly, the consent of the chargee is required before endorsement may take place, and that is if the rented premise is charged to the chargee at the time when the tenancy was created; however, the landlord often does not inform the chargee on creating tenancy as is required by Section 226(1) National Land Code 2020. Finally, the endorsement of tenancy on the register document of title will make the rented premises unattractive to the potential buyer if the buyer wants an immediate vacant possession of the rented premise (Yong et al., 2022). Therefore, in the absence of mandatory sanction provided under specific legislation, the tenant has to decide on whether to protect their tenancy by way of endorsement or encounter risks of dispossession by the subsequent buyer of the rented premise (Kok, 1984).

Although oral tenancy agreement is valid, administratively, the written tenancy agreement is needed as a supporting document for endorsement of the tenancy under Section 316 (1)-(3) of the National Land Code (2020). Conversely, oral tenancy agreement focusses on the rental rate while other rights and obligations between the parties are left to their mutual agreement. An oral tenancy may be created on weekly, monthly or annual basis, which either the landlord or the tenant may lawfully terminate the tenancy by issuing a notice to terminate commensurate with the period of oral tenancy. However, the tenancy may continue for longer period if it is not terminated. The flexibility in creating and managing tenancies highlights the need to improve landlord-tenant laws in Malaysia, particularly for private residential tenancies.

RATIONALE OF THE STUDY

In the private sector, residential tenancies are not monitored by any regulatory body and are instead governed by the principle of freedom of contract. As a result, the clauses in private residential tenancies depend largely on the individual bargaining power of each party. Moreover, there is no specific mechanism for settlement of dispute except that the parties must gain access to the civil court for settlement, in order to seek redress of any breach of contractual obligations between them (Suffian, 2012). By contrast, Syed Abdul Kader (2015) have recommended employing the ADR mechanism especially for mediation in regulating tenancy disputes between landlord and tenant. The use of the ADR has also been advocated by Mohamad (2015a, 2015b) in settling housing disputes especially within the strata properties stakeholder. However, Syed Abdul Kader (2015) in a study had focussed on the regulation of retail tenancies, while in two related studies, Mohamad (2015a, 2015b) focussed on strata dispute management. This leaves a gap unexplored in the discussion on private residential tenancies, especially on the dispute settlement between parties employing the ADR mechanism. Such a discussion should be explored further to provide an understanding on the settlement of disputes in private residential tenancy (Ceno et al., 2015; Oladokun & Aluko, 2014; Olapade et al., 2019).

Currently, any dispute, depending on the amount of monetary claim between the landlord and the tenant, is under the civil court jurisdiction. Under the Subordinate Courts system in Malaysia, if the amount of claim is below MYR5,000.00, the matter can be brought to the Small Claims Court, which operates under the Magistrate Court and handles minor disputes without legal representation. Procedurally, the cases are governed by Order 93 of the Rules of Court 2012. For claims not exceeding MYR100,000.00, the Magistrate Court has jurisdiction under the Subordinate Courts Act 1948. If the monetary claim exceeds MYR100,000.00, the case falls under the jurisdiction of the Sessions Court, which also has unlimited authority to hear cases related to landlord-tenant matters.

The Small Claims Court was established to offer parties involved, a dispute resolution forum by avoiding lengthy and expensive process. Thus, parties in the dispute are not allowed to be represented by a legal counsel except where the defendant is required by law to be represented by an authorized person. All proceedings involving small claim cases will be heard and decided by a magistrate. Despite being an ideal forum, very often the parties involved do not leverage on the advantages offered by the small claims court. Research highlights that parties in a dispute refrain from expressing themselves in the court room. This is because owing to their cultural values they avoid speaking much in public to avoid open confrontations, especially in financial related matters. Hence, they fail to reinforce their rights (Elinor et al., 2017). According to Hei et al. (2015), each ethnic group in Malaysia displays different communication styles as shaped by their respective cultural and evolving norms. Malays are generally described as being indirect, polite and values courteousness to reflect a good upbringing.

While the Chinese tend to be more direct, as they prioritize harmony in conflicting situations and respects for the elders. The Indians are known to be polite and adopt indirect communication (Hei et al., 2015). However, the silence adopted by Malaysians is not viewed as negative and futile. It helps to maintain harmony, although it is not necessarily to show agreement (Kuang et al., 2010). Therefore, despite the advantages offered by the Small Claims Court, its application remains constrained due to the ethnic cultural values and norms that discourage confrontation and public disputes.

Courts in Malaysia practice the common law adversarial system. Under this system, the parties through their legal representative, control and administer their cases in the best manner from their perspective. The court or the judge will not direct or dictate on how the case will be presented. The judge will take a passive role and merely presides at the hearing. From the judges' perspective, parties are expected to fully optimise the court process and present their claims. Nevertheless, this has not been fully optimised owing to the parties' lack of knowledge on their rights, the legal procedures, and the remedies offered by the law (Bezdek, 1992). In Malaysia, the resolution of small claims cases varies significantly, depending on the magistrate's involvement in the cases. Empirical analysis in Feliprada and Jawan (2018) reveals that when a magistrate actively assists in reaching for compromise agreements and dedicating specific time in creating a conciliatory environment, a high percentage of amicable settlements and zero percentage of writ of execution are recorded. Conversely, when the involvement of the magistrate is limited, most of the small claim cases will be decided based on the merits which resulted in legal processes and writs of execution. It has been observed that vigorous involvement by the magistrate in negotiation significantly advances the effectiveness and amicability of the small claim dispute (Feliprada & Jawan, 2018). In resolving disputes between landlords and tenants, the existing dispute resolution mechanism offered by the civil courts does not provide a win-win solution to the disputing parties (Isa et al., 2022, 2023; S. Ismail et al., 2019; Suffian, 2012; Wai, 2017).

As argued by Mohamad (2015b), parties resorting to litigation will incur heavy financial expenditure and loss of time waiting for the settlement of the dispute. She has further asserted that litigation or adjudication does not offer the best solution to the parties. Additionally, a more detailed argument has been presented by Olapade et al. (2019), in which they have argued that the procedure of litigation is dictated by the statutes; hence, it must be followed strictly. Any deviation from such procedure will frustrate the whole process. Moreover, the use of litigation will likely destroy any goodwill between the landlord and the tenant, diminishing any prospect of future dealings. Hence, parties without sufficient financial resources may choose to go without legal representation to pursue their cases in the courts. Without legal representation and a limited understanding of the procedure, the parties may not be able to present their case well and secure a fair deal. Apart from financial constraints, the parties also tend to be poorly informed of their legal rights and this may result in a judgment obtained by default (Cassidy & Currie, 2023; Feliprada & Jawan, 2018; Poppe & Rachlinski, 2016).

The present paper presents the findings of a study that highlights the need to reform the existing legal framework for resolving tenancy disputes by introducing alternative dispute resolution (ADR) mechanisms. The study examined Malaysian laws governing tenancy matters, the impact of court litigation on both landlords and tenants, the advantages of the ADR in addressing tenancy conflicts, and the legal frameworks and practices of the ADR in Ireland and New South Wales in the context of tenancy dispute resolution. Hence, in this paper, discussions revolve around the following key issues: the need to provide alternative dispute resolution mechanism in tenancy dispute; the effects of courts litigation on the landlord and tenants; the benefits of alternative dispute resolution (ADR) in resolving tenancy disputes; and the law and practice of the ADR in Ireland and New South Wales in the resolution of tenancy disputes.

METHODOLOGY

The present study adopts the doctrinal method of research in which references were sourced mainly from the statutory provisions to examine the laws relating to tenancy dispute resolution in Malaysia, Ireland and New South Wales, Australia. In addition, court decisions, newspaper reports, ministry policy papers, and journal articles were also analysed to support the use of the ADR in resolving disputes between the landlord and the tenant. The purpose of studying the practices in New South Wales and Ireland was to identify best practices in this matter (Isa et al., 2022; Robbins, 2009). The data collected were analysed using the thematic content analysis method. The paper is divided into the following seven sections: (i) Introduction, (ii) Malaysian law on Tenancy Disputes (iii) Advantages and Disadvantages of the ADR in Tenancy Disputes, (iv) Tenancy Law and the ADR practice in Ireland, and (v) tenancy law and the ADR practice in New South Wales (vi) Recommendations and (vii) Conclusion.

Reference is made to the best practices in Ireland and New South Wales as these jurisdictions have enacted specific residential tenancies laws and regulations that share similar characteristics with the policy in Malaysia, where homeownership is promoted and the increasing demand for rental housing is given equal importance (Bennett, 2017). Malaysia's aspiration for homeownership reflects a similar inclination observed in jurisdictions such as in Ireland and New South Wales (NSW), where owning a home is traditionally and politically preferred (Adnan & Hamzah, 2014; Hamzah et al., 2024; Ismail & Hamzah, 2017; Sirr, 2014). In these contexts, rental housing is typically viewed as a provisional or transitional option, rather than a long-term tenure option (Ismail et al., 2019). The amendment to the legislations in Ireland and New South Wales are due to the needs of "generation rent" (Bennett, 2016; Howard, 2023; McKee et al., 2020; McKee Kim, Mihaela Soaita Adriana, 2019; Zheng et al., 2019). This trend is also growing in Peninsular Malaysia as many young people prefer renting because it offers flexibility and avoids long-term mortgage instalments. While owning a house is still a goal, renting allows them to save money towards buying a house in the future (Yi, 2021).

In both Ireland and New South Wales in Australia, the use of the ADR in resolving residential tenancy dispute has attracted significant attention through the establishment of specialised tribunals. These two jurisdictions, albeit foreign, provide an important framework for Malaysia, especially in how legislative reforms have been implemented to support the inspiration of using the ADR in resolving residential tenancy dispute. Ireland implemented the Residential Tenancies Act 2004 which formalised the protection of tenancy right to both parties and introducing a mechanism of dispute resolution outside the conventional courts. The state of New South Wales in Australia introduced the Residential Tenancies Act No. 42 of 2010 which has since been implemented in parallel with the Residential Tenancies Regulation 2019, both of which have improved the legal framework for the management of residential tenancy and its dispute.

DISCUSSION AND FINDINGS

Introduction

In Malaysia, homeownership has remained a primary choice, with the national homeownership rate reported at 77.5 percent in 2019. However, the percentage for rental has been increasing steadily at 20% as of 2019 (S. Ismail et al., 2015). It has been observed that the reasons for the increase are due to the following factors: the high cost to purchase a house, inability to secure housing mortgage, and the scarcity of affordable housing (Badrudin et al., 2022; Si & Yi, 2018; Yaacob et al., 2025). Although

preferences for home ownership remain high, the perception for renting remains positive as it allows renters the flexibility to relocate for job opportunities or to save for their dream house (Ahmad@Baharum, 2023; Anuar & Wahab, 2022). With the increasing demand for rented properties, the legal and institutional framework regulating the rights of the parties to a tenancy should be strengthened to protect their interests, as the majority of tenants come from the lower income group. These situations call for protection over the right to housing, especially in Malaysia.

Although the right to housing is not explicitly guaranteed under the Federal Constitution 1957, Consumer Protection Act 1999, or any other written law, it must be regulated under the Ministry of Housing and Local Government (Ismail et al., 2018). The right to housing incorporates access to rental housing, which constitutes a critical component of secure and adequate living arrangement. In championing the right to housing, it is important that proactive and systematic interventions be implemented to prevent eviction. The settlement of disputes between the landlord and the tenant through amicable and equitable means is important in mitigating the risk of displacement, especially when eviction is frequently triggered by factors extending beyond rent arrears (Olapade et al., 2019).

Legal frameworks serve as a significant mechanism in addressing such disputes, especially when causes of eviction are complicated and rooted on socioeconomic factors. As noted by Holl et al. (2016), these causes include rent arrears, nuisance and improper use of housing, financial problems (e.g., sudden decrease in income and loss of employment), lack of financial skills, and lack of knowledge (e.g., underutilization of available subsidies, assistance, and care). Accordingly, the promotion of alternative dispute resolution mechanisms and the execution of targeted and preventive measures are important to promote housing stability and uphold the right to housing for those who are renting (Holl et al., 2016).

Landlord and tenant are not categorised as consumers under the Consumers Protection Act 1999 [Act 599]. In any disputes, both parties must rely on their contractual terms regardless of whether in oral or written form. For the tenant, an important tenancy issue is eviction, which can potentially lead to homelessness. For low-income earners, the salary received may be insufficient to pay for rental and other expenses (Ramli & Dawood, 2019). Unsurprisingly, most tenants would default, opting to attend court to defend their case when summoned. The tenant may move out even though the eviction proceedings have yet to be completed. At any stage of the proceedings, the tenant may give up the rented property when the tenant feels the legal process is too intimidating, expensive, and that there is little hope to continue living in the rented premises (Hartman & Robinson, 2003).

Apart from the formal eviction process, eviction can be done involuntarily with the landlord or landlord's agent serving notice informing the likelihood of rent increase, alleged violations of terms of the tenancy agreement, refusal to renew the tenancy, or force the tenant to leave the premise due to the uninhabitable condition of the premises (Balzarini & Boyd, 2020; Fowle & Fyall, 2024). Some landlords even pay the tenant to leave the rented premises (Decker, 2021). In discussing the disputes between the landlord and the tenant, the imbalance of ability to assert and claim legal rights and duties between the parties may increase the risk of eviction to the tenants. In the absence of legal representation, the tenant facing eviction may have to face lawyers engaged by the landlord and as a result, many tenants do not assert or claim their rights, and often agree to unfair conditions or get evicted (Desmond & Bell, 2015).

Conversely, for landlords, in circumstances when a dispute arises, they are left with the option to recover possession from the tenant, which can only be done by way of a court process. Recovery of rental premises through litigation is highly regulated and can cause landlords to incur losses in the course of

regaining possession of their property (Hanim, 2017). In this regard, the landlord is viewed as the party enjoying the advantages that advances their interest, as against the interest of the tenant, resulting in the existing private tenancy system being regarded as exploitative. The current system allows for exploitative practices by the landlord, thereby depriving the tenant of a secured tenancy. Nevertheless, the landlord would be at a disadvantage of their right to recover the rented premises from a tenant automatically by virtue of Section 7 of the Specific Relief Act 1950 (Kader et al., 2015).

The exact costs incurred in a civil litigation cannot be quantified as the recoverable amount is decided on a case-by-case basis. The amount of fee arranged between the lawyers and clients might not be disclosed (Maxeiner, 2010). Billing arrangements can vary based on the issues involved, lawyer client relationship and expectations, involvement of expert opinion and related costs and types of cases. A case might get complicated owing to other contributing factors as it progresses (Hannaford-Agor, 2013). Lawyers who charge their client a contingency fee also contribute to the delay in litigation as the courts are burdened with frivolous claims (Burbank, 2002). In Malaysia, all matters relating to costs are stipulated in Order 59 Rules of Court 2012, and item 15 of the Schedule in the Court of Judicature Act 1964 empowers the High Court to award costs. Generally, the losing party pays the costs of the successful party except in very special and rare circumstances (Maxeiner, 2010).

Malaysian Law on Tenancy Disputes

In 2018, the Ministry of Housing and Local Government proposed to introduce the Residential Tenancy Act (RTA) to address pressing issues on tenancy. The primary objective of the proposed RTA was to establish a fair, transparent, and accessible legal framework that would govern the relationship between landlords and tenants in Malaysia. It was aimed at addressing the limitations of outdated common law principles by introducing modern legislation to make the rental sector more competitive and enhance governance, without compromising the rights and interests of the parties involved. Initial feedback was received from the opponents of the proposed RTA, who had argued that the tenancy arrangement should be left at the mercy of the bargaining power of the parties and the market. Matters such as standard residential tenancy agreement, rental amount, and security deposit should be determined by the landlord and the tenant. Thus, interference from the government through the introduction of a specific act would not be welcomed ("NST Leader: Tenancy rights and wrongs", 2023). At present, the law regulating the relationship between the landlord and the tenant is based on piecemeal provisions provided by the National Land Code 2020, Distress Act 1951, Civil Law Act 1956, and Specific Relief Act 1950 (Suffian, 2012). The lack of a specific law in administrating the tenancy process has created disputes over a period of time (Azmi et al., 2019).

In resolving any dispute between the landlord and the tenant, a civil suit to claim for relief and damages would usually ensue. However, the process and procedure in civil litigation may cause the parties involved to incur additional costs in terms of finances and other resources. For failure to pay rent, a landlord can terminate the rental agreement after the expiration of notice, and the tenant would vacate the premises. In cases where the tenant refuses to pay rent and refuses to vacate the premises, the landlord may seek remedy to recover the unpaid rent under the Distress Act 1951. The landlord will apply a warrant of distress to recover the unpaid rent for a period not exceeding 12 months. The court will send a bailiff to seize the tenant's property, subject to conditions, and to sell the property in order to recoup the rental arrears. In the event where the tenant refuses to vacate, the landlord under Section 28(4) of the Civil Law Act 1956, can double the rent until the tenant vacates the property. Depending on the nature and complexity of the matter, Section 65(1) of the Subordinate Courts Act 1948 gives jurisdiction to the Sessions Court to resolve the dispute between the landlord and the tenant.

Parties are prevented from taking self-help remedies to redress their grievances. According to Abdullah et al. (2023), most landlords resort to self-help measures due to the absence of a specialised mechanism to resolve disputes between the landlord and the tenant outside the existing court system. By adopting self-help measures, the landlord is enforcing their contractual rights speedily without engaging in any legal proceeding and bypassing formal legal procedures (Abdullah et al., 2023). Issues relating to the self-help remedies were considered in the case *Trustees of Leong San Thong (Khoo Kongs) v. Poh Swee Siang* [1987] 2 MLJ 661. Prior to the amendment of Section 7 of the Specific Relief Act 1950 in 1992, the word used is “may” and it indicates that it is permissive, discretionary, and is not obligatory on the part of the landlord to resort to court proceedings to gain repossession of their property. The amended Section 7(2) of the Specific Relief Act 1950 stipulates as follows:

“Where a specific immovable property has been let under a tenancy, and that tenancy is determined or has come to an end, but the occupier continues to remain in occupation of the property or part thereof, the person entitled to the possession of the property shall not enforce his right to recover it against the occupier otherwise than by proceedings.

The effect of the amended Section 7(2) of the Specific Relief Act 1950 can be seen in the following cases: *Nur-Islam Worldwide Industries Sdn. Bhd. v. Yee Kok Sum* [2001] 7 CLJ 494, *Dr. Harjit Singh v. Suhaimi bin Samat & Anor* [1995] MLJU 109, and *SME Aerospace Sdn. Bhd. v. Steyr Mannlicher (M) Sdn. Bhd* [2006] 5 CLJ 121. By locking the premises let to the tenants, the landlord’s action violates the amended Section 7(2) of the Specific Relief Act 1950 which eliminates the remedy of self-help for landlords looking to repossess their property. The intention of the parliament by enacting this section is to show that possession of the premises can only be obtained by way of court proceedings. Though it may be agreeable between the parties in the tenancy agreement, the remedy cannot be resorted when a tenant is in possession of the premise. Section 8(1) of the Specific Relief Act 1950 enforces the right of a tenant who has been wrongfully dispossessed other than in due course of law to sue his landlord. In *Metro Charm Sdn. Bhd. v. Lee Nyan Hon & Brothers Sdn. Bhd.* [2007] 5 MLJ 272, it was held that failure by the landlord to comply with the mandatory requirement under section 7(2) of the Specific Relief Act 1950 will subject the landlord to compensate and reinstate the tenant to his/her prior position before the unlawful eviction takes place.

Advantages and Disadvantages of the ADR in Tenancy Disputes

As has been justified in this paper, the need to establish an alternative dispute resolution (ADR) forum to resolve the disputes between the landlord and the tenant is imminent. The ADR is an alternative mechanism to resolve disputes other than through a court process. The most common ADR mechanisms are arbitration, mediation, negotiation, neutral evaluation, and conciliation. The determination of a suitable ADR mechanism is based on the type of disputes, financial position of the parties and the urgency for settlement of the dispute (Ansari et al., 2020). Mediation or conciliation may be a suitable option for dispute which requires quick solution. There may be a situation where arbitration may be a better option for the disputant if the case involves a high-profile case with significant monetary consideration but needs faster resolution. However, arbitration is still highly procedural as it is governed under the Arbitration Act 2005. Therefore, if the amount of claim is very minimal, it may not be practical to go through the process of arbitration.

The benefits of the ADR are diverse. The parties are less likely to return to the court to enforce the judgment agreed within the period of 12 months. This is most likely because the parties can control the outcome and resolve the issue by proposing an amicable solution that is mutually agreed. In all ADR mechanisms, the disputing parties will have the opportunity to listen and understand each other's perspectives. This also paves the way for preserving the relationship between the parties, this is because when they vent their grievances to each other in the process, the burden can be lifted. This can provide parties with a sense of empowerment, responsibility, and satisfaction with the decision that was voluntarily and jointly made without coercion (Charkoudin et al., 2017).

The ADR assists the parties by avoiding the costly and time-consuming litigation process (Lebovist & Hidalgo, 2010). The settlement of disputes by adopting ADR mechanisms will help preserve the relationship between the parties, as well as maintain their reputation, privacy, and the confidentiality of the dispute. The use of the ADR allows parties to be creative in proposing remedies, especially when involving non-financial decisions which suit the needs of the parties, as compared to a typical decision made by the court (McGregor, 2015). Empathy, flexibility, patience, and considerable listening skills are important abilities for a person appointed to resolve the issues of parties to a conflict through ADR mechanisms, particularly through mediation. The ability of the mediator to look below the surface of the facts and underlying issues to detect and understand the parties' needs and interests is also important. A satisfactory mediation outcome is designed to be a win-win situation. It is to be cautioned that for dispute resolution through the ADR, there must be a balance of power between the disputants to avoid the risk of unfairness in any mediatory or conciliatory decisions.

Although the ADR mechanisms are often praised for their advantages, Ceno et al., (2015) have argued that there are also notable disadvantages that cannot be ignored. The ADR has notable drawbacks. Decisions made through the ADR cannot be regarded as judicial precedents as they are not binding court rulings; instead, both disputing parties design their own outcomes. Another characteristic of the ADR is that the compensation awarded may be lower, as it is the parties that negotiate the terms of settlement. In terms of cost, arbitration can be expensive due to high arbitrator fees (Ceno et al., 2015). Conversely, community or family mediation is generally free of charge.

In Malaysia, the embodiment of the ADR can be seen in the setting up of tribunals, such as the Tribunal for Homebuyer Claims (hereinafter referred to as the Homebuyer Tribunal) under the Housing Development (Control & Licensing) Act 1966 and the Tribunal for Consumer Claim under the Consumer Protection Act 1999. Most of the provisions, wordings and subheading under these tribunals are similar; hence, discussion of one tribunal will also reflect that in another. The Housing Development (Control & Licensing) Act 1966 is a social legislation where it is designed to protect the right of the home purchaser against the developer. In the Tribunal for Homebuyers Claim, a homebuyer may bring action against the housing developer for various causes of action for a number of times. Most importantly, the limit of claim is MYR50,000.00, which will best serve the low-cost housing purchaser. In adopting the aforementioned mechanism, the setting up of a tribunal for private residential tenancy will help the parties to the tenancy, especially the tenant in addressing the cause of action on matters such as defect on the rental premise, the unregulated rental increase and eviction exercise by the landlord and any other relevant matters. The proposed tenancy tribunal should be able to entertain any claim from the landlord and the tenant with various financial capability, including those who are low- and middle-income earners. To achieve these aspirations, the proceeding in the tribunals should be simple and does not involve legal fees, appointment of lawyers and complicated procedures.

Disputes between landlords and tenants necessitate the resolution procedures that are cost-effective, timely, enforceable and accessible. Among the ADR mechanisms, mediation is argued to be most effective and appropriate mechanism for resolving housing related disputes. By employing this mechanism, it will allow for the resolution of disputes through a relatively low cost while preserving the ongoing relationship between the parties. Mediation is suitable to be adopted for both inside or outside the tribunal process as the objective of this adoption is to assist the parties in reaching a mutually agreed solution (Mohamad, 2015a; Olapade et al., 2019). With the help of a third neutral party, both the landlord and the tenant will be assisted in reaching a solution that is acceptable to them and which can be formalised as a consent judgment, and are legally enforceable by court subject to the fulfilment of contractual principles (Feehily, 2013). As a customized consensual decision, mediation will avoid a win and lose decision (Dahlan et al., 2021). Additionally, negotiation remains an effective mechanism to resolve minor disputes when both parties show willingness to negotiate, compromise or corporate.

According to Maidin (2020), a mediator performs a variety of roles that are beyond the functions of a judge in any judicial proceedings. Unlike a judge whose main function is to adjudicate based on the facts and law presented by both parties, a mediator assists as a transmitter of information in creating a constructive communication and mutual understanding between the disputing parties. Essentially, a mediator positions himself as a reality checker in differentiating between wants and needs of both parties in a dispute, prompting them to consider the consequences of prolonged conflict and the cost of litigation (Maidin, 2020). Another perspective is presented by Roby (2025), who argues that mediation provides practical benefits to the disputing parties. For the landlord, employing mediation will allow for a quicker return of vacant possession of rented properties and the possibility of negotiating a scheduled rental arrears payment plan. This is financially beneficial to the landlord who can then recover any losses, especially when the tenant is judgement-proof, that is, lacking in any seizeable assets to satisfy any court decision (Roby, 2025). This approach is particularly advantageous because such a tenant may be agreeable to pay a smaller amount of rental arrears over time rather than relying on a court decision which may not be enforceable. Conversely for the tenant, the mediation process provides a cooling period that will allow the landlord and the tenant to find other alternative housing options while serving the instalment of rental arrears.

Tenancy Law and the ADR Practice in Ireland

The Residential Tenancies Act 2004 (RTA) was established to modernise and promote professionalism in managing the rental sector by implementing a longer security of tenure and a specialised dispute resolution mechanism (Buckley, 2019). One of the most prominent features is the Irish Private Residential Tenancy Board (PRTB) or *An Bord um Thiono'ntachtai' Co'naithe Pri'obha'ideacha*, a body empowered to regulate the private and public housing providers (e.g., Approved Housing Bodies [AHB]), hear and resolve disputes between the landlord and the tenant at an efficient and cost-effective level, maintain a national register of all private residential tenancies, AHB and student-specific accommodation, and to conduct research and offer information for policy purposes and the public.

The idea of establishing a specialised mechanism of dispute resolution was a recommendation made by the Commission on the Private Rented Residential Sector in July 2000, which had addressed the disadvantages of court proceedings in resolving disputes between the landlord and the tenant, especially in terms of cost and time. Therefore, the board should provide an ADR mechanism which would be accessible to landlords, tenants, and others. The awareness of accessible and effective dispute resolution can be evidenced from the practice of the landlord and the tenant in resolving disputes over deposits, where both parties will settle their disputes through the Small Claims Procedure (SCP). The SCP

operates effectively by employing an informal dispute resolution mechanism and anecdotal evidence procedure. Hence, based on these two scenarios, a suitable, cheap, and speedy dispute resolution should be an alternative for the public to resolve any issues relating to tenancy (Byrne & McArdle, 2020).

Effective 1st July 2019, the RTA provides for the power of the PRTB to attend to complaints, investigations, and sanctions procedure to regulate the rental sector. The investigation can commence proactively, with or without any complaint of potential breaches by the landlord or the tenant (Norris, 2011, 2014). The PRTB can apply to impose fines of up to €15,000.00 if it is found that improper conduct has been committed. Along with the existence of the Tenancy Tribunal in resolving disputes between the landlord and the tenant, there are various alternative mechanisms employed, such as face-to-face mediation, telephone mediation, adjudication, and appeal. These methods are important to provide speedy and efficient resolution. Among the top three issues in disputes are rent arrears, validity of notice of termination, and deposit retention. The availability of the dispute resolution service to the landlord depends on whether the tenancy is registered with the PRTB, as registration of tenancy is obligatory to the landlord under Section 134(1) of the RTA 2004. According to Section 83(2) and (3), the PRTB cannot deal with disputes referred to it by the landlord if the tenancy is not registered under Part 7 of the RTA 2004. However, tenants can avail themselves of the dispute resolution service, even if the tenancy is not registered, with the exception that the tenancy is exempt from registration under the RTA 2004.

The dispute resolution process can be initiated by completing a Dispute Application Form which must be submitted either physically to the PRTB or online. There are three stages in the PRTB dispute resolution process.

In stage one, the PRTB inspires the parties to resolve disputes among themselves by providing information on their websites on the responsibilities of the landlord and those of the tenant, and the procedures to prevent and resolve disputes. This stage one is also known as self-resolution where the disputing parties privately resolve disputes between them. Additional support is given, such as through the webchat or online chat function to help the disputants resolve the disputes.

Stage two consists of an informal and confidential mediation or adjudication stage. The parties are at liberty to choose either mediation or adjudication. It should be noted that while telephone mediation service is also provided, neither side of the parties is required to attend the mediation session. Once the choice is made, then a PRTB mediator or local adjudicator will be appointed. The supportive and non-confrontational process will explore each perspective and find a resolution agreeable to both parties. If a settlement is reached, then a Determination Order is made based on the settlement.

In stage three, if a settlement could not be reached within 21 days after statements of mediation or adjudication are served, or one of the parties appealed against the decision, then a Tenancy Tribunal shall be established. A Determination Order will be made based on the findings of the Tenancy Tribunal and failure to comply with the order will result in enforcements through a court sanction. An appeal to the Tenancy Tribunal can be made when a mediation agreement cannot be reached or has broken down, or the adjudicator's decision is rejected. The cost of application is €100.00, while the online application mode is €85.00. The members of the Tribunal comprise three dispute resolution committees and its hearings are held in public. At the end of the hearing, the Tribunal will issue a Determination Order which will outline the decision of the case, the terms that must be adhered to, and the period of compliance. Since 4th June 2019, all Determination Orders must be published by the PRTB.

Tenancy Law and the ADR Practice in New South Wales

Section 7(1) of the Civil and Administrative Tribunal Act 2013 (Act 2013) sanctioned the establishment of the NSW Civil and Administrative Tribunal (NCAT) on 1st January 2014. Four divisions have been established under Section 16(1) of Act 2013 and issues related to tenancy are governed under the Consumer and Commercial Division. The applicable guiding principles have been developed to facilitate quick, cheap, and just resolution in proceedings. The NCAT must ensure that the parties understand the procedure or decision made during the proceedings and parties must be provided with the opportunity to be heard, for their submissions to be considered. Before making any decision, all relevant materials must be disclosed, and evidence can be presented either orally or in writing. This is to safeguard the rules of natural justice and the aspiration to be free from legal technicalities. The use of a resolution process (i.e., a process in which assistance is provided to the parties to the proceeding in solving or narrowing down the issues between them) is promoted whenever appropriate and this is provided for under the Civil and Administrative Tribunal Regulation 2013 (“CAT Regulation 2013”).

Under the CAT Regulation 2013, mediation is conducted as a structured negotiation process in which a mediator acts as an independent and a neutral third party to assist the parties to achieve their own resolution to the disputes. The aim of mediation is to break down disputes, and it is not a means to decide who is right and who is wrong, who has a solid case and who has a weak case, or which party will prevail over the other. The mediation acts as a path to bring parties to an agreed solution to the disputes. The mediator, however, will not make a decision, as the settlement of the disputes is between the parties and the parties cannot be forced to settle or accept any solution arrived at, though each has to act and negotiate in good faith. The mediation session can be undertaken by a mediator appointed by the parties or appointed by the NCAT. It is very important to note that when the NCAT decides or gives effect to any agreement between the parties, it must take into consideration the interest of any vulnerable person. It is also important to consider the interest of tenants who may not be able to assert or claim their legal rights properly. Notwithstanding the opposition from the parties, mediation can be ordered by the court or the tribunal, although the process may be pointless and viewed as a waste of money. However, mediation can be a successful process despite the reluctance of the parties due, or to fear of being weak if they agree to mediation in the first place. Accordingly, mediation provides a constructive and non-adversarial platform for landlords and tenants to resolve disputes through mutual agreement, promoting long-term harmony in residential tenancies. By focusing on collaboration rather than blame, mediation helps parties reach practical solutions while considering the needs of vulnerable tenants, often at a lower cost than that of a formal litigation.

RECOMMENDATIONS

In view of the existing law in resolving disputes between the landlord and the tenant, it is suggested that a specific legislation known as the Residential Tenancy Act be introduced to regulate the landlord-tenant relationship. The current Malaysian laws are based on piecemeal legislations; hence, parties can only settle disputes by court action which can be expensive, cumbersome, and time-consuming. Therefore, the present study has proposed the following recommendations:

First, a residential tenancy tribunal should be established to promote a speedy, cheap, equitable and just resolution between the parties. In doing so, the use of the ADR mechanism must be specifically provided to promote an amicable dispute resolution between disputing parties. The mechanism of dispute resolution can exist in the form of negotiation, mediation, or adjudication by a neutral third party, or a

hybrid of these. Drawing from the strength of the best practices in Ireland and New South Wales, it is proposed that a specialized residential tenancy tribunal for Malaysia may incorporate a hybrid dispute resolution model that promotes efficiency, fairness and accessibility. The three-stage process by the PRTB in Ireland can be adopted. The process starts with self-resolution where the parties will be assisted with online resources and webchat assistant to help the parties to resolve the issue by themselves. Following this, neutral mediators appointed by the PRTB or by the parties will offer a confidential mediation either in person or telephone, or via any medium the parties prefer. Inspired by the best practices in New South Wales, mediation in resolving residential tenancy dispute should be incorporated as a collaborative process, especially involving vulnerable tenants such as single mothers, people from the low-income bracket and victims of domestic violence. Mediation should be embedded as a mandatory preliminary procedure to be adopted within the tribunal, with the chairman bearing the responsibility of ensuring that all avenues of mediation have been exhausted. If mediation fails, the formal proceeding with published written decision should be made available to the parties concerned. This integrated model would support a conclusive, fair, accessible system for resolving residential tenancy disputes.

Second, to strengthen the aforementioned aspiration, the use of online services such as *WhatsApp* or *Telegram* applications, telephone or any other communications services should be actively promoted. These tools are cost-effective and practical in encouraging early engagement between the disputing parties. This application should begin at the self-resolution stage immediately after the tenancy disputes are registered with the proposed residential tenancy tribunal by either of the parties. By offering this accessible digital platform, parties have the opportunity to resolve their disputes without having them to attend physically. This digital platform also helps to reduce all the operational costs, such as the maintenance of physical rooms and administrative facilities. More importantly, these inclusive and responsive approaches will help the vulnerable tenant, who may face challenges in attending the session or proceedings in person. These approaches reflect a modern and effective model of dispute resolution which aligns with the aspiration to provide accessible justice in matters regarding residential tenancy in Malaysia.

Third, alternative interventions such as supportive measures provided by social welfare departments, Malaysian International Mediation Centre, non-governmental organisations (NGOs), legal aid bodies, and community services should be introduced to assist tenants facing issues such as rent arrears, anti-social behaviour, or legal proceedings before a tribunal. This is to prevent the issues between the tenant and the landlord from worsening. For example, as often is the case, the failure to pay rent is also associated with a complex mixture of social, financial and health factors. Other factors including lack of knowledge, feeling of shame, and lack of trust may lead to the underuse of rightful subsidies and the provision of financial assistance to the tenant.

CONCLUSION

The present study has shown that ADR mechanisms do offer various choices for disputing parties to identify the best dispute settlement method. A participatory and facilitated negotiation process may increase the number of resolved cases before an adjudication process begins. This is because a “one-size fits all” approach associated with court proceedings may not give fair resolution to the parties concerned. Advocates of the ADR mechanism allow the parties in a dispute to employ “self-resolution”, thereby embracing the philosophy of empowerment. This will enhance the respective party’s voice in addressing the dispute and provide improved access to justice. The ADR is not only an alternative to

court proceedings, but it is also desired as it promotes a participatory process, a win-win solution, the preservation of relationship, and can be embedded within the current justice system. The settlement of disputes can be speedier, simpler, cheaper, more convenient and accessible, especially to those from the low-income group who have no choice but to stay in a rental premise. By learning from the best practices in Ireland and New South Wales, it has become imperative that for a more harmonious, affordable, and fair resolution of tenancy disputes in Malaysia, its law governing tenancy adopts the ADR as the way forward mechanism in landlord-tenant relationship.

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