Eviction

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Glossary

Arrears of rent Rent not paid by the due date; rent owing.
Eviction The permanent and involuntary expulsion of occupants from their residence.
Forced eviction Term used usually in connection with mass evictions, relocations, or resettlement without due process of law; frequently in the context of, for example, major development projects, land clearances, or major events.
Security of tenure The right to remain in occupation of premises; security of tenure may be strengthened (increased) or weakened (reduced) by law reform.
Self-help Enforcement of alleged rights by direct action (often physical force) without recourse to legal proceedings.

Introduction

Eviction highlights the distinctions between ‘housing’ and ‘home’. The essence of an eviction is the permanent and involuntary expulsion of people from their place of residence. An eviction gives effect to a stronger claim on the property than that of the occupants. The superior claim may originate in local property law; it may stem from planning and development controls; in some cases it may simply reflect greater power (state or private) exercised directly with minimal legal constraint.

Although robust and comprehensive data are hard to come by, studies have consistently shown that the risk of eviction is spread unevenly. Eviction is more likely for the poor, the marginalised, and the vulnerable. It may trigger or exacerbate other problems; after eviction families may fracture; physical and mental health may deteriorate; and homelessness and social exclusion may result.

Eviction marks the limit of security of tenure and is governed primarily by domestic law and practice, reflecting local factors such as the prevailing legal culture, community expectations, policy priorities, and political realities. However, the impact of international human rights law is increasingly inescapable, both within domestic law and in the international arenas. Security of tenure has been increasingly addressed within the human rights domain. Housing rights, evictions, and the right to security of tenure have been firmly linked, placing security of tenure in the category of legal entitlements arising under the International Covenant on Economic, Social, and Cultural Rights (the ICESCR). The international perspective facilitates structural challenge, contesting the balance struck in domestic law between occupation and eviction. The following discussion considers the present and evolving role of eviction from residential premises. It first considers ‘eviction’ understood as tenant eviction, regulated by domestic (national) law. It then considers the development of a human rights jurisprudence on eviction based on international instruments.

Tenant Eviction

Defining Eviction

‘Eviction’ is a term that can include any situation in which occupants are obliged to move from their housing at the instigation of another, usually without compensation. This could include ‘eviction’ by a mortgagee lender. However, the following discussion focuses primarily on the eviction of tenants and other occupiers with even more precarious rights, such as licensees and squatters.

Eviction is most frequently associated with tenancy. From a common law perspective, Woodfall defines it as “something of a grave and permanent character done by the landlord with the intention of depriving the tenant of the enjoyment of the demised (rented) premises”. It is the most acute manifestation of the landlord’s interest in the property, reflecting the landlord’s decision to act; evictions do not take place at the tenant’s initiative. Woodfall’s description is helpful in capturing the essence of eviction without tying it specifically to any particular stage of the process. The term is often used informally to indicate only the final (and most visible) stage: the forcible physical exclusion of resisting or uncooperative residents in execution of an order for possession.

However, this restrictive use is not justified by law, as Woodfall makes clear, nor does it indicate the dynamic of eviction in practice. Whatever the legal system, there will be sequential stages in the eviction process. Some tenants may leave as soon as a problem is identified by the landlord, even before the ‘issue’ has developed into a ‘dispute’. Others may leave in anticipation of the dispute being
formalised, or later in anticipation of judgment or later still, in anticipation of enforcement of the judgment. There are, therefore, a number of exit points available in an eviction process. Departure at any of them may be treated as ‘an eviction’. The details of the process will embody the balance struck by that legal system between the interests of landlords and tenants, the balance between ‘house’ and ‘home’.

Any tenure other than ‘ownership’ is inherently limited and potentially precarious. It will include a risk of displacement. Occupiers whose legal status is less legally privileged than tenancy, such as invitees, licensees, or squatters, are vulnerable to a wider range of superior claims. They will also experience a more perfunctory process, including, for example, shorter notice periods and less potential for challenge.

Data on Evictions

Evictions have been called ‘the hidden housing problem’ because of the absence of robust, comprehensive data that could illuminate the incidence and impact of tenancy failure. As Stenberg and van Laere comment in their groundbreaking survey of eviction in nine (European) ‘modern welfare states’, published in 2009: “Finding figures for evictions in different countries is not an easy task. If available at all, statistics are often published in local languages and numbers are only given for some of the stages in the process from the first reaction of the landlord to the executed eviction.” However, studies reveal common themes and trends. Investigations of ‘vulnerable’ or ‘precarious’ tenancies have contributed insights into the precipitating factors of eviction and have lead to the development of early intervention and eviction prevention strategies by social landlords.

This section draws on the small body of published work to present an overview of current understandings. The studies mostly focus on the Anglosphere and Western Europe, including Australia (South Australia, Tasmania, Victoria); Canada (Ontario); England; the Netherlands; Sweden; and the United States with two more broad-based surveys outlining the field. Eviction in Central and Eastern Europe after the privatisation and restitution of public rental has not yet been extensively researched. Priemus and Mandic in 2000 referred to “a no man’s land: a sector where a landlord likes to stay out of and which public authorities want to abandon as soon as possible”. A range of issues including potential claims based on historic ownership, restrictive rent policies, shortcomings in the regulation of mixed ownership estates, and the ambiguity about security of tenure have “put rental housing in Central and Eastern Europe in an uncomfortable position” and the dynamics of eviction in this environment still await extensive study.

Who is evicted?

Research has shown that evictions occur disproportionately in the private (not the public) rental sector. Several studies identify groups overrepresented among evictees: people living alone, single parents, and ethnic minorities (including indigenous people). Women and other people on low incomes are especially vulnerable. An Australian study in 2003 found a clustering of eviction cases in the poorest postcodes. Reported rates of eviction vary. For example, 10 executed evictions per 1000 rented dwellings (Austria, 2003); 3.6 evictions per 1000 dwellings (Dutch social housing sector, 2007); 5% of the total rental stock (Massachusetts, 1990s); 1.2% of renter households (New York, 2001); 10% (San Jose, CA, 2000); and 5% of all terminating tenancies (South Australia, 2001). However, the quality and range of data available are inconsistent, so comparisons across jurisdictions are indicative at best.

What are the triggers for eviction?

Rent arrears are identified as the most frequent trigger for eviction, accounting for 75–90% of cases. The Lex Mundi study of dispute regulation in 109 countries used eviction for rent arrears as one of its two featured actions because it is so typical of “default on an everyday contract in virtually every country”. In some cases of arrears, claims may mask more complex issues between landlord and tenant that are harder to prove. Other triggers for eviction quoted with some regularity include antisocial, or nuisance, behaviour leading to complaints from neighbours; poor maintenance of the property; and the landlord’s impending sale of the property or intended reoccupation of it. There are also reports of a small but regular number of ‘no cause’ evictions in those jurisdictions that permit them. Tenants often believe these actions are motivated by discrimination or interpersonal landlord–tenant relations or serve as retaliatory evictions. In some jurisdictions, the landlord’s aim in seeking a formal order is not to make the tenant move but to formalise an agreed repayment plan. Social landlords in several jurisdictions have now developed proactive arrears management strategies to avoid the accrual of large arrears that lead to evictions.

Tenant disengagement

Studies have consistently shown very few tenants take part in formal hearings. In some cases, they may not have received notice of the proceedings or may not have appreciated the urgency of the matter, as was shown to occur in Ontario. However, nonparticipation seems to be symptomatic of a more pervasive disengagement, noted particularly in Australian, British, and US accounts. An Australian study found that among invitees interviewed, a high proportion of tenants were ‘dispute shy’, in that they would abandon the premises early rather than dispute with the landlord or contest the eviction. Over 70% of
this group of 150 had quit the premises even before a formal notice to leave had been delivered. In some cases, their decision probably reflected an accurate assessment of the strength of their position. However, the study also revealed very low levels of help-seeking. Those who had sought advice or support had almost all approached others within their existing networks: relatives, workmates, support workers, professional contacts (such as social workers or church leaders), or even the police. This happened despite the availability locally of tenants’ advocates and advice services. In rent arrears claims the opportunity often exists to negotiate and agree a repayment plan, so early abandonment is especially unnecessary, bringing not only physical dislocation, stress, and uncertainty but also the likelihood of credit blacklisting and a resulting legacy of problems securing accommodation. However, the findings echo studies of access to justice that demonstrate the paralysing impact on vulnerable groups of problem clustering and voicelessness. The low rates of engagement reflect tenants’ helplessness and hopelessness, as well as exhaustion from the existing challenges of lives that may be compromised by chronic illness, mental health, and dependency issues or the demoralisation of poverty.

The impact of eviction
This will vary depending on individual circumstance, particularly the availability and resilience of support networks. However, the eviction of low-income tenants creates a real risk of homelessness. Evictees may not immediately become rough sleepers: an Australian study found that initially most evictees joined the hidden homeless—‘sofa surfing’ with friends; residents of insecure shared accommodation (e.g., boarding house or hostel rooms); and families sleeping in their cars. Finding a new independent home was challenging, especially when tenant databases showed a record of eviction, whatever the cause. Sharing with friends or relatives was unlikely to be a sustainable solution, jeopardised by overcrowding and stress. The eviction may have resulted in the loss of personal and domestic goods, especially if storage space was not available (or affordable). This complicated the reestablishment of an independent home. Moving away from familiar areas in the search for cheaper accommodation meant the loss of networks, increased isolation, compromised support, children changing school, increased travelling times, and compromised health and well-being, at least in the short term. Where mental health, chronic disease, or substance-dependence were involved, dislocation had even more significant impacts. Some families split up, reconstituting themselves as smaller, more easily accommodated households to share with family; some relationships broke down irretrievably; and in some cases, children were taken into care. In Sweden, men who had been evicted had noticeably worse health than their peers, and their mortality was five times higher than expected when compared with that of the general population.

Delimiting Eviction, Defining Security
Although historically eviction may have been effected by direct self-help methods of physical violence and threats, it is now converted into a court process. As indicated by the Lex Mundi survey of dispute regulation in 109 countries, this process is broadly similar across many jurisdictions. The Lex Mundi study highlights the two factors that delimit security of tenure in any particular system: the content of relevant substantive legal rules and the operation of the legal process. Both factors show considerable variation across jurisdictions, resulting in very different risks of eviction for tenants.

Substantive aspects
The law that governs eviction is tailored to reflect a locally accepted balance between landlords’ rights and the rights and interests of tenants. The balance may shift in relation to community expectations. Residential tenancy laws in the jurisdictions of Canada, New Zealand, and Australia were significantly redrawn between 1960 and 1990, for example, simplifying claims and extending tenants’ rights. Less fundamental shifts may be introduced by altering individual features of the scheme. For example, the availability of ‘no cause’ evictions favours landlords and limiting eviction to a finite list of ‘causes’ increases tenants’ security of tenure. More indirectly, restrictions on rent revision (frequency and quantum) can affect the sustainability of tenancies and the risk of eviction.

Just cause’ eviction: Many jurisdictions limit eviction to a fixed list of situations. These include a breach of one or more tenancy obligation such as arrears of rent (although the amount of arrears triggering the right to evict varies considerably: 7 days in Sweden, 3 months in Latvia); nuisance or antisocial behaviour; and failure to maintain the premises. The list may also include occasions such as the landlord’s need for the property and the imminent sale of the property, although issues of proof may arise in such cases. Some jurisdictions (e.g., South Australia) also continue to include ‘no cause’ evictions, subject to longer notice to quit. Although there is often a prohibition on retaliatory eviction by landlords, this may be hard to prove behind a no cause eviction.

No-fault evictions: The Supreme Court in Department of Housing and Urban Development v. Rucker (00-1770) 535 U.S. 125 (2002) upheld the department’s right to evict a tenant for drug-related criminal activity by household members ‘on or off’ the property, even though the tenant is ‘innocent’. The provision is echoed in many
nuisance clauses in tenancy agreements and tenancy statutes, although the 'one strike' policy seen in Rucker has not been quick to spread.

**Failure to renew a fixed-term lease.** Where the agreement is for a fixed period, traditional principles determine that it then expires automatically. Where the standard tenancy is short, 6 months or 12 months, tenants may be left in regular apprehension of eviction. In some jurisdictions (e.g., France) there are minimum terms prescribed by law (3 years for unfurnished properties, 1 year for furnished properties) and fixed-term leases renew automatically for the same period (Italy) unless notice is given in writing by either party (France; Victoria).

**Periods of notice.** Short notice periods for landlords' notices can seriously disadvantage the tenant. Allocation of the risk (vacancy or lack of shelter) and management of that risk through the length of notice required is an interesting reflection of the balance struck by regulation between the parties.

**Opportunity to make good the breach.** Where a tenant has breached the lease, many systems require time to remedy the breach before formal action can be begun, for example, arrears paid, property tidied, and behaviour changed. Some systems (e.g., Latvia) allow repayment of arrears at any point until an order for eviction is carried out.

**Discrimination.** Antidiscrimination law may be considered primarily in the context of securing a tenancy. However, it may also help strengthen security of tenure and challenge eviction. Examples include sex discrimination arguments raised by victims of domestic violence (United States); disability discrimination arguments used by a compulsive hoarder threatened with eviction (Australia); and criticisms of alleged structural ethnic or racial discrimination in the operation of eviction boards (Hawaii).

**Discretion.** One of the factors of 'defendant protection' in eviction cases seen in the Lex Mundi study is consideration of the tenant's economic situation at the points of judgment and enforcement. Some legal regimes confer discretion in specified circumstances (England) or more generally (France) and many provide power to postpone enforcement either generally or in specified circumstances (Italy).

**Differential security.** Differential security of tenure depending on legal status or type of residence is not unusual. Distinctions may be drawn, for example, between tenants, subtenants, cotenants, and contractual occupiers. This can cause confusion, potential expense, and risk, especially where people share accommodation. Similarly, differing legal regimes may apply to residents of caravan parks, boarding houses, retirement villages, and common interest developments, conferring widely different security of tenure and liability to eviction.

**Procedural Factors**

The risk of eviction comes not only from the content of the law described earlier but also from the procedures that apply when the law is invoked. These may favour one party. An imbalance of power between residential landlords and tenants has long been recognised, and in jurisdictions where renting is predominantly a tenure of poverty, the formal legal process may exacerbate tenants' vulnerability. Provision of 'accessible' courts, interpreters, advocacy support, debt or budget advice, and links to welfare support and cultural support may all help restore some balance. Factors that exacerbate the imbalance include accelerated eviction procedures; the absence of accessible information, advice, and advocacy; a requirement of legal assistance without legal aid; and a slow, expensive, ineffective system for dispute resolution, as landlords' frustration may encourage 'self-help'.

**An International Perspective**

Since 1945, a substantial human rights jurisprudence has developed around the right to adequate housing. This right has been variously expressed in numerous human rights instruments, notably the Universal Declaration of Human Rights (Art. 25, para 1) and the ICESCR (Art. 11, para 1). Other significant treaties potentially relevant to housing and homelessness and thus to issues of eviction include the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the Convention Relating to the Status of Refugees; the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families; and the Convention against Torture.

Evictions may be successfully challenged directly under these treaties. For example, in Vojnovic v. Croatia, UN Doc CCPR/C/95/D/1510/2006 (28 April 2009), having exhausted all domestic avenues of redress, Mr Vojnovic made a complaint to the United Nations Human Rights Committee under the ICCPR against the Croatian government regarding its treatment of him and his family. The Human Rights Committee held that a lawful termination of tenancy rights under Croatian law amounted to an arbitrary interference with the right to home and violated Article 17 of the ICCPR, the right not to have one's privacy, home, and family unlawfully or arbitrarily interfered with.
While it is increasingly possible to invoke human rights arguments, and international human rights instruments on occasion, in the context of individual evictions, much of the focus internationally has been on ‘forced evictions’ as defined in General Comment No. 7.

**Forced Evictions in International Law**

*General Comment No. 7* UN Doc E/C.12/1997/4 defines ‘forced evictions’ as “the permanent or temporary removal against their will of individuals and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (para 3). Examples given by the United Nations include:

- dams and other energy projects, land acquisition or expropriation, housing or land reclamation measures, prestigious international events (Olympic Games, World Fairs etc), unrestrained land or housing speculation, housing renovation, urban development or city beautification initiatives, and mass relocation or resettlement programmes.

Such mass evictions were declared to be “a gross violation of human rights” by the World Conference on Human Rights in Vienna in 1993. In 2004, the UN Commission on Human Rights, Resolution 2004/28 on Prohibition of Forced Evictions, reaffirmed this and ‘strongly’ urged “governments to undertake immediately measures… aimed at eliminating the practice of forced evictions”.

Miloon Kothari in his 2004 and 2007 reports as UN Special Rapporteur on Adequate Housing also focused on the issue of forced evictions, reflecting their continuing prevalence. Indeed, the most recent international survey of forced evictions, for the period 2003–06, by the Centre on Housing Rights and Evictions (COHRE) reported “over 2 million people in Africa and almost 3.5 million people in Asia and the Pacific have been forcibly evicted from their homes since 2003. Furthermore, nearly 175 000 people in the Americas and over 16 000 people in Europe have been evicted from their homes in the same period.” The European data are illuminated further by the report, *Housing conditions of Roma and Travellers in the European Union*, launched in October 2009. This identifies “the forced eviction of Roma and Traveller families” as “a recurrent problem which often results in de facto homelessness and violates Member State obligations under international human rights law”.

**Conclusion**

Evictions remain a feature of rental housing. Tenants, and others who are not homeowners, are at risk of eviction in a
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range of circumstances that differ from legal system to legal system. Generally, poorer citizens are more at risk than their more affluent and secure fellows, and research indicates that many people faced with, or fearing, eviction will anticipate the event and move on without negotiating or attempting to defend a claim. The developing human rights jurisprudence, both internationally and within national legal systems, promises help to some who are threatened with eviction. It may accelerate the development of a new equilibrium between the occupation and investment views of residential premises: between ‘home’ and ‘house’.

See also: Housing Pathology; Rights, Citizenship, and Shelter; Rights to Housing Tenure; Security of Tenure Legislation in Private Rental Housing; Slum Clearance; Squatter Settlement Clearance; Urbanisation and Housing the Poor: Overview.

Further Reading


