

Awareness Series 10: Renting a house should give shelter, not stress—A rental Maze walkthrough - Living Securely

(A CSR initiative)



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Renting a house in India involves navigating a blend of legal formalities and practical issues for both the landlord and the tenant. While tenants seek secure and fair terms for accommodation, landlords must safeguard their property and income stream. This comprehensive guide provides detailed insights into the rental process, including legal remedies, safeguards, and significant case laws.

It is very important to know the difference between Rent agreement and Leave and License agreement before entering into any contract. Below is the deliberation on both:

I. Leave & License:

It does **NOT transfer any interest in the property**. It only gives **permission to use**. Short-term stay (usually 11 months), Landlord wants easy repossession, you don't want tenant claiming permanent rights, Paying monthly "license fee" instead of rent

When to use this?:

You are renting your flat temporarily, you want flexibility, you want easier eviction, it is residential use

II. Basic Formalities of a Rent Agreement.

A rent agreement, also referred to as a lease agreement, is a formal contract outlining the terms under which a landlord rents out property to a tenant.

- I. Names and addresses and identity details of both parties
- II. Description of the property
- III. Duration of tenancy (typically 11 months)
- IV. Monthly rent, security deposit, and payment terms
- V. Responsibilities for maintenance and utilities
- VI. Terms of renewal, termination, and notice period
- VII. Clause regarding rent escalation and subletting
- VIII. Conditions for eviction or vacating the premises
- IX. Clause for purpose / use of property

1. Landlord's Perspective: Rights and Safeguards:

The landlord must ensure the legal sanctity and security of their property. The following safeguards are recommended:

- i. **Written and Registered Agreement**
All agreements exceeding 11 months must be compulsorily registered under the Registration Act, 1908. Unregistered agreements may not be admissible in court.
- ii. **Police Verification of Tenants**
It is mandatory in many states to get the tenant verified by the local police. It helps identify any criminal antecedents and builds trust. Landlords in Gurgaon face strict legal action, including fines of up to **₹5,000** or criminal cases under IPC sections, for failing to complete online tenant police verification.
- iii. **Security Deposit**
Landlords generally take 2–6 months' rent as a refundable security deposit. This covers potential damages and unpaid dues. Deposits are capped at **1 month's rent** for residential properties and up to **2 months** for commercial spaces in Delhi and Gurgaon. Residential deposits are capped at a maximum of **2 months' rent**, while commercial deposits are capped at **6 months**.
- iv. **Inspection Rights**
Include a clause allowing periodic inspection of the property after providing notice.
- v. **Rent Payment Defaults**
Include penalties for delay in rent payment and provisions for termination in case of default.
- vi. **Foreign Tenant Reporting:** If renting to a foreign national, Gurgaon landlords must submit **Form-C** to the local police; as of early 2026, police have booked scores of owners for non-compliance with this rule.

2. Tenant's Perspective: Rights and Responsibilities:

Tenants must ensure they are not taken advantage of and that their rights to peaceful enjoyment of the property are protected. Key considerations include:

i. Registered Agreement

A registered agreement offers greater legal security. Tenants should avoid oral or informal arrangements.

ii. Receipts and Documentation

Always collect rent receipts and retain a copy of the agreement. Document the condition of the premises when moving in.

iii. No Arbitrary Eviction

Tenants can only be evicted as per the agreement or with due notice under the applicable rent control laws.

iv. Rights to Essential Services

Landlords cannot cut off water or electricity services as a means to force eviction

v. For properties still under the older 1958 Act, rent can only be increased by **10% once every three years**. For new agreements under the updated framework, hikes must be pre-agreed in the contract, typically following an annual notice of 90 days

III. Legal Remedies Available

a) Remedies for the Landlord

- i. File an eviction suit under the State Rent Control Act
- ii. Claim arrears of rent or damage to property through civil courts
- iii. Seek police help in cases of trespass or unlawful occupation
- iv. Apply for recovery of possession upon expiry or violation of agreement

b) Remedies for the Tenant

- i. Seek injunction against illegal or forceful eviction
- ii. Lodge complaint before the Rent Controller for harassment or excessive rent demand
- iii. File suit for refund of security deposit or compensation for harassment

Both landlords and tenants must operate within a legal framework that ensures mutual trust, fair practice, and enforceability. Proper documentation, adherence to statutory obligations, and awareness of rights and remedies help in building a hassle-free rental experience

IV. Landlord's Rights When a Tenant Refuses to Vacate Rented Premises in India:

landlord-tenant disputes are primarily governed by:

- the Transfer of Property Act, 1882, state-specific Rent Control Acts,
- the Model Tenancy Act, 2021 (where adopted by states),
- Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for certain criminal aspects of landlord-tenant disputes, such as criminal trespass

Landlord has following rights:

- i. **Right to Terminate Tenancy:** Under Section 106 of the Transfer of Property Act, 1882, a landlord can terminate a lease by serving a written notice, specifying a reasonable period (typically 15 days for monthly tenancies or as per the lease agreement). If the tenant fails to vacate, the landlord can initiate legal proceedings.
- ii. **Right to Evict for Valid Grounds:** The Rent Control Acts and the Model Tenancy Act, 2021 outline grounds for eviction, including non-payment of rent, subletting without consent, misuse of property, causing nuisance, damage to property, landlord's bona fide requirement, or major repairs/reconstruction. These grounds remain unaffected by the BNS and BNSS, as they are civil in nature.
- iii. **Right to Recover Possession:** If a tenant refuses to vacate after lease expiry or a valid eviction notice, the landlord can file an eviction suit in a civil court or approach the Rent Controller under state laws or the Model Tenancy Act.
- iv. **Right to Claim Compensation:** Under Section 108(o) of the Transfer of Property Act, 1882, landlords can claim mesne profits for unauthorized occupation post-lease termination. Courts may award compensation based on market rent. Mesne profits are essentially damages representing the profits the wrongful possessor actually received or could have received from the property, along with interest.
- v. **Right to Protection Against Criminal Trespass:** If a tenant forcibly occupies the property after lease termination, the landlord can invoke provisions of the Bharatiya Nyaya Sanhita, 2023 for criminal trespass:

- i. Section 329 of BNS: Defines criminal trespass as unlawfully entering or remaining on property with intent to commit an offence, annoy, intimidate, or insult the owner. Punishment includes imprisonment up to three months, a fine up to ₹500, or both. If the tenant changes locks or prevents access, this section applies.
- ii. Section 330 of BNS: Addresses house-trespass, where a tenant unlawfully remains in the property after lease termination, with punishment up to one year imprisonment, a fine up to ₹5,000, or both.
- vi. **Right to Police Assistance:** Under Section 38 of BNSS, police officers have the power to assist magistrates and courts in executing orders, such as eviction orders issued by a civil court or Rent Controller, ensuring the landlord regains possession.
- vii. **Right to Reasonable Notice:** The landlord must provide reasonable notice (15–90 days, depending on lease terms or state laws) before seeking eviction, ensuring compliance with due process.
- viii. **Right to Inspect Property:** Under the Model Tenancy Act, 2021, landlords can inspect the property for maintenance or repairs with 24 hours' prior notice, at a reasonable time (e.g., 7 AM–8 PM).

V. Can a Tenant Claim Ownership Rights?

Tenants generally cannot claim ownership of rented premises under a valid lease agreement, as their possession is permissive. The principle of “once a tenant, always a tenant” applies, preventing ownership claims unless specific conditions are met, such as adverse possession under the Limitation Act, 1963 or he becomes a statutory Tenant under the Statute. The BNS and BNSS do not directly govern ownership claims but provide criminal remedies if tenants unlawfully retain possession.

A. Conditions for Adverse Possession

Under the Limitation Act, 1963, a tenant may claim ownership through adverse possession if:

- i. There is Continuous and Uninterrupted Possession: The tenant occupies the property openly for at least 12 years (private property) or 30 years (government property) without permission.
- ii. There is Hostile Possession: The tenant denies the landlord's title and asserts their own claim openly.
- iii. There is Open and Notorious Possession: The possession is visible and known to the landlord.
- iv. There is Non-Payment of Rent: Rent payment acknowledges the landlord's title, vice versa being adverse possession.

Even for Income Tax Act purpose a person who acquires any rights in or with respect to any building or its part by virtue of original or extendible lease for a term of not less than twelve years shall be considered as owner of such property.

The following documents are required to claim adverse possession:

- i. Property Tax Receipts
- ii. Utility Bills
- iii. Maintenance Records
- iv. Testimonials from Neighbours
- v. Any communication or proof indicating owner's awareness of the possession

Safeguards:

- i. evidence rent payments or a lease agreement
- ii. Serve eviction notice or suit within 12 years
- iii. landlord can approach the Rent Authority with the rent agreement and notices. The Rent Authority may issue an eviction order
- iv. File a Police Complaint for Criminal Trespass
- v. File for a permanent injunction in a civil court to prevent the tenant from interfering with the property or claiming ownership

A significant Indian Supreme Court ruling on April 25, 2024 (Justices Abhay S. Oka and Ujjal Bhuyan) established that for a claim of adverse

possession to succeed, the plaintiff must prove they know who the property's true owner is and that they had uninterrupted possession for over 12 years, with the original owner being aware of this possession. This reiterates principles from cases like *Mallikarjunaiah v. Nanjaiah* (2019), which emphasized the need for possession to be open, hostile, and known to the true owner.

Key Principles from the Latest Rulings:

- **Knowledge of True Owner:**

The party claiming ownership through adverse possession must be able to identify the actual, true owner of the property.

- **Uninterrupted Possession:**

The possession must be continuous for the statutory period of 12 years, as per Article 65 of the Limitation Act, 1963. Article 65 of the Limitation Act, 1963 sets a 12-year limitation period for filing a suit for possession of immovable property based on title. And Article 65(b) of the Limitation Act, 1963 sets a 12-year time frame from when possession becomes adverse to the plaintiff, within which a person entitled to possession of property upon the death of a Hindu or Muslim female must file a suit

- **Owner's Awareness:**

The original owner must be aware of the possession, and the possession must be open and hostile to their title.

Why these are landmark rulings:

- **Plaintiff as "Sword":**

These judgments affirm that a person can use adverse possession as a "sword" to acquire ownership, not just as a "shield" to defend their possession as a defendant.

- **Conditions for Adverse Possession:**

They clarify the strict conditions required to prove a claim of adverse possession, emphasizing that mere continuous or permissive possession is not enough to constitute adverse possession.

- **Emphasis on Awareness:**

The requirement of the original owner's awareness of the possession is a critical aspect that must be established by the party claiming adverse possession.

B. Conditions for Statutory Tenancy:

A statutory tenancy is a legal status that a tenant acquires after their initial contractual lease has expired, but they continue to occupy the property and pay rent. This type of tenancy changes its character between the landlord and tenant. It gets created through **statute**, meaning it's established by specific rent control laws and the tenant is called statutory tenant with wider rights. The key purpose is to grant tenants security of tenure, preventing landlords from evicting them without a valid, legally-defined reason.

The process of becoming a statutory tenant is governed by the specific rent control legislation of the state. In many places, a tenant can become a statutory tenant if they:

- Have a valid **contractual lease** that has expired.
- The rent is **below Rs 3500 pm**
- Continue to **pay rent** to the landlord after the lease ends.
- The landlord **accepts the rent** even after the lease has expired.

VI. Eviction and Dispute Resolution

Rent Tribunals: Disputes are now handled by specialized Rent Courts/Tribunals aiming for resolution within 60 days, bypassing slow civil courts.

Protection from Force: Landlords cannot use forceful eviction, lockouts, or cut off essential services like water and electricity. Such actions are now legally punishable.

Grounds for Eviction: Valid reasons include non-payment for two consecutive months, misuse of the property, or structural changes made without permission

VII. Case Study:

If I give my house on rent for 11 months lease to tenant and if he does not vacate after 11 months and lease is not renewed, then does he become statutory tenant in Delhi and I cannot evict him?

Here is a analysis of the situation based on the Delhi Rent Control Act, 1958:

The Role of the Delhi Rent Control Act (DRC Act)

The Delhi Rent Control Act, 1958, is a specific law designed to protect tenants from arbitrary eviction and excessive rent hikes. The concept of a "statutory

"tenant" is a creation of this Act. However, the Act does not apply universally to all rental properties in Delhi.

2. The Crucial Rent Threshold

The most important provision for your case is Section 3(c) of the Delhi Rent Control Act. This section states that the Act does not apply to any premises, whether residential or commercial, whose monthly rent exceeds Rs. 3,500.

- If the monthly rent of your house is Rs. 3,500 or less: The Delhi Rent Control Act, 1958, applies to your property. In this case, if your tenant does not vacate after the 11-month lease expires and continues to pay rent, they may be considered a "statutory tenant." Once they acquire this status, you can only evict them on specific, legally defined grounds mentioned in Section 14 of the Act. This means you cannot simply evict them because the lease has expired. You would have to prove a legitimate reason, such as non-payment of rent, misuse of the property, or needing the property for your own bona fide residential needs. The eviction process can be lengthy and must be done through the Rent Controller's court.
- If the monthly rent of your house is more than Rs. 3,500: The Delhi Rent Control Act does not apply to your property. Your tenancy will be governed by the Transfer of Property Act, 1882. In this scenario, when the 11-month lease expires and is not renewed, your tenant does not become a statutory tenant. They are considered a "tenant holding over" (or "tenant at sufferance"). While you cannot forcefully evict them, you have the right to initiate legal proceedings to regain possession of your property under the Transfer of Property Act. This process is generally less restrictive and can be quicker than an eviction under the DRC Act.

Practical Advice

The common practice of creating an 11-month lease agreement is precisely to avoid the more stringent provisions of the Delhi Rent Control Act, which apply to leases of a year or more. The 11-month agreement is a "leave and license" agreement and is not a lease that requires mandatory registration, which is required for leases of one year or more under the Registration Act.

To protect yourself as a landlord, it is crucial to:

- Ensure the monthly rent is above Rs. 3,500 to keep the tenancy out of the purview of the Delhi Rent Control Act.

- Include a clear clause in your rental agreement stating that the tenancy will terminate at the end of the 11-month period and that the tenant agrees to vacate the premises.
- Do not accept rent from the tenant after the 11-month period has expired if you do not intend to renew the lease. Accepting rent after the lease ends can be interpreted as your consent to a continued tenancy.
- Serve a legal notice to quit immediately after the lease expires if the tenant has not vacated, as this is a mandatory step before filing a civil suit for eviction.

In Uttar Pradesh (Including Noida, Ghaziabad, and Lucknow)

Uttar Pradesh has introduced a modern law, the **Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021** (UP Tenancy Act). This new law has replaced older, more tenant-friendly laws and is a game-changer for landlords.

- **No Statutory Tenancy:** Under this new Act, there is no concept of a "statutory tenant" who gets indefinite protection.
- **Written Agreement is Mandatory:** The law requires a **written tenancy agreement** for all tenancies.
- **Clear Eviction Process:** If a tenant's lease expires and they do not vacate the property, they are considered a "tenant holding over." The landlord has a clear right to initiate an eviction process through the **Rent Authority** established under the Act. The Act provides specific grounds for eviction, such as non-payment of rent, misuse of the property, or the landlord requiring the property for their own use. The eviction process is designed to be much faster and more transparent than in the past.
- **11-Month Lease:** The 11-month lease is still a common practice to avoid registration requirements under the Registration Act, but it's important to have a clear agreement that states the tenancy is for a fixed term and the tenant will vacate upon expiry.

In essence, if your property is in Uttar Pradesh, your tenant does not automatically become a statutory tenant, and you can evict them after the lease expires by following the legal process outlined in the new Act.

In Gurgaon (Haryana)

The situation in Gurgaon is governed by the **Haryana Urban (Control of Rent and Eviction) Act, 1973**. This law is older and tends to be more protective of tenants, similar to the Delhi Rent Control Act.

- **Statutory Tenancy exists:** The concept of a statutory tenancy **exists** in Haryana. If a tenant's lease expires but they continue to occupy the property and the landlord accepts rent, they can become a statutory tenant.
- **Strict Eviction Grounds:** As a landlord, you **cannot** evict a statutory tenant in Gurgaon just because the lease has expired. You must prove a specific, legally defined reason for eviction, such as:
 - The tenant has not paid rent.
 - The tenant has used the property for a purpose other than what was leased.
 - You require the property for your own or your son's bona fide residential or commercial use.
 - The tenant has caused a nuisance.

Eviction via Rent Controller: Any eviction process must be initiated through the **Rent Controller**, and it can be a long and complex process.

Seek professional help for complex cases.

VIII. Remedies under other Acts:

- **Bharatiya Nyaya Sanhita, 2023 (BNS):**
 - Section 329: Replaces Section 441 of IPC for criminal trespass, applicable when a tenant unlawfully remains on the property with intent to annoy or intimidate the landlord. Punishment: up to 3 months imprisonment, ₹500 fine, or both.
 - Section 330: replaced the concept of house-trespass, previously defined in IPC Section 442. Section 330 of the BNS now defines and penalizes offenses related to "House-trespass" and "House-breaking. Punishment: up to 3 years imprisonment, fine, or both.
- **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS):**
 - Section 38: Replaces Section 37 of CrPC, empowering police to assist magistrates and courts in executing eviction orders.

- Section 41: Replaces Section 41 of CrPC, allowing police to arrest without a warrant for cognizable offences like criminal trespass, subject to conditions like preventing further offences or ensuring proper investigation.

IX. Renting to Foreign Nationals:

Renting a house in India to foreign residents involves several special considerations due to legal, regulatory, cultural, and practical factors. Below is a concise yet comprehensive overview of key points to consider:

- I. Foreigner Registration: Foreign tenants (except Overseas Citizens of India) must register with the Foreigners Regional Registration Office (FRRO) or Foreigners Registration Office (FRO) within 14 days of arrival if staying longer than 180 days. As a landlord, ensure the tenant complies, as you may need to provide a copy of the lease agreement during registration.
- II. Documents Required: Verify the tenant's passport, visa (e.g., employment, student, or business visa), and proof of address. Ensure the visa is valid for the lease duration.
- III. Lease Agreement: Draft a clear, legally binding lease agreement registered at the local sub-registrar's office (mandatory in some states for leases over 11 months). Include:
 - i. Tenant's passport and visa details.
 - ii. Rent amount, payment terms, and security deposit.
 - iii. Clauses on maintenance, repairs, and termination.
 - iv. Restrictions on subletting or illegal activities.
- IV. C-Form Reporting: Landlords must submit a C-Form (a report of foreign nationals staying at their property) to the local FRRO/FRO or police station within 24 hours of the tenant moving in. This is mandatory under the Foreigners Act, 1946.
- V. Police Verification: Many states require landlords to conduct police verification of tenants (Indian or foreign). Submit tenant details, including passport copies, to the local police station to avoid legal issues.
- VI. Tax Implications: Rental income is taxable under Indian law. If the tenant is a foreign national, ensure compliance with the Income Tax Act: Deduct Tax at Source (TDS) at 2% if the monthly rent exceeds 50000 ₹2.4 lakh per year (as of 2025). For Non-Resident Indians (NRIs) or foreigners, TDS rates may vary (typically 30% unless a Double Taxation Avoidance Agreement applies).

VII. Obtain a PAN card for yourself and the tenant (if applicable) for tax purposes.

X. Practical Comparison for Common Man

Situation	Better for Landlord	Better for Tenant
Short stay (city rental)	Leave & License	Acceptable
Long stay (3+ years)	Risky	Lease
Commercial property	Lease	Lease
Want easy eviction	Leave & License	Not ideal
Want strong legal protection	Not ideal	Lease

Key Takeaways and Caution:

1. Always make sure whether you want Leave and Licence Agreement or Rent Agreement. Wrong draft can turn the leave and Licence agreement into Rent Agreement.
2. Courts look at: Who has possession? Duration? Control? Intention of parties? Not just the title of document. A badly drafted Leave & License can become a Lease in court.
3. Always have a written agreement: This is the most critical step you can take. A clear and comprehensive lease agreement, even for just 11 months, is your best protection. An 11-month notarized agreement is no longer sufficient for legal protection in specialized Rent Courts
4. Know your local laws: Do not assume that the rules in one city or state are the same as in another. A quick search for "Rent Control Act [Name of City/State]" can provide valuable information, but a legal consultation is always the safest bet.
5. Keep a record of all transactions: Whether you are a landlord or a tenant, always maintain a record of rent payments, communication, and any notices sent or received. This documentation is vital in case of a dispute.

REMEMBER

"Renting a house should give shelter, not stress - Know Your Rights, Secure Your Home!"

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