

The Attribution of Decoration In House Lease Contract

-- Thinking Based on The Understanding and Application of Judicial Interpretation in The Trial of Urban Housing Lease Contract Dispute Cases

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Abstract

Since the 21st century, the cost of developing commercial housing has been increasing, and the rise of real estate investment wave has heated up the real estate market. At the same time, the government also introduced a number of favorable policies to accelerate the flourishing growth of the real estate industry. Under this background, housing prices are starting to rise rapidly, faced with high housing prices, many people began to turn to the rental market. There are many contradictions and disputes between the parties when carrying out house rental market. Facing this emerging industry, other interpretations have been formulated outside the Civil Code in our country in order to protect and mediate the legitimate rights and disputes of the parties. In this paper, the lease contract and some basic terms are explained, through the analysis and discussion of some problems encountered in practice and the interpretation of the specific law, to find the existing disputes and loopholes in the specific law. The law promulgated in 2009 has made effective provisions on the specific disputes of house rental decoration, but its interpretation still has some deficiencies and ambiguities. In this paper, some practical cases are combined to reflect and refute the deficiencies in its interpretation and put forward some feasible suggestions.

Keywords

Decoration; Tenancy Relationship; Residual Salvage Value.

1. Introduction

In recent years, with the rapid economic development of our country, housing prices have witnessed a historic increase. Along with this, the phenomenon of renting houses has become increasingly popular. Coupled with the current high mobility of people, renting has also become a choice for many young people. one. In order to enhance the living comfort or to meet the rental purposes, most people choose to renovate and decorate their houses, which often involves huge expenditures. Therefore, the issue of the ownership of decoration and renovation items becomes particularly important. The decoration and renovation items are divided into those that have not formed an accord and those that have formed an accord. Many scholars have already made distinctions and explanations for this. This leads to issues regarding the ownership of decoration and renovation items that have not formed an accord and those that have formed an accord, as well as problems such as who should restore the original state of the house due to the damage caused by the removal of decoration and renovation items. Based on this, China issued the Supreme People's Court's judicial interpretation "Understanding and Application of the Judicial Interpretation on the Trial of Urban House Lease Contract Dispute Cases" (referred to as the "Lease Contract Judicial Interpretation", the same below) in 2009.

This judicial interpretation soon became an important reference for resolving such disputes. Although this judicial interpretation has made clear regulations on the decoration and renovation issues of houses for lease, there are still controversies when solving specific and complicated practical problems. This article has some thoughts and suggestions on some specific disputes, for discussion by all.

2. Overview of the House Rental Contract

2.1. The concept and characteristics of the house lease contract

Article 703 of the Civil Code of the People's Republic of China stipulates: "A lease contract is a contract whereby the lessor delivers the leased property to the lessee for use and benefit, and the lessee pays rent." The lease right is a contractual form with relatively high social economic benefits. The purpose of a lease contract is to enable the lessee to obtain the right to use and benefit from the leased property for a certain period of time, rather than to obtain ownership of the property. Therefore, a lease contract merely transfers the lessee's right to use and benefit, without changing the ownership. This feature is different from that of contracts for the transfer of property ownership, such as sales contracts, and has essential distinctions. At the end of the lease contract, the lessee must return the original property of the lease contract to the original lessee. The lessee enjoys the possession of the leased property based on the need for the use benefits of the leased property, but does not have the right of disposition. Because the lessee must return the original thing to others and cannot replace it with something else, this feature of the lease contract is also different from loan contracts. A lease contract for houses is a contract whereby the lessor provides the house for the lessee to use and benefit, the lessor collects rent from the lessee, and the lessee returns the leased house to the lessor upon the expiration of the lease term. Because house leasing is an important means to solve the tenant's right to residence, to ensure the tenant's need for residence, to maintain consistency between the owner of the leased property and the beneficiary of the right to benefit, and to prevent or reduce the possibility of rights conflicts, the law specially stipulates priority purchase rights, priority lease rights, and the lease rights of cohabitants, etc. for the lessee of houses.

2.2. The obligations of both parties in the house lease contract

As the lessor, the following responsibilities should be borne: First, deliver the house as stipulated by the lessee. The delivery of the leased property is an important component of the lease contract. The lessee uses and benefits from the leased house, and the lessor delivers the house in accordance with the provisions of the contract. According to the contract, at the agreed time and place, in the agreed manner, a house that meets the agreed conditions should be delivered to the lessee. Second, maintain the agreed usage and income status of the leased house. During the lease period, the lessor should keep the state of the house consistent with the contract agreement. If damage occurs during the lease period due to reasons other than the lessee, the repair costs should be borne by the lessor. Third, liability for guaranteeing defects. The lessor's guarantee of defects of the leased property can be divided into the guarantee of rights defects on the leased house and the guarantee of the house itself. During the lease period, the lessor should ensure that no third party claims rights against the leased house, thereby not affecting the lessee's usage and income rights of the leased house. This is the guarantee of rights defects. During the lease period, the lessor should keep the leased house consistent with the contract agreement from beginning to end, which is called the guarantee of the object's defects. Fourth, the obligation to return the collateral or deposit. When the lease term of the house ends and the contract terminates, the lessee returns the leased house. Correspondingly, the lessor also returns the deposit or collateral paid by the lessee. This also includes the expenses incurred by the lessee during the custody period when the lessor fails to accept the leased house on time. The lessor should also return them.

As the lessee, the following obligations are imposed: First, in accordance with the contractual stipulations, the lessee shall use, generate income from, and manage the leased property. The lessee should manage the leased property to a certain extent within the scope of use, income generation and maintenance as stipulated in the lease contract. If the lessee exceeds the lease scope of the leased property in the use of the property, he/she shall bear the corresponding liability for breach of contract. Second, rent shall be paid as stipulated. This is the primary responsibility of the lessee. The lessor shall pay the rent to the lessee according to the time, place, amount, method, etc. stipulated in the lease contract. Third, the lease rights shall not be transferred or assigned to others at will. Without the lessee's permission, the lessee shall not sublet the lessee's property to a third party without authorization. Fourth, the leased property shall be returned. When the lease contract terminates or is revoked, the lessee shall return the leased property to the lessor. Although the property has suffered certain wear and tear at this time, the lessee generally does not need to pay additional fees. Within a certain range of normal wear and tear, the rent paid by the lessee already includes this part of the cost.[1]

3. The Determination and Scope of The Manifestation of Consent Made By The Lessor

3.1. Recognition of consent

In the "Lease Contract", the decoration is classified according to different circumstances. The decoration is divided into two types: one is the decoration approved by the lessor, and the other is the decoration without the lessor's approval. The resulting consequences are often completely opposite, which leads to the fact that both parties involved in the dispute hold different opinions on whether the lessor has made an expression of consent. In a certain lease dispute case, it is difficult for the lessee to provide evidence that the lessor has agreed to the decoration. This arbitration ruling holds that before the lessor recognizes the design and construction behavior of the lessee, the lessee's claim that the lessor should bear the expenses for the decoration project lacks corresponding facts and contractual basis. Moreover, based on the contracts and payment vouchers related to the decoration project provided by the lessee, the arbitration tribunal cannot determine the authenticity and relevance of the relevant contracts, nor can it determine whether the relevant contracts have been actually performed. Then, how to determine the lessor's consent in actual judicial trials? As for the lessor's consent to the decoration of its house, it is divided into two situations: express and implied. Express consent is a way of expressing its behavior through direct language, including oral and written forms. For this situation, the lessee can prove it in the litigation process. However, according to previous cases, it is often that the lease and rental parties cannot cultivate such awareness, and the relevant evidence cannot be preserved by the lessee or the lessor has not made a clear statement. Implied consent is divided into two forms: presumptive and silent. Presumptive consent refers to an implicit behavior where the actor expresses his inner intention indirectly through language or other means that can be inferred; silent consent refers to an implicit behavior where the actor expresses his inner intention indirectly through non-action in accordance with legal or contractual provisions.

The determination of implied acquiescence is difficult to distinguish in actual judicial trials. In the above-mentioned case, the first-instance arbitration tribunal held that although Company A contended that Company B did not submit the construction contract and drawings for decoration materials to it, and that the decoration was not approved by Company A, Company B, as the lessor, having the same address as the leased premises, should have known about Company B's decoration activities. There was no evidence to prove that Company A opposed Company B's decoration activities. Although Company A believed that Company B's decoration activities did not conform to the agreement, this could not be used to deny Company A's

indication of acquiescence to Company B's decoration activities. In conclusion, from this case, it can be known that if the indication of acquiescence can be inferred from the specific circumstances of the case, it is also a fair ruling for both parties. The following are some types of default indication that may be inferred in daily life: First, there is evidence to prove that the lessor has visited the decoration site and known about the decoration facts, and has not raised any objections. Second, the decoration state of the house at the time of lease was seriously inconsistent with the intended use of the leased house as stipulated in the lease agreement. For example, if the house is a bare room and the tenant's lease purpose is to operate a business, which necessarily requires decoration. Third, the spatial structure of the house is clearly inconsistent with the intended use of the tenant. For example, if the leased house is a large empty room and the tenant intends to use it as a large staff dormitory. Fourth, the contract clearly stipulates a rent-free decoration period, etc.

3.2. The meaning expressed by "agree" covers the scope of the agreement

The People's Court of Yunyang County, Chongqing City once accepted such a case. On March 15, 2019, the "House Lease Contract" was signed by the plaintiff and defendant Liu. With the consent of both parties, the tenant leased the house to the plaintiff, and the contract stipulated that the purpose of the lease was to operate a training school. Later, due to being informed that the relevant certificates such as the property ownership certificate and fire safety certificate had not been properly obtained, the plaintiff was unable to obtain the qualification for operating a training school. Defendant Liu argued that when renting, it was agreed that the lease purpose was commercial rather than for a training education institution. The tenant changed the nature of the lease contract without authorization, ultimately causing the loss. Therefore, the landlord was not at fault. This point is not stipulated in the "Lease Contract" at all, nor is there any explanation. If the landlord agreed to the decoration, what was the scope of the landlord's consent? Was the complexity, area, frequency, purpose, style, price, and structural change of the tenant's agreed decoration considered to exceed the meaning expression scope of the landlord's consent? In this case, the court held that when the plaintiff knew at the time of signing the contract that the house had no property ownership certificate and fire safety acceptance procedures, but still chose to lease and start the decoration matters, he should bear 30% of the responsibility. The defendant Liu's appeal reasons were not established. This shows that the court does not recognize that the change of the decoration purpose violated the meaning expression of the landlord's consent. Regarding this, some scholars believe that first, in most cases, the leased houses have fixed categories such as residential houses, industrial houses, commercial houses, factories, warehouses, service houses, offices, and educational houses, etc. Therefore, in judicial practice, the types of the leased houses should be the focus of reference. Through the types of the leased houses in the lease contract to infer the normal usage purpose and thereby determine the rationality of the decoration situation. The behavior of conducting decoration beyond the applicable scope of the leased house types can be regarded as exceeding the consent scope of the landlord and without obtaining the landlord's consent. Secondly, if the landlord's consent to the tenant is a subsequent act, then the decoration process at the time of the landlord's consent can be a clear reference. Because the tenant's subsequent consent is obviously clear about the general situation of the decoration and the results formed at the completion time, so it can be presumed that the tenant's agreed decoration range.

Then, regarding whether the consent scope of the lessor includes multiple and continuous renovations, the scholar holds that the answer is affirmative. The reason is that renovations are inherently a continuous act, involving phenomena such as rework and repair. Even renovations carried out due to changes in the overall style for a complete makeover are included. Therefore, in judicial practice, it is difficult to determine whether the renovations are multiple repair

actions. Based on the lease term of the rent, the amount of rent collected, the agreed purpose, and the current condition of the house, the lessor should have reasonable expectations and preparations for the tenant's renovation behavior. However, the author believes that although the lessor has expectations, these expectations are based on the agreed purpose and the amount of rent. The lessor's expectations will be based on general life experience and normal uses and general decoration and renovation of the house type, while the actual renovation situation and purpose of the tenant cannot be guaranteed. In actual cases, it cannot be presumed that the lessor's consent scope includes renovations that exceed the understanding of normal life experience.

4. Disputes Arising Upon The Termination of The Contract

4.1. Compensation Liability in Case of Breach of Contract by One Party

Article 9 of the "Interpretation on Lease Contracts" stipulates that when the parties fail to reach an agreement on the disposal of the decoration items that have formed an agreement-based relationship upon the termination of the contract, the people's court shall handle the matter based on the specific circumstances. Here, we will discuss the disputes involved in the following two situations:

First, if the contract is terminated due to the landlord's breach of contract, and the lessee requests compensation for the residual value of the decoration items during the remaining lease period, it should be supported. Regarding this, some scholars have proposed that since the landlord violated the contractual agreement, leading to the termination of the lease contract, and the lessee has already borne the liability for breach of contract. To impose additional compensation for the decoration items again is unfair to the landlord.[2] However, the author believes that the losses caused to the lessee by the landlord's breach of contract not only include high-value decoration items, but also the efforts made in decoration and renovation, such as the selection of materials during the renovation period, supervision during the renovation, the initial investment and business losses caused by the business-use property, and the time cost spent on finding a new lease property, etc. These additional losses are sufficient to match the liability for compensation borne by the landlord. For the residual value of the newly decorated items, the compensation should be borne by the landlord separately. In addition, the law clearly stipulates that the landlord shall compensate for the residual value loss of the decoration items during the remaining lease period. In most cases, it is calculated by the annual amortization method of the lease term, so it is not the residual value of the decoration items at the time of lease termination. The law stipulates that when signing the lease contract, if the lessee requests the landlord to compensate for the cost of the attached decoration and renovation when the lease term expires, the court shall not support it. Therefore, the time, energy and cost spent by the lessee in decoration will be taken into account as an important reference factor in the lease term. Most of the value of the decoration items will be fully utilized during the lease term, and the lease relationship is prematurely terminated due to the landlord's breach of contract. The present value refers to the engineering appraisal of the existing decoration and renovation items at the time of the dispute occurrence. We can divide the situation into two types: the lessee has consumed most of the value and retained most of the value during the lease period. For the former type, the present value is small, and the compensation by annual amortization is relatively large, which may be unfair to the landlord. For the latter type, the present value is large, and the residual value during the lease period is small, which may be unfair to the lessee. However, there is currently no specific applicable explicit regulations to define the usage situation of its value. Adopting the one-size-fits-all method of using present value will affect the fairness and rationality of actual trial cases.

Secondly, if the contract is terminated due to the tenant's breach of contract, and the tenant demands compensation from the lessor for the depreciation loss of the decoration and fixtures during the remaining lease period, such demand will not be supported. However, if the lessor is willing to utilize them, appropriate compensation can be given within the range of their utilization value. Some scholars believe that the second sentence of the legal provision is simply redundant and nobody would be willing to pay an amount that does not need to be spent. [3]The existence of this sentence has no significance. If the tenant's breach of contract leads to the termination of the contract, the tenant should bear the losses caused by the breach on their own. The first controversy lies in the fact that although the tenant's breach of contract occurred first, the value of the tenant's decoration and fixtures is real. In addition, the contractual liability for breach of contract stipulated previously, if the lessor does not make any compensation, is unfair to the tenant. However, the author believes that for the lessor, their decoration and fixtures may not be in the style and type they prefer. For those who do not like it, it is of no value or even detestable. They may even prefer the tenant to dismantle the decoration and restore the original state. The reason for tolerating the undesirable decoration is the lease term and the rent price. The tenant's breach of contract disrupts the original lease term and makes it impossible for the lessor to collect the originally agreed rent. Moreover, the issue of the tenant's malicious decoration should also be considered. If the court supports such a situation, then the tenant deliberately spends a large amount on decoration and signs a contract with a longer term with the lessor, and then breaches the contract. The lessor not only needs to compensate for the high-priced, disliked style of decoration and fixtures, but also bears certain losses, such as the loss of the original long-term income, the impact of the existing style on the next rental, and the loss of the agreed rent-free period, etc. In conclusion, the author believes that the court's refusal to support the compensation for decoration and fixtures is relatively reasonable.

4.2. Calculation of the value of decoration and renovation items

In Article 9 of the "Interpretation on Lease Contracts", the concept of compensating for the residual depreciation loss of decoration and renovation during the lease period is stipulated when the lease contract is terminated due to the breach of contract by the lessor or the lessee. However, in actual judicial practice, there are different methods for calculating the residual depreciation loss of decoration and renovation during the lease period. This may lead to significant differences in the amount of the calculation, thereby causing injustice. The following will summarize some common methods for courts to determine the residual depreciation loss of decoration and renovation: First, the method of annual amortization based on the lease term. The lessee fully utilized the leased property during the lease term, that is, fully enjoyed the entire value of the attached decoration. However, if the lease term is not yet over, the value brought by the lessee's investment in decoration and renovation has not been fully utilized, and the decoration and renovation still have value during the remaining lease period. The calculation formula is: the decoration and renovation investment cost divided by the lease term, then multiplied by the remaining lease term. Assuming the decoration and renovation cost is 1 million yuan, the contract lease term is five years, and the contract will be terminated three years after performance, then the amortization cost to be deducted is 400,000 yuan. The determination of the decoration and renovation cost is mostly through professional institutions to appraise the engineering cost or by referring to the actual decoration cost. This determination method is more appropriate in disputes over decoration and renovation caused by contract termination, and it reasonably distributes the value during the remaining lease period. However, in invalid contract disputes, this method does not take into account that the contract term between the lessor and the lessee is also invalid, which is unfair to the lessee. Second, the existing calculation value method, which refers to the actual value of the attached decoration and renovation remaining when the contract is terminated or invalid. This method is generally applicable to invalid lease contracts because once a contract is determined to be

invalid, all agreements made between the two parties will also be invalid, and calculating the remaining period no longer has practical significance. When calculating the present value loss of decoration and renovation, the lease term should not be considered as a factor, but the use period of the decoration and renovation should be considered. Depreciation should be made based on the degree of use by the lessee without considering the lease term. This method is easy to grasp and is relatively fair to both parties of the lease contract, and it can be adopted through appraisal. Third, the expense expenditure method, which refers to the actual decoration expenses paid by the lessee. This method does not consider the actual lease term of the lessee, the wear and tear of the decoration, and is extremely unfavorable to the lessor in contract termination. However, this method is widely used in cases of invalid lease contracts because the lease term agreed upon in the contract also loses its validity. Fourth, the method combining residual depreciation value and present value during the remaining lease period. That is, the value of the decoration and renovation is not only considered to be amortized in the agreed lease period, but also to refer to its present value. The amortization cost may be higher or lower than the present value. However, in practice, the principle of "lower is better" is generally adopted. If the amortization cost is higher than the present value, the present value shall be taken as the residual depreciation loss; if the amortization cost is lower than the present value, the amortization cost shall be taken as the residual depreciation loss. For example, if the decoration cost is 1 million yuan, the lease term is five years, and the contract is terminated three years after performance. Then the amortization cost to be deducted is 400,000 yuan. If the present value of the decoration and renovation is 300,000 yuan, the residual depreciation loss is 300,000 yuan; if the present value of the decoration and renovation is 500,000 yuan, the residual depreciation loss is 400,000 yuan. This method, based on amortizing the loss during the lease period and referring to the present value, leans towards the lessor and tries to minimize the compensation amount for the lessor.

Regarding the issues of compensation and indemnification, disputes often arise between the two parties, and they need to be adjudicated by the court. The court may hire professional institutions for assessment, but the cost is often high. If the decoration and renovation value is low, there is no need for such assessment. For such issues, some other methods can be adopted: The court can conduct an inspection of the current decoration situation and make a judgment based on the decoration evidence materials submitted by both parties. This can avoid the high cost of assessment. If the compensation value for decoration and renovation as determined by both parties is not much different, or if the price of hiring a professional institution is much higher than the value of decoration and renovation, the court can avoid using litigation methods and instead adopt mediation methods, thereby facilitating the parties to reach an agreement, avoiding unnecessary lawsuits, and saving human resources and judicial resources.

5. Conclusion

In daily life, the establishment of a lease contract requires the signing of a lease agreement by both parties. As an important piece of evidence after a dispute arises, detailed provisions can be made regarding the specific matters of decoration and renovation. One of the disputes that often occur during lease termination is the determination of the amount of renovation expenses invested by the tenant. Therefore, for the tenant's side, relevant agreements on decoration or construction materials should be well preserved. For the landlord's side, it is necessary to proactively request the tenant to provide relevant drawings of the renovation plan and expected standards, etc., to prevent being unable to provide evidence in case of disputes. In addition, one of the factors affecting the compensation amount for decoration and renovation is the assessment reference date. This date can be clearly stipulated in the lease contract. Both parties need to pay attention to the specific matters regarding renovation, such as the start date

of renovation, the date of completion and acceptance upon finishing the renovation, the date when the tenant starts to use the house, and can also refer to the agreed decoration rent-free period in the contract. When signing the lease contract, specific decoration terms should be clearly stipulated. If the two parties had communicated about this matter before the renovation, relevant records should be saved. In my opinion, for the landlord, if the tenant's use of the house or the style of decoration do not match the original expectations, but the lease contract was signed due to a long-term contract term or high rent, it is necessary to think carefully when the lease expires. After all, the termination of the lease due to the expiration of the lease term is only one of the situations. Once there are situations such as invalid contracts or contract termination due to breach of contract, compensation for the decoration and renovation may be required even if the contract is valid. Therefore, landlords should not have a psychology when renting out houses. They should try to avoid problems that may lead to contract invalidation and handle all the conditions required by the tenant for leasing, such as certificates and qualification certificates of the house, in advance. They should also keep abreast of the safety conditions of the house in a timely manner. For tenants, they should communicate and negotiate with the tenant as much as possible, retain as many written records and proofs as possible, and invite the landlord to inspect the progress and results of the decoration during the renovation period. When conducting decoration and renovation, it is necessary to fully consider the lease term and usage degree. Excessive cost and extravagance will only cause losses to oneself, while being too simple may lead to the inability to fully utilize the decoration purpose. Choosing a decoration that is more suitable for one's own situation can maximize one's own interests. The solutions to disputes arising from lease contracts include reconciliation, negotiation, arbitration, and litigation. No matter when a conflict or dispute arises, active communication and negotiation are the preferred methods. Both parties should abide by the principles of equality, mutual benefit, and honesty and trust to reach a settlement and reach an agreement. If they cannot reach an agreement, they can apply for arbitration to relevant departments. If arbitration fails to solve the problem, they can file a lawsuit with the people's court. The judicial route is our last guarantee for protecting rights. The litigation process includes: First, prepare the complaint and various evidence materials, including the lease contract and other evidence that can prove the other party's violation of the contract. Second, when all the evidence is ready, go to the court within the jurisdiction to file a case. According to relevant regulations, disputes between tenants and tenants are under the jurisdiction of the court in the location of the house. Third, for those who have the qualification to file a lawsuit, the people's court should accept it. In the judicial process, it is recommended to continuously improve the judicial service system, improve the quality and efficiency of judicial services, and provide more convenient and fast judicial services for citizens. In the formulation of judicial procedures, it can be more person-oriented and practical. In addition, it is also recommended to increase the publicity and education of laws and regulations to enhance citizens' legal awareness and legal literacy, avoiding unnecessary disputes. In legislation, it is suggested to enhance the transparency of the legislative process to let everyone understand the process and content of relevant laws and regulations, so as to have a preliminary understanding and recognition of the relevant laws and regulations for lease contract disputes. Increase public participation, make laws and regulations more relevant to people's actual lives, reflect their basic demands, and thereby better serve the people.

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