

# LAW & POLICY UPDATE

## REAL ESTATE



### Analysis of the new Model Tenancy Act

By: Rahul P Jain, Associate Counsel; Khushboo Rupani, Senior Associate & Jai Dhanani, Associate

The Union Cabinet approved the Model Tenancy Act (MTA) on June 02, 2021. The headline feature of this Act is setting up of separate rent authorities, courts, and tribunals at district level for protecting the interest of both the Tenant and the Landlord. MTA will have a prospective effect and both the States as well as Union Territories can adopt the law either by enacting fresh legislation or by amending the existing laws already prevailing.

MTA seeks to cover both urban and rural areas and will apply to premises let out for residential, commercial, or educational use but not for industrial use. The primary requirement under the MTA is that written agreement is a must for all new tenancies which would be governed by the MTA and the said agreement has to be submitted to the concerned District Rent Authority. MTA does not provide for a fixed duration and the amount of rent as these need to be decided by the Tenant and the Landlord mutually through written agreement.

#### Key provisions of the MTA

<b>Definitions</b>	<ul style="list-style-type: none"> <li>▪ <b>Landlord:</b> A person who receives or is entitled to receive, the rent of any premises, on his own account, if the premises were let to a tenant. It includes his successor-in-interest as well as a trustee or guardian or receiver who is receiving rent for any premises or is entitled to so receive, on account of or on behalf of or for the benefit of, any other person such as minor or person of unsound mind who cannot enter into a contract.</li> <li>▪ <b>Tenant:</b> A person by whom or on whose account or on behalf of whom, the rent of any premises is payable to the Landlord under a Tenancy Agreement. This includes any person occupying the premises as a sub-tenant as well as any person continuing in possession after the termination of his tenancy.</li> </ul>
<b>Dispute Redressal</b>	<ul style="list-style-type: none"> <li>▪ A time-bound and robust grievance redressal mechanism comprising of the Rent Authority, the Rent Court, and the Rent Tribunal has been introduced to provide fast-track resolution.</li> <li>▪ The Rent Court and the Rent Tribunal have to dispose of a case within 60 days from the date of its registration as provided under Section 30 of MTA.</li> <li>▪ The Tenant has to continue paying the rent even if there is an ongoing dispute between him/her and the Landlord. MTA bars the jurisdiction of Civil Courts in the case of any conflict between the Tenant and the Landlord.</li> </ul>
<b>Eviction Rules</b>	<ul style="list-style-type: none"> <li>▪ Landlord cannot evict the Tenant during the ongoing tenancy period as per the written agreement, except in situations as mentioned under respective provisions of the Act.</li> <li>▪ In case where the Tenancy Agreement had already expired but the Tenant still continues to occupy the said rented premises, the Tenancy would be deemed to be renewed on month-to-month basis as per the terms and conditions of the expired Tenancy Agreement for a maximum period of six months.</li> <li>▪ If Tenant continues to occupy the premises even after completion of six months from expiry of Tenancy Agreement, then the Tenant shall be a 'Tenant in Default' and he/she would be liable to pay an amount which is double the amount of monthly rent for two months as a compensation.</li> <li>▪ If the Tenant in Default does not vacate the premises even after this six month period, an amount equivalent to four times the monthly rent has to be paid as compensation.</li> </ul>

Revision of Rent	<ul style="list-style-type: none"> <li>The rent has to be revised as per the terms set out in the Tenancy Agreement between the Landlord and the Tenant.</li> <li>If the terms of revision of rent are not set out in the Tenancy Agreement, then the Landlord shall give a notice in writing three months before the revised rent becomes due.</li> <li>If the Tenant who has already been informed about the revision in rent through a notice as mentioned above does not give notice of termination of tenancy to the Landlord and continues to occupy the said premises, then the Tenant should be deemed to have accepted the revised rent for the purpose of Tenancy Agreement.</li> </ul>	
Force Majeure Clause	<ul style="list-style-type: none"> <li>In case of a Force Majeure event, the Landlord shall allow the Tenant to continue in possession till a period of one month from the date of cessation of such disastrous event on the terms of the existing Tenancy Agreement.</li> </ul>	
Premise Visits	<ul style="list-style-type: none"> <li>The Landlord cannot enter the rented premises suddenly at any hour without prior intimation to the Tenant. If the Landlord wants to enter the premises, then the Landlord needs to give a written notice or notice through electronic mode, which should be served at least 24 hours prior to the time of entry.</li> <li>The entry by the Landlord to the rented premises can be only for the following events: <ul style="list-style-type: none"> <li>To carry out any kind of repairs or replacement work</li> <li>To carry out the inspection of the rented premises for the purpose of determining the habitable state of the premises</li> <li>For any other reasonable purpose as may be defined in the Tenancy Agreement</li> </ul> </li> </ul>	
Exemptions	<ul style="list-style-type: none"> <li>The tenants who would have entered into the tenancy agreements in the current year i.e., 2021, as per the existing tenancy laws would be exempted from the purview of the Model Tenancy Act, 2021.</li> <li>There is no requirement of a separate law as all the conditions which needs to be fulfilled in order to validate a Leave &amp; License agreement are already covered under the MTA.</li> <li>MTA does not apply on the following: <ul style="list-style-type: none"> <li>Premises owned or promoted by the Central Government, State Governments, Union Territory Administrations, Local Authority, Government undertaking or enterprise, Statutory Body or Cantonment Board</li> <li>Premises owned by a company, university or organization given on rent to its employees as part of service contract</li> <li>Premises owned by religious or charitable institutions as may be specified by notification by the State Government/Union Territory Administration</li> <li>Premises owned by Board of Auqaf West Bengal registered under the Waqf Act, 1995 or by any trust registered under the public trust law of the State/Union Territory for the time being in force</li> <li>Other buildings or category of buildings specifically exempted in public interest by notification by the State Government/Union Territory Administration</li> </ul> </li> </ul>	
Exceptions	<ul style="list-style-type: none"> <li>If the Landlord and the Tenant agree that the Tenancy Agreement entered into between them should be regulated as per the provisions of the MTA, then the Landlord has the duty to inform the Rent Authority which is to be set up for the submission of the Tenancy Agreement, post which MTA would be applicable on the said Tenancy Agreement.</li> </ul>	
Do's and Don'ts	Landlords	Tenants
Do's	<p>Unless otherwise agreed upon by the Landlord and the Tenant in writing, the Landlord as per the MTA will be liable for:</p> <ul style="list-style-type: none"> <li>Structural repairs, except those damages which are caused by the Tenant</li> <li>Colouring of the walls or whitewashing</li> <li>Maintenance of the doors and windows as well as their painting</li> <li>Changing of the pipelines, whenever necessary</li> <li>Electrical wiring maintenance from time to time</li> </ul>	<ul style="list-style-type: none"> <li>Cleaning of the drains regularly</li> <li>Any kind of fixtures or repairs in kitchen</li> <li>Socket repairs</li> <li>Maintenance of the garden or open spaces</li> <li>If there is any kind of damage, then the Landlord should be informed as soon as possible</li> <li>Any kind of replacement needed for the glass panels in doors or windows</li> </ul>

## Don'ts

- The Landlord cannot withhold any essential supply to his/her premises given on rent to a Tenant
- Amount of deposit to be charged by Landlord has been fixed under the MTA
  - **Residential:** Cannot be more than two month rent amount
  - **Commercial:** Cannot be more than six month rent amount
- No intentional damage must be done to the premises

## Our viewpoint

MTA is clearly an enabling step taken by Government and will bring about heightened professionalism in governance of real estate assets. Key attributes such as faster and transparent decision making will benefit the stakeholders and create better transaction execution capability.

The existing rent control laws have proven to be restrictive and have had an adverse impact on the growth of rental housing. Different Rent Acts typically lean towards the Tenant and are seen to discourage owners from renting out their vacant homes due to fear of the Tenant not vacating the premises and claiming protection under relevant Rent Act. It is expected that a clear and stable legal framework for tenancies will help unlock the significant housing inventory in India and open the doors for private players to participate in rental housing sector.

