

## 디지털시대에 있어서 주택임대차 존속기간에 대한 문제점과 개선방안

박종렬\*

# Problems and Solutions for the Term of Existence of the Housing Lease in the Digital age

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### 요 약

주택임대차보호법은 임차인의 주거생활과 법적지위를 개선하기 위하여 1981년 3월5일 법률 제3379호로 제정된 이후에 많은 문제점은 있었으나, 몇 차례의 개정을 걸쳐 종래의 미흡했던 부분을 개선하기도 하였다. 하지만 무주택영세민들의 지위강화를 실질적으로 보장해 주기 위해서는 아직도 많은 문제점을 해결해야할 필요성이 제기되고 있는 가운데, 국회는 2015년 2월14일 임차인 계약갱신청구권 도입을 두고 서민주거복지특별위원회를 가동하여 임시국회에서 현안을 논의하기로 하였으나 현재 찬반양론의 대립이 뚜렷하게 보이고 있는 실정이다. 그동안 임차인의 계약갱신청구권이 보장되지 않았었기 때문에 임대차의 최단존속기간이 경과하게 되면 임대인의 의사에 따라 계약갱신의 여부가 좌우됨으로서 무주택영세민들의 주거안정이 불안정할 수 있었다. 따라서 본 논문에서는 열악한 지위에 있는 임차인들의 주거생활 안정을 위해 우리의 존속기간규정을 분석하고, 각국의 존속기간과 비교 검토를 통하여 문제점에 대한 구체적인 입법방안을 제시하고자 한다.

▶ Keywords : 디지털시대, 계약갱신청구권, 임대차기간, 갱신거절, 존속보호

### Abstract

The Housing Lease Protection Act was enacted from March 5, 1981 as Law No. 3379 to guarantee the stability of residential life and legal status. After then, there were many problems, but through several times revision, it had improved insufficient part. However, in order to give guarantees actually the position strengthen for homeless poor people many issues still need to be solved and it has been raised. Along the way, with the introduction of the tenant renewal claims, in February 14, 2015, the National Assembly planned to discuss current issues by operating the Special Committee for housing welfare of ordinary people in the extra session. In the current, however, the conflict of the pros and cons is shown clearly.

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Meanwhile, because the contract renewal claim of tenant was not guaranteed, if the minimum duration of the lease will be lapsed, contract renewal is dependent on the intention of landlord. Thus, the residential stability of homeless poor could become unstable. Therefore, in this paper, to stabilize the residential living for tenants who are in poor status, analyze our term of existence regulation and through the compared to the national legislation about the term of existence, it will try to propose the specific legislative approach to the problem.

▶ Keywords : Digital age, Renewal Claims, Term of Lease, Refuse Renewal, Subsistence Protection

## I. Introduction

In order to live a stable life of human, the most basic things are food, clothing and shelter. Among them, the stability of residential life is a most important part. However, through the growth of industry and rapid urbanization population was concentrated in cities. Thus, now we faced the narrow land and limitation of housing supply. Therefore, the government, backed by supply expansion of residential construction, nationwide housing shortage problem has been largely mitigated. In addition, for housing welfare of ordinary people, continuous supply of long-term rental housing and revisions with supplements of the Housing Lease Protection Act, the construction of the lease and monthly rent information systems, etc. Despite these various efforts, it is still inadequate levels to self-housing supply for ordinary people[1]. Therefore, in order to stabilize the residential life of the homeless poor people, the political care of government and system to ensure the legal status for housing tenants will be run efficiently. In particular, there are many ways for homeless poor to lead residential living by lending the home which belonging to others, among them, the lease is the one of ways.

In accordance with Housing Lease Protection Act Article 4 Paragraph 1, there is a benefit that the tenant can live in a two-year housing, but after the termination of the contract landlord refused renew the contract to tenant unilaterally, thus if tenant have to find another housing or do not accept the new conditions of landlord, the lease is extinguished naturally and tenant lose the right that can live that housing and cannot guarantee the residence right is emerging as a problem. And in order to protect residential stability of tenant, the long-term existence protection is required. Therefore, in this paper will try to point out problems of the duration about the Housing Lease Protection Act and propose the legislative measures for them.

## II. The term of existence and contract renewal of the Housing Lease

### 1. The significance of the term of existence

As stated in the purpose of current Housing Lease Protection Act Article 1, according to Housing Lease, if the tenant hopes to live the house that he currently residing continues, as giving the legal safeguards he can get a Residential stability[2]. In order to give ensure the subsistence protection of tenant institutionally, as determining the minimum

duration of the lease by law and ensure the at least over that period residence. And the parties signed the Housing Lease contract and if certain legal requirements are met, regardless of the duration, it can guarantee a stable residence life by disabling the termination of Housing Lease to established Housing Lease.

## 2. Guarantee the term of existence by Civil code

### 2.1 When agreement the lease period

If agreement period by lease the Civil code has restrictions about longest period, but does not has the minimum duration and there is any restrictions[3]. In order to protection of tenant, it is the inadequate legal regulations that in the sense that the minimum duration is need more than longest. However, in case of the Housing Lease which covered by the Housing Lease Protection Act enacted in March 5, 1981 has put restrictions with respect to the shortest duration[4].

### 2.2 Restriction of the longest term of existence

For the longest period, there is no particular limitation in the Housing Lease Protection Act, leasing provisions of the Civil Code is applied[5]. Therefore, the provisions of the land lease rights are applied and anything other than a lease of land lease can agree in the range of less than 20 years, if as commitment between the parties it exceeds 20 years, which reduced to 20 years. In addition, it is possible to update the period of 20 years, the term shall not exceed 10 years from the day the updated [6].

### 2.3 Renewal the lease

If the case that has fixed term the lease terminates by expiration. Therefore, if the tenant wishes to continue to use and profit of leased object shall renew the contract. The civil law prescribes the explicit and implicit renewal about duration of

the lease, but in the Housing Lease Protection Act Article 6 Paragraph 1 regulates implicit renewal[7]. In the implicit renewal, after the lease period has expired and the tenant continue to use and profit of leased object, if the landlord has not file a complaint within a reasonable deadline, it deemed to lease again as the same conditions of the previous lease[8]. This regulation is common as the protection of tenants. Likewise landlord can claim the existence of the period. However, about the term of existence, it can regard as the lease which has no agreement of period and in this case, the parties can notice of termination at any time. However, at the effect of termination, if landlord does termination notice it, must pass 6 months, and the case that do termination notice of tenant, effect of the termination occurs after 1 month[9].

### 2.4 The case that not stipulated term of existence

If there is no agreement of the lease period, parties can notice of contract termination at any time. If there is a termination notice, the lease agreement is not terminate immediately and from the day that the termination notices reaching the tenant and after some grace period the effect of revocation occurs. In other words, when other party gets the notice, from that day, if the landlord informs the notice of termination about "building and other structure" then 6 months, if tenant inform the notice of termination, the effect of termination occurs after one month.[10].

## 3. The term of existence guarantee on the Housing Lease Protection act

### 3.1 The guarantee of the shortest terms of existence

About the lease, the current civil code has the longest term of existence, but has no the shortest term of existence. However Housing Lease Protection Act ensures the 2 years shortest term of

existence only to Housing Lease as special provisions in order to ensure a minimum stability of residential living for tenant[11]. However, the tenant can claim validity that the period specified in less than two years. The Supreme Court said that the tenant of tenancy which agreed under two years and in any auction process by application of mortgagee, all agreement between the parties which violates the Housing Lease Protection Act regulations are not invalid, and even if any agreement which violates that regulation is unfavorable to tenant, that is effective and is considerable. Thus tenant can claim the preferential payment right of deposit for lease by reason of agreement expiration which under 2 years[12].

### 3.2 Legal renewal

In the Housing Lease, if the landlord did not notice to tenant that does not change the notice or condition of renewal refusal to tenant before the six months to one month from the expiration of lease period and it shall not be renewed, it deemed to that when the lease expires, the lease made again as same condition.

There is a difference in the period that can claim has renewal refusal or conditions changed between legal renewal of the Housing Lease Protection Act[13]. In the Housing Lease Protection Act, if landlord want renewal refusal, he have to refusal notice from 6 months before expire to 1 month, however in the Civil code Article 639 regulate as considerable period. It seems that the Housing Lease Protection Act protect tenant stronger than civil code, however it is same the freedom of renewal refusal recognized to landlord. So, in this point, it can be criticized strongly[14].

### 3.3 Legal subsistence period

Even if the lease is terminated, conventional lease relationship existence until the tenant refund entitled to any refund of lease deposits, and the

buyer succeed position of landlord in the exit status of lease by Housing Lease Protection Act Article 3 Paragraph 2[15]. This provision should be consider that the center of gravity of the legislative purpose to ensuring return of deposit rather than existence protection of lease right[16]. When viewed from the side that guaranteeing the existence of the lease until the return of the deposit, there is also functions of the existence guarantees of lease for residential stable livelihood of tenant indirectly[17].

## III. Foreign legislation case about term of existence

Lease law of Western Europe, as the purpose of lease stability through the long-term existence of lease relationship, even if the lease agreement period is over, unless the tenant does not intention of lease termination the lease continues to existence (renewal), only if the landlord prove just cause to revoke or terminate the tenancy lease agreement has to be shut down.

### 1. England

England distinguish the protection of lease right as 3 kinds that regulatory Lease "difference law" is applied in 1997, guarantee lease or guarantee short-term lease which "Housing Act" is applied in 1988. In particular, residence Lease law ensure the prolonged lease agreement for protect tenant by recognizing that after lease is terminated if tenant still living in the building, then legal lease occurs naturally. In order to terminate the Lease relationship, landlord apply to the court and if refusal reasons for renewal which is listed in the Residence Lease Law has recognized, court make a command for a occupancy recovery to tenant, the lease contract is terminated[18].

### 2. Germany

In German Civil Code Article 556 regulate about

term of existence of residence lease the longest period as well as shortest period, it is not qualified at all just regulate by agreement of the parties[19]. And at the all kinds of end of the lease agreement, if the landlord does not prove the reason for the justifiable period end and keep the lease contract, by these way it protect long-term existence of the lease agreement. However, considering the legitimate interests of landlord, when the end of the lease relationships to tenants can be severe, the tenant can claim about revocation and require the continuation of the lease relationship.

### 3. France

In France the housing lease it defined by a comprehensive law in 1948 as the background to solve the serious housing shortage. The coverage of this law was reduced by several times amendment in 1982, 1986, 1989 and now the law in 1989 has the meaning[20]. French Civil Code has the renewal claim system for tenant, in this time, the landlord can refuse the renewal claim by tenant, then the landlord have to compensation for removing. In other words, the landlord just has a choice either accept the renewal or pay compensation for removing. However, when there are special circumstances, such as building renovations, etc. the landlord can refuse the claim of tenant by rewarding a certain amount of compensation not the compensation for removing.

### 4. Japan

In Japan, not specially protected only housing lease, they protecting by "House Lease Law of Japan" without distinguish between residential building and commercial building. Existence protection for the building lease in Japan made by legitimate grounds institution, once the system want to shut down the established building lease, the landlord can terminate the lease relationship only if there is a legitimate ground for him to termination lease relationship. In particular, Japan protects

tenants by legitimate reason institution as the core and put the some minor institution[21].

## IV. Problems and solutions for the term of existence

### 1. Problems for the term of existence

#### 1.1 Refuse the renewal

Housing Lease Protection Act Article 6 paragraph 1 said "in the case of renewal the contract, if landlord did not notice to tenant about renewal refusal from the six months to 1 month of the end of lease period or did not change the condition of contract, then do not renew the contract" in this case, when lease period is over it deemed to lease back with the same conditions as before. Therefore, it regulated as "it is same like the case that when the tenant did not notice to landlord before the 1 month before the end of the lease period" thus, when the time of renewal, term of existence is guaranteed two years. However Housing Lease Protection Act does not have any restrictions on the renewal refusal reasons and the lease contract can be terminated by only unilateral declaration of intention of landlord. About this, the tenant cannot do any claim, so, it has emerged as a problem of protect tenant. On the one hand, it can be seen contrast to Commercial Building Lease Protection Act that the tenant can claim the contract renewal actively[22].

#### 1.2 Overdue the balance

If a tenant living in the house late 2times balance or does not fulfill its obligations as a tenant, the tacit renewal is not accepted. The tenant overdue 2 times balance, at the standpoint of landlord it can be viewed as considering many time for tenant, however, standpoint of tenant that time is too short. And most tenants do not have economical free, there are many cases that overdue the balance usually

and renewal is difficult and after all, the purpose of housing stability for ordinary people is colorless and there is a limit to protect the tenant in vulnerable groups who have to be protected substantially by Housing Lease Protection Act.

## 2. Solutions for the term of existence

### 2.1 Introduction of contract renewal claims institution

In the Housing Lease, even if the agreed lease period has expired lease contract is not terminated. In other words, In order to terminate the lease, must do intention for refuse the renewal of the contracting parties. In the Housing Lease Protection Act Article 6 Paragraph 1 "if landlord does not notice of renewal refusal before the six months to one month from the expiration of lease period to tenant or does not change the condition, shall not be renewal. Thus, if the landlord does not notice to tenant, when the period is over, it is deemed to make the lease again as the same condition as before. Even if the tenant does not notify before the one month of the lease period also same" said regulation. And tenant can terminate the contract any time after implicit renewal, and does not require any reason to terminate.

In Housing Lease Protection Act, the implicit renewal is protected to all tenant and landlord, however, it does not require any special reason for declining the renewal to them and they are entrusted to private autonomy. As specified in the Commercial Building Lease Protection Act Article 10, if the Housing Lease Protection Act recognizes the contract renewal claim to housing tenant, it seems to be right.

### 2.2 Rationalization of overdue period

According to the current case judicial precedent, if tenant overdue the rental fee over 3 months, the landlord(rental company) receive the be overdue rental fee without cancellation right or right to

refuse the renewal, after than, landlord (rental business) cannot terminate or refuse to renew the lease agreement. But it just given the continuation of the lease relationship to landlord party, there is no evidence to require the contract renewal. Thus, in this regard want to propose two solutions.

First of all, like the Commercial Lease Protection Act, Housing Lease Protection Act also needs to be adjusted to three times to fit the equity when the overdue exist. Look at different point of view, it needs to protect the housing tenants or commercial tenants equally and there is no reason to discriminate. And try to give the way to that if the balance is overdue to three times overdue period, the landlord does not contract renewal reject until overdue to the one-half of tenancy security deposit which landlord received.

### 2.3 Standard contract obligation

The Lease Housing Act, Article 32 which was enacted December 31, 1984, Law No. 3783 regulate that who want make the contract at the lease housing have to use the standard lease contract which the Ordinance of the Ministry of Land and Transport. A person who intends to enter into a lease agreement has both parties, thus obligations are also added to tenant. In addition, the rules for using the standard lease is regulated in Korea as well as other countries, do not leave it only to free agreement between the landlord and tenant, it is a need to institutionalize the obligations using the standard lease contract to protect the disadvantage for tenant by imbalance of economic power to determining the terms of contract between tenant and a landlord.

## V. Conclusion

Until now, as we have seen for the term of existence of housing lease, to protect the existence for homeless pool people in Korea, with the

legislation that limiting the rejection right to unilateral contract renewal requirements of landlord(rental business) and newly established the similar provisions such as legitimate interests in Germany and justifiable grounds in Japan, etc. and need to prepare the regulation which landlord cannot refuse the contract renewal request of tenant unilaterally. Therefore, like Commercial Buildings Lease Protection Act it is need to be given the contract renewal claims to tenant. And to ensure the existence protection of tenant more substantially, keep first maintaining a minimum contract length to two years, and if there is no special reason, it need to guarantee the term of existence of four years.

At the overdue balance, if the balance is overdue to three times overdue period, landlord does not contract renewal reject until overdue to the one-half of tenancy security deposit which landlord received. Like this, extend the period for overdue balance to reality, and in an agreement between the parties hope to be resolved by legislation that mandates the use of a unified standard lease contract provisions like Lease Housing Act Article 32.

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