

Litigation - Japan

Supreme Court: lease renewal fee clauses under Consumer Contract Act

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In Japan, when the tenant of a residence renews his or her lease agreement, the lessor often charges a renewal fee. In many cases this renewal fee is based on a clause in the original lease agreement, such as "upon renewal of this agreement, including deemed renewal by the tenant's continued use of the apartment, the tenant shall pay to the lessor a renewal fee equal to two months' rent".

Facts

A number of individual tenants challenged the validity of the renewal fee clauses in their lease agreements and filed suit against the lessors for a refund of the renewal fees that had been paid as a result. The tenants invoked Article 10 of the Consumer Contract Act (61/2000) in challenging the validity of the clauses, although they had entered into the original lease agreements containing the clauses when taking up residence in the apartments.

The act, which became effective in 2001, is intended to protect consumers' interests in light of the "discrepancy between consumers and business operators in quality and quantity of information and their negotiating power". In essence, Article 10 provides that a clause in an agreement between a consumer and a business operator is invalid if:

- the clause limits the consumer's rights or expands the consumer's duties under the default rule provided by the Civil Code, the Commercial Code and other such laws; and
- the limitation of rights or expansion of duties unilaterally impairs the consumer's interests in contravention of the fair and equitable principle in Article 1(2) of the Civil Code.

In the case of a renewal fee clause, the individual tenant is regarded as a 'consumer' and the lessor is regarded as a 'business operator'. Thus, the question of whether a renewal fee clause satisfies the two requirements was a significant issue.

Although the Supreme Court had upheld the validity of the renewal fee clauses on one occasion before the introduction of the act, it had not ruled on the issue of Article 10. At least 10 benches of the district courts and the Osaka High Court had decided that the renewal fee clauses under consideration in their cases were invalid under Article 10, but at least five benches had upheld the validity of such clauses in renewal fee cases.

Supreme Court decision

On July 15 2011 the Second Petty Bench of the Supreme Court dismissed the tenants' claims, upholding the validity of a renewal fee clause that stipulated a fee equal to two months' rent.

First requirement of Article 10

A renewal fee clause establishes a liability to pay a renewal fee, which the tenant does not owe under the default rule. In this sense the clause "expands the consumer's duty under the default rule provided by the Civil Code, the Commercial Code and such other laws" and thus satisfies the first requirement of Article 10.

Second requirement of Article 10

However, a renewal fee clause does not satisfy the second requirement, as the clause does not "unilaterally impair the consumer's interests in contravention of the fair and equitable principle in Article 1(2) of the Civil Code".

General nature of renewal fee

A renewal fee serves a number of purposes - among other things, it may be regarded as a complement to (or advance on) rent and consideration for the continuation of the lease agreement. From an economic viewpoint, the payment of a fee under a renewal fee clause cannot be deemed unreasonable.

The payment of such a fee is common practice. Moreover, it was recognised that in cases where a tenant and a lessor have sought settlement in court, the renewal fee clause has generally been respected as complying with the fair and equitable principle and has been regarded as valid. Thus, if the clause appears clearly and unambiguously in the lease agreement, there is no significant discrepancy between tenant and lessor in terms of the quality and quantity of information regarding the clause, or between the parties' respective negotiating power.

Rule to determine validity of renewal fee clause

In light of these facts, a renewal fee clause does not unilaterally impair the consumer's interests in contravention of the fair and equitable principle if:

- the clause appears clearly and unambiguously in the lease agreement; and
- there are no exceptional circumstances (eg, a fee that is excessive in light of the rent and the renewed term).

Applying the rule

The renewal fee clause in this case, which appeared clearly and unambiguously in the lease agreement, provided for a renewal fee equal to two months' rent, in exchange for renewal for one year. The court considered that the amount was not excessive and that there were no exceptional circumstances.

Comment

As the court implied, the nature of renewal fees must be considered on a case-by-case basis. However, in most cases the validity of a renewal fee clause will be determined by the rule set out by the court. A number of factors are likely to be significant to its application:

- As the rule is based on Article 10 of the act, the rule applies only where the tenant is a 'consumer' and the lessor is a 'business operator' within the meaning of the act. Thus, the rule will not apply where, for example, the tenant has borrowed the apartment for its business or is not an individual (and therefore not a 'consumer' under the act).
- In determining whether the renewal fee is excessive, it is significant that the court decided that a renewal fee of two months' rent in exchange for one year's renewal was not excessive. Although the court did not establish this amount as a threshold, this example will provide guidance when applying the rule.
- Even if a clause is valid under the rule, the lessor cannot charge a renewal fee unless the tenant renews the agreement by a further agreement or is deemed to have renewed the agreement by his or her continued use of the apartment. Thus, even under a valid clause the tenant has an option to renew the lease agreement by paying the fee or to leave the apartment. Furthermore, a tenant who decides to renew is not prohibited from negotiating with the lessor for an exemption from the renewal fee.

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