

The Possibility of Making Improvements by a Tenant During the Lease

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Abstract

This research thoroughly addresses the possibility of making significant improvements to properties or efficiently implementing e-payments by tenants during the lease period. Specifically, it aims to provide innovative solutions that effectively facilitate communication between landlords and tenants. To achieve this, the research extensively relies on studying relevant legal and regulatory frameworks related to rentals, in addition to carefully reviewing the practical experiences of systems that have successfully integrated technology into rental processes. Moreover, it comprehensively discusses the potential benefits of using these improvements, such as significantly enhancing the tenant experience, transparently promoting transparency, and effectively reducing disputes between the parties. Furthermore, the research strongly emphasizes the importance of establishing clear legal frameworks to adequately regulate these improvements and identifies the essential components of an effective improvement system. Ultimately, the research convincingly asserts the necessity of adopting these smart solutions to substantially improve the effectiveness of the real estate market while also significantly enhancing relationships between landlords and tenants. However, the possibility of creating meaningful improvements for the tenant during the lease period ultimately depends on several key factors, including the specific type of lease and the detailed terms of the contract.

Keywords: improvements, tenant, landlord, lease, disputes, transparency, legal frameworks.

The tenant is, to some extent, allowed to make minor changes to enhance the use of the property, such as installing new fixtures, as long as these changes do not negatively affect the property or infringe upon the owner's rights. However, if the modifications involve substantial alterations, such as construction or expansion, they usually require the owner's explicit approval. In Imamiyyah jurisprudence,

these renovations are examined from a legal perspective and are permitted as long as they do not harm the property or conflict with the owner's rights. Therefore, it is crucial for both the tenant and the owner to clearly agree on the terms regarding modifications in the rental contract to avoid any potential disputes in the future. There are various similar rulings between Iraqi law, Iranian law, and Imamiyyah jurisprudence.

People typically use others' property due to insufficient purchasing power, which is related to the existence of a labor force. One of the contracts commonly seen in this area in the past is the lease agreement. In this mutual and binding contract, the rights and interests of the landlord and tenant are set against each other, with both parties seeking to maximize their benefits from the deal. Generally, the landlord is the sole owner, while the tenant's labor also holds economic and legal value. The conflict between the contracting parties' rights becomes more apparent after the lease term ends and the need arises to terminate the lease, especially if there have been violations by the tenant during the lease. Sometimes these actions are done with the landlord's permission, but other times they may be arbitrary and unauthorized.

Research Importance:

- **Defining Rights and Duties:** Analyzing the legal framework for changes that a tenant can make to the property and clarifying the boundaries between the tenant's and the landlord's rights.
- **Avoiding Disagreements:** Emphasizing the significance of prior agreement among tenants and landlords on the terms of modifications to avoid future conflicts.
- **Making comparisons among legal systems:** This includes studying the different and similar rulings in Iraqi law, Iranian law, and Imamiyyah jurisprudence regarding such modifications.

Research Objectives:

- **Clarifying Legal Boundaries:** This includes defining the legal framework governing tenant modifications to the property, including both minor and substantial changes.
- **Enhancing Mutual Understanding:** Highlighting the importance of prior agreement between the tenant and the landlord on modification terms to prevent disputes.
- **Comparing Legal Systems:** Analyzing and comparing the legal rulings in Iraq, Iran, and

Imamiyyah jurisprudence concerning these modifications.

Research Problem:

The research problem is represented by the following:

- **Defining Legal Constraints:** What are the legal constraints for tenant modifications to the property, and how can a balance be struck between the tenant's and the landlord's rights?
- **Managing Disputes:** How can mutual understanding and prior agreements between the tenant and the landlord be ensured to avoid future disputes over modifications?
- **Comparing Legal Systems:** What are the similarities and differences in the legal rulings of Iraq, Iran, and Imamiyyah jurisprudence regarding these modifications?
- **Economic Motivations:** What are the underlying reasons for people resorting to renting as an alternative to private ownership?

Research Methodology:

We will adopt a comprehensive analytical and comparative approach by thoroughly studying and examining the legal frameworks in Iraq, Iran, and Imamiyyah jurisprudence concerning the tenant's rights to make renovations to the property. Additionally, we will systematically conduct a comparison between different legal systems and carefully analyze the feasibility of applying common rulings across these frameworks.

Research Plan:

- **Chapter One:** The possibility of modifications with the landlord's consent.
 - **Chapter Two:** The possibility of modifications without the landlord's consent.
- Chapter One: The Possibility of Making Modifications with the Landlord's Consent**
- The tenant's ability to make renovations with the landlord's consent means that if the tenant obtains the landlord's approval, they can carry out changes or improvements to the rented property without any legal complications. In this

case, the landlord's consent is considered a fundamental condition, allowing the landlord to specify the types of modifications that are permitted. With the landlord's approval, the tenant can make minor changes, such as repainting or installing new fixtures, as well as more substantial modifications, such as construction or expansion, provided that these alterations fall within the agreed-upon terms with the landlord. Typically, the tenant is allowed to retain the modifications they have made, especially if they were completed with the landlord's approval. It is important that all modifications must be documented in writing to avoid future disputes. The landlord is often the actual owner of the property, while the tenant's actions carry economic and legal value. When the lease contract ends, the conflict between the rights of both parties becomes more apparent, especially if the tenant refuses to comply with the terms of the contract or engages in violations. In some cases, these actions are carried out with the implicit consent of the landlord, while in other instances, they may be arbitrary and unauthorized. This situation raises questions about whether the tenant's actions need to be subject to specific conditions and restrictions. Additionally, it raises the issue of whether the landlord can disregard the tenant's efforts and the modifications made on the grounds of the temporary and transitional nature of the lease agreement, treating the tenant as a "master" with full authority over the property. (Mustafa, 1390)

Therefore, this chapter will be divided into two sections as follows:

- Section One: If renovations are stated in the contract.
- Section Two: If renovations are not stated in the contract.

Section One: If Renovations are Stated in the Contract

If the modifications are mentioned in the contract, it means that specific conditions allow the tenant to make changes or improvements to the rented property. In this case, the contract is binding on both parties, and the tenant must

adhere to the stipulated terms. These terms may include the type of modifications permitted, the requirement to obtain the landlord's approval, and how to handle the changes at the end of the rental period. If the modifications align with the terms agreed upon in the contract, the tenant can proceed without legal issues and has the right to retain the changes made according to the agreed conditions. However, no one is allowed to construct, plant, or establish structures on someone else's property without a legal connection between them and the owner. Any installations made without a legal basis do not entitle the individual to claim their value, and the owner has the authority to remove them. The legal relationship established by the lease agreement between the tenant and the landlord grants the tenant the right to claim compensation for any improvements or additions made during the lease term, provided that these changes have genuinely increased the property's value or improved its utility. In such instances, the tenant is justly entitled to receive compensation for the modifications.

The lease agreement is consensual and does not require a specific formal procedure. It is binding on both parties, creating mutual obligations. It is also a contract of exchange, meaning each party receives something in return for their commitment. As a management contract, it does not transfer ownership of the rented property but rather creates a personal obligation between the landlord and the tenant, granting the tenant the right to use the property without ownership rights. The lease is temporary, with a specified duration, and the tenant is obligated to return the property to the landlord at the end of the lease term. The tenant may have made improvements to the property, and can then request compensation from the landlord for these improvements at the lease's conclusion. Article 774 of the Iraqi Civil Code requires the existence of a lease agreement between the parties for its provisions to apply. In the absence of such a lease agreement, the rules of adhesion apply instead. In Iraq, the tenant can

claim the value of improvements made to the leased property through a legal action filed against the landlord during the period of occupancy, that is, during the lease period. It is important to note the types of modifications: (Al-Sanhuri, 1963)

First: Necessary Improvements

If the improvements made by the tenant pertain to the repair and maintenance of the leased property, without which the property cannot be utilized, and if these improvements were made with the consent of the landlord based on an agreement, the tenant, as the claimant, must prove that they carried out these improvements on the leased property. Additionally, they must prove that the improvements were necessary for the repair and maintenance of the property. Such necessity for the improvements can be proven by all available means of evidence.

Second: Unnecessary Improvements

If the improvements made by the tenant do not involve repair or maintenance but instead are meant to enhance the benefits of the property, the tenant cannot claim compensation from the landlord unless there is an agreement between the two parties: (As organized by Article 774 of the Civil Code No. 40 of 1951, as amended).

1. If the lease has ended and the tenant has constructed buildings, planted trees, or made other improvements that increase the value of the property, and this was done despite the landlord's opposition or without their knowledge, the tenant will be required to demolish the buildings, uproot the trees, and remove the improvements. If removing these improvements would damage the property, the landlord has the right to retain them by paying the tenant the value of what has been added.

2. If the improvements were made with the landlord's knowledge and without objection, the landlord is obligated to reimburse the tenant for the lesser of the amount spent or the increase in the property's value, unless there is a special agreement stating otherwise.

3. If the improvements were made at the landlord's request, the landlord is obligated to reimburse the tenant for the full amount spent, unless there is an agreement that states otherwise. (Article 763 / Iraqi Civil Law)

If the tenant fails to prove that they stipulated such a custom to the landlord, it is considered that the tenant made the repairs and improvements without the landlord's consent. In this case, the tenant is required to demolish and remove the improvements. However, if such removal would cause damage to the leased property, the landlord may acquire what the tenant has added, paying the tenant the value of the improvements as they are entitled to remove them.

Third: Improvements Ordered by the Landlord:

If the improvements made by the tenant were based on the landlord's explicit orders, then the landlord is obligated to reimburse the tenant for the known value of the improvements, unless there is an agreement stating otherwise. This is based on paragraph three of Article 774 of the previously mentioned law. The tenant must prove that the improvements were ordered by the landlord with written evidence if the landlord denies this. Personal testimony is not admissible to prove this, but if the tenant is unable to provide written proof, they may be allowed to direct a decisive oath to the landlord (the defendant).

If the landlord sells the property, the proper defendant in this case would be the selling landlord, not the buyer. The buyer has purchased the property along with all its buildings and improvements, as the sale includes all improvements and structures on the property. The landlord, as the one who benefits from these improvements, must compensate the tenant, since they increase the property's value. A lawsuit to claim the value of improvements can only be filed after the lease ends, whether through an eviction order or otherwise. Before the lease expires, the tenant has no right to claim compensation for improvements.

In Iranian law, leasing (*Ijarah*) is considered one of the forms of ownership contracts, whether the leased object is a person, an animal, or something else. Therefore, a lease in all its forms is an ownership contract, and immediate transfer of ownership is not prohibited. In the case of a general lease issue, the tenant's fiduciary ownership may be recognized as the landlord's responsibility, similar to general sales. However, this possession is temporary, and the lease ends with the expiration of the contract term. The tenant, as the usufructuary owner during the contract, has full rights to possession and use of the property, except for cases excluded by law.

The limitations on usufruct may arise from explicit or implicit agreements between the parties or customary rules that oblige the tenant to respect these limits. Therefore, the tenant's share of the benefits and advantages of the property forms part of the lease contract. Contracts can be categorized into various types and characteristics depending on their effects. For a contract of ownership, the direct effect is the creation or transfer of ownership of the object or interest. Leasing is considered a contract of ownership under Article 466 of Iranian law. However, if the subject of the lease concerns a human or something similar, Article 467 applies. Thus, leasing in all its forms is considered a monopoly contract, and the immediate transfer of ownership is not prohibited, though Islamic law recognizes that such possession is temporary and ends with the lease's expiration. In Iraq, if the tenant makes improvements and additions to the leased property with the landlord's approval and without objection, the landlord must compensate the tenant for the lesser of the amount spent or the increase in the property's value, unless otherwise agreed upon in accordance with Article 774 of the Iraqi Civil Code. (Faraj, 1977)

When the tenant files a lawsuit to claim compensation for improvements and additions made with the landlord's approval and knowledge, without objection, the court must appoint experts to assess the value of these

improvements. The experts must estimate the cost of the improvements at the time they were made and their value at the time of the eviction. The landlord is required to reimburse the tenant for the lower of these two amounts, as per the ruling of the Iraqi Court of Cassation.

Section Two: If Renovations are not Stated in the Contract

If the improvements (modifications) are made without being mentioned in the lease contract, this may lead to some legal complications. In this case, the issue depends on the nature of the modifications and their impact on the property. If the changes are minor and do not harm the property, they might be viewed positively. However, if the changes are substantial or damage the property, the landlord has the right to demand the removal of these changes or even take legal action. It is essential for any modifications made to be documented, and for the tenant to attempt to seek retroactive approval from the landlord to avoid future disputes. In a lease contract, the tenant may construct buildings or plant trees with the landlord's permission. It is also possible that the tenant's property may be established without authorization. In such cases, after the expiration of the lease, the tenant's rights conflict with the landlord's rights. Authorized actions by the tenant are supported by the legislator, while unauthorized actions are not supported. The rule of delivering the land to the owner requires removing the crops unless the parties intend to retain the land, taking into account local custom. A study of Iranian law shows that not only is a lease not considered a property contract, but special attention is also given to actions taken by an agent in good faith. (Hasan, 1384)

In Iraq, the court of first instance issued a judgment in the presence of both parties, obliging the first defendant to pay half the value of the constructions he had built. The Court of Cassation issued a decision to overturn the appealed judgment and return the case to its original court, as the expert report was based on Article 774 of the Civil Code, which does not

apply to the relationship between the parties, and the case is governed by Article 1121 of the Civil Code. (Al-Saraf, 1956). The Court of Cassation also overturned a decision in which the trial court failed to verify whether the tenant made the modifications during the lease relationship or after its termination. (Decision No. 2006\M2\1999, Judicial Magazine, Issues 1, 2, 3 and 4, Year 53\1999, p. 198).

According to the decision issued by the Court of Cassation, the modifications made by the tenant must result in an increase in the value and utility of the leased property for the tenant to be entitled to claim their value. Examples of modifications that increase the value of the property include adding additional facilities, constructing a room, installing central air conditioning, and replacing wooden doors with aluminum ones. (Decision No:2544/2/2000 in 20/9/2000). However, the modifications that do not align with the nature of the property and its intended purpose do not entitle the tenant to claim their value. In such cases, the landlord may demand specific performance or request contract termination with compensation. A lawsuit to claim the value of the modifications should be filed after the lease contract has ended, as filing the lawsuit before that would result in its dismissal. (Decision No:599/2/2000 in 11/5/2000)

Accordingly, there are several important points related to the tenant's claim for the value of modifications and additions made to the leased property: (Al-Rubai'I, 1991)

1. Assessment of Modifications:

- ☐ The determination of whether the modifications have increased the value and utility of the leased property is made through the appointment of specialized experts.

- ☐ Modifications that do not align with the nature of the property and its intended purpose cannot be claimed by the tenant.

2. Timing of the Claim:

- ☐ The tenant must claim the value of the modifications at the end of the lease contract.

- ☐ Filing a lawsuit before the expiration of the lease will result in its dismissal.

3. Scope of the Claim:

- ☐ Not all modifications made by the tenant during the lease term are eligible for a claim.

- ☐ The modifications must have increased the value and utility of the leased property."

4. Rights of the Landlord:

- ☐ If the tenant makes improvements that are incompatible with the nature and purpose of the leased property, the landlord has the right to:

- ☐ Demand specific performance : Request the removal of the unauthorized improvements.

- ☐ Request contract termination with compensation : If justified by the situation, the landlord may also seek to terminate the lease and claim damages.

Thus, certain conditions must be met for the tenant to be entitled to claim the value of improvements made. On the other hand, the landlord has the right to take legal action if those improvements are not aligned with the property's nature.

In Iranian law, not only is a lease not considered a transfer of ownership, but it also places significant emphasis on actions taken by the tenant in good faith. For instance, the tenant may build structures or plant trees with the landlord's permission. However, if the tenant carries out unauthorized improvements or modifications, conflicts arise between the tenant's and landlord's rights after the lease term ends. Authorized actions by the tenant are supported by law, while unauthorized actions are not.

In Iraqi law, when a lawsuit is filed between landlords and tenants, and the tenant requests the removal of the modifications they made, the court must distinguish whether the removal of these modifications would cause harm to the landlord or not. If their removal does not cause harm, the court may allow it. However, if their removal causes harm to the landlord, the court will not grant the tenant's request in accordance

with the principle of 'no harm and no harassment.' In this case, the value of the modifications is assessed according to the procedures previously established.

Chapter Two: The Possibility of Improvements in the Absence of Landlord's Consent

If there is no consent from the landlord, the possibility of making improvements is limited. In this case, the tenant is obligated to comply with the terms stipulated in the lease agreement, and it is inadvisable to make any changes or improvements without the landlord's approval. If the tenant makes improvements without the landlord's consent, they may face several consequences, such as being required to remove the changes at the landlord's request, or facing legal liability for damages or costs arising from these changes, in addition to the negative impact on the possibility of renewing the lease in the future. Therefore, it is always better to obtain the landlord's approval before making any changes to the property. Interference by the tenant with the landlord and the resulting additions from their actions can occur in two cases: First, regarding the tenant's interference and their occupation of the same property and the additions resulting from the operation within the same property, two scenarios can be imagined:

1. The tenant may construct buildings aggressively without the owner's consent, establishing buildings or planting trees according to the law. Legal scholars indicate that in this case, the tenant has disrespected the owner's property by "acting" at their own expense. Consequently, the landlord has the right to demolish the construction or cut the tree whenever they wish, without the tenant having the right to prevent it or claim compensation. The mention of the timing indicates that the landlord's right to demolish does not depend on the lease term's expiration, and even if a defect occurs for the tenant, the liability remains with the tenant. Naturally, the tenant is solely responsible for the damages and defects of the item and is not liable for unmet interests unless

the landlord is no longer satisfied with the tenant's continued occupation by claiming ownership. Furthermore, the mentioned article does not express the formal conditions for exercising the right or the possibility of personal practice of the right; in this context, a conclusion should be reached through filing a lawsuit and appealing to the competent authorities.

Section One: If Modifications are Stated in the Contract

If improvements are made without the landlord's consent and this is stated in the contract, the tenant may find themselves in a legally weak position. Contracts typically specify conditions related to making changes, and failure to adhere to these conditions may expose the tenant to legal consequences. These consequences can include the landlord requesting the removal of changes or restoring the property to its original condition, along with the potential for claiming damages. It is important for the tenant to be aware of the terms outlined in the contract and to seek the landlord's approval before making any changes to avoid disputes.

Originally, the improvements added by the tenant to the leased property are considered owned by the tenant as long as the lease agreement remains in effect. However, both parties may agree otherwise, allowing them to stipulate that these improvements belong to the landlord from the date of their creation. This is inferred from the third paragraph of Article 774 of the Iraqi Civil Code. The absence of a clause in the lease agreement stating that the improvements are owned by the landlord does not prevent the landlord from requesting these improvements from the tenant. (Murqas, 2000)

However, the phrase "at the request of the landlord" in the third paragraph of this article needs to be rephrased, as it should indicate that the creation of these improvements occurs by mutual agreement between the landlord and tenant, rather than being a command imposed on the tenant without their consent. (Article (774) of the Iraqi Civil Code states: 'If the tenant makes

any of those modifications at the request of the landlord, the landlord is obligated to reimburse the tenant for the expenses incurred to the extent agreed upon, unless there is an agreement to the contrary).

Moreover, the content of the third paragraph suggests that the legislator has established a simple presumption that merely agreeing to create improvements without determining their fate implies that these improvements belong to the landlord, while the tenant retains the right to recover what they have spent. However, this presumption is subject to rebuttal; for example, the landlord could prove the existence of an agreement with the tenant that denies the latter's right to claim compensation for these improvements. (Al-Amiri, 1970)

If the ownership of the leased property is transferred to a new owner, the tenant has the following options: (Faraj, 1948)

1. If there is an agreement between the landlord and tenant for the creation of improvements for a fee :

- The tenant does not have the right to directly claim the value of the improvements from the new owner.

- This is because these improvements became part of the landlord's property before the transfer of ownership, and the new owner received ownership from the landlord, not from the tenant.

- Thus, the tenant's claim against the new owner would unjustly enrich the landlord at the expense of the new owner.

2. If there is an agreement to create improvements without compensation :

- The tenant has the right to claim from the landlord the amount spent on the improvements, provided it does not exceed the customary or agreed amount.

3. If there is an agreement between the landlord and tenant for the creation of improvements, but the tenant has not yet done so, and ownership of the property is transferred to a new owner :

- The new owner replaces the previous owner in all rights and obligations arising from the lease agreement, including this agreement.

- The tenant does not have the right to claim against the previous landlord but must instead claim against the new owner.

In all cases, the tenant is not entitled to claim the value of the improvements from the new owner through a direct lawsuit if these improvements became part of the landlord's property before the ownership transfer. The tenant may only pursue a claim against the new owner through an indirect lawsuit if the improvements were made prior to the transfer of ownership. (Al-Ajili, 2016)

Additionally, Article 774, paragraph 1 of the Civil Code addresses the situation where, upon the expiration of the lease, if the tenant has built a structure, planted trees, or made other improvements that increase the value of the property, regardless of the landlord's opposition or lack of knowledge, the tenant must demolish the building, uproot the trees, and remove the improvements. If the tenant's modifications would cause damage to the landlord, the landlord has the right to claim ownership of the tenant's additions as compensation for their removal. This implies that the law views the landlord's objection to improvements and their lack of awareness regarding them in the same light. In situations where the landlord opposes the changes, the tenant is obligated to demolish the building, uproot the trees, and remove the improvements made. If demolition or uprooting would harm the landlord, they have the right to own those improvements as compensation. The Court of Cassation has clarified how to assess the compensation value for removal by estimating the value of the installations after removal and deducting the removal costs. Thus, several important points can be highlighted: (Article 763(1) of the Iraqi law states that the repairs carried out by the tenant with the landlord's permission are permissible if they pertain to the maintenance of the leased property).

1. The possibility of proving the factual circumstances related to the improvements by all legal means of evidence; it is not necessary for the landlord's opposition to be in writing, as it suffices to be by any available means.

2. The possibility of agreement between the landlord and tenant on the fate of the improvements in a manner that serves the interests of both parties, as the rules of Article 774 complement and explain the intent of the contracting parties, and public order and morals do not prevent an agreement that contradicts them.

3. In the absence of an agreement regarding the fate of the improvements, the provisions of Article 774, paragraph 1, apply, whereby the tenant has no right to claim an increase in the value of the leased property if they made improvements without the landlord's knowledge.

4. The landlord has the right to firmly require the tenant to promptly remove the improvements, uproot the trees, and thoroughly demolish the installations, as long as doing so does not significantly damage the leased property. However, if removing the improvements would cause substantial harm to the leased property, the landlord has the right to rightfully claim ownership of those improvements.

These points stress on the possibility of agreement among the contracting parties concerning the fate of the improvements, and grant the landlord the right to take certain actions if the improvements were made without their knowledge. (Thanun, 1991)

Section Two: If Modifications are not Stated in the Contract

If improvements are made without the landlord's explicit consent and this is not clearly mentioned in the contract, the tenant may potentially face serious legal consequences. In this situation, the tenant is deemed to have deliberately violated the terms of the contract, which may consequently result in the landlord requesting the prompt removal of the changes or

restoration of the property to its original condition. The tenant may also be held fully liable for any damages or costs arising from these alterations. It is always strongly advisable to proactively communicate with the landlord to clearly obtain their consent before making any changes, even if they are not specifically outlined in the contract, to effectively avoid any potential future disputes.

In Iraqi law, this situation is addressed by Article 774(1) of the Civil Code, which states that if the lease has expired and the tenant has built a structure, planted trees, or made other improvements that increase its value, regardless of the landlord's opposition or lack of knowledge, the tenant is obligated to demolish the building, uproot the trees, and remove the improvements. If doing so would harm the property, the landlord may take ownership of what the tenant has added as compensation for the removal. This text indicates that the law treats the case where the landlord opposes the tenant's improvements and the case where these improvements are made without the landlord's knowledge equally, and whether the landlord opposed the tenant at the time of making these improvements or not is a matter of fact to be determined by the trial court based on the evidence.

Therefore, in the absence of an agreement between landlords and tenants regarding the fate of the improvements made by the tenant on the leased property, the ruling in paragraph 1 of Article 774 of the Civil Code must be applied. If the tenant made these improvements without the landlord's knowledge, they cannot demand an increase in rent value; rather, the landlord has the right to compel the tenant to remove the improvements, trees, and structures, unless doing so would harm the property. In the latter case, the landlord has the right to own these improvements upon paying their value to the tenant. (Decision No: 637/2/2000 in 6/4/2000)

The value of the improvements subject to removal is determined after deducting the costs of removal. The court may rely on experts to

assess this value. If the tenant makes improvements without the landlord's consent, the court must apply Article 774(1) of the Civil Code and conduct an inspection to determine whether these installations increase the value of the leased property and whether their removal would harm it. In this case, the landlord acquires ownership of these improvements at their assessed value. (Decision No: 191/1/2000 in 26/8/2000)

If the tenant made improvements during the lease term without the landlord's knowledge, and they are movable in nature, the tenant may remove them upon the expiration of the lease, even if the landlord opposes this, as long as their removal does not cause harm to the leased property and they were made at the tenant's own expense. According to Article 1119 of the Civil Code, the property owner has the right to request the removal of the improvements as soon as they occur, while the landlord can only do so after the lease period has expired, as indicated in Article 774. (Tharwatt, 1974)

Regarding the burden of proof of consent or opposition, the emphasis on the ruling of the Court of Cassation reflects the importance of adhering to applicable rules of evidence. The tenant must convincingly prove the landlord's consent to the improvements, and if they are unable to do so, they may invoke the landlord's oath. If the tenant cannot adequately prove the consent, they have the right to demonstrate the landlord's knowledge of what has been created through all available means of evidence. This situation strongly underscores the importance of clearly clarifying the legal roles and responsibilities of both parties, ensuring the landlord's rights to maintain ownership while simultaneously allowing the tenant to effectively defend their position in case of any improvements or alterations to the property. (Ownership of Modifications Dependent on the Landlord's Will: This is the situation where the tenant has made improvements to the leased property despite the landlord's opposition or without their knowledge. In this case, the tenant

is required to demolish the construction and uproot the trees in accordance with the provisions of Article 1/774 of the Civil Code. However, the landlord may, in this case, acquire what the tenant has added at its value for removal. This matter is contingent solely on the landlord's will, and the law does not obligate them to do so, as it would be unjust to compel them to pay for it despite their opposition to the tenant's actions. The landlord may choose to remove these modifications, but such removal does not become mandatory until after the lease term ends, and the tenant may benefit from them throughout the duration of the lease. (Al-Ajili, 1947). Regarding the fate of the improvements made by the tenant on the leased property without an agreement between them and the landlord, the law addresses this situation as follows:

A- If the tenant has made these modifications without the landlord's knowledge, or if they were made with the landlord's knowledge but despite the landlord's opposition:

- In this case, Iraqi law does not allow the landlord to demand that the tenant remove these improvements as long as the lease contract has not ended. However, the law does not explicitly specify to which owner (old or new) the tenant should direct their claims if the lease ends and ownership transfers to a new owner. Consequently, the law does not resolve the issue of who bears the costs of removing or retaining these improvements if ownership is transferred to a new owner after the lease ends.

According to the perspective of some Iraqi and Egyptian jurists regarding the legal provisions related to the fate of the improvements made by the tenant on the leased property, the main points can be summarized as follows: (Al-Sanhouri, 1963)

1. These legal provisions condition the ownership of the improvements on the will of the landlord (lessor), allowing them two options: (Al-Badrawi, 1961) (A) Either to remove these improvements upon the expiration of the lease,

or (B) to choose to own these improvements by paying their due value to the tenant.

2. This is because it would be unfair to obligate the landlord to pay for the improvements made by the tenant despite their opposition.

3. Whether the landlord chooses to retain ownership of the improvements or to remove them, the tenant has the right to benefit from them throughout the duration of the lease.

4. Therefore, if the tenant makes improvements during the term of the lease, the landlord is considered to own them conditionally, pending their declaration of the desire to own them.

5. The tenant is regarded as the owner of the improvements under a resolutive condition, pending the landlord's declaration of their desire to retain ownership.

6. If the ownership of the leased property is transferred to a new owner, the tenant does not have the right to directly claim against the new owner but must instead seek recourse against the previous landlord, who may allow some time for the tenant to pay for the improvements or to pay in installments. (Faraj, 1948)

If the landlord refuses to retain the improvements made by the tenant and requests their removal, this results in the retroactive failure of the suspensive condition. Consequently, the landlord is considered to have never owned these improvements at any time. Regarding the tenant's ownership of these improvements, they will be considered the tenant's property from the date of their creation, as the resolutive condition related to the tenant's ownership has failed. (Murqas, 1993).

It is important to note that if the landlord exercises their right of choice before the transfer of ownership of the leased property, this right transfers to the new owner, as they are the successor of the landlord, and all of the landlord's rights and obligations are also transferred to them. (If the lease has expired and the tenant has built on the leased property, planted trees, or made other improvements that increase its value,

despite the landlord's opposition or without their knowledge, the tenant is obligated to demolish the construction, uproot the trees, and remove the improvements. If such removal would harm the leased property, the landlord may acquire what the tenant has added at its value for removal).

Therefore, the new owner has the right to request the removal of these modifications from the tenant, or to prevent the tenant from removing them in exchange for reimbursing the tenant for their expenses or for the increase in value they have added to the leased property.

Conclusion:

There are notably similar provisions between Iraqi law, Iranian law, and Imamite jurisprudence regarding the rights of tenants to make modifications to the leased property. While tenants are generally allowed to make some minor changes to enhance the property's use, these modifications must not negatively impact the property or infringe upon the rights of the landlord. In cases involving substantial alterations, landlord approval is typically required.

Findings:

1-Tenants are permitted to make minor changes to improve the use of the leased property, provided that these changes do not adversely affect the property or the rights of the landlord.

2-Significant modifications, such as construction or expansion, require the landlord's consent.

3-There are similar provisions between Iraqi law, Iranian law, and Imamite jurisprudence regarding tenants' rights to make modifications to the leased property.

4-It is essential for the tenant and landlord to agree on the terms related to modifications in the lease contract to avoid any future disputes.

Recommendations:

1-It is necessary to clearly outline the terms related to modifications to the leased property in the lease contract to prevent any future disputes among landlords and tenants.

2-Encourage landlords and tenants to cooperate and engage in mutual understanding regarding modifications to the property, preserving the rights of all parties.

3-It is essential to consider the provisions of relevant laws and Islamic jurisprudence when addressing issues related to modifications to leased properties.

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