What every Landlord of business premises must know about recovery of possession in Ghana

In Ghana, the provisions of the Rent Act,1963(ACT 220) are very strict when it comes to recovery of business premises let out to tenants.

The importance of these stringent provisions can be gleaned from the desire of the lawmakers to protect tenants from arbitrary rent increases and unfair evictions while balancing the rights of Landlords.

Under section 36 of the Rent Act, 220,

a 'lease' includes every agreement for the letting of any premises, whether oral or otherwise, and whether the terms thereof grant the right of exclusive occupation to the tenant or include the use of any premises in common with the Landlord or any other person or with the Landlord and any other person;

Irrespective of how the relationship of Landlord and tenant arises, any Landlord seeking to recover possession of business premises, whether let under a formal agreement or oral transaction must satisfy the court that the conditions precedent to the application for recovery of possession have been complied with. Where the Landlord fails to meet these requirements, the application for recovery of possession of business premises must fail.

Applications for recovery of possession of premises are generally regulated by section 17 of the Rent Act. In particular, applications for recovery of business premises are regulated by section 17(1)(h) of the Rent Act. That section provides as follows:

(1) Subject to the provisions of subsection (2) of section 25 and of section 28, no order against a tenant for the recovery of the possession of, or for the ejectment from, any premises shall be made or given by the appropriate Rent Magistrate, or any other Judge of a court of competent jurisdiction in accordance with the provisions of any other enactment for the time being in force, except in any of the following circumstances:

> (h*) where the lease has expired and the premises are* reasonably *required by the landlord to be used by him for his own business purposes, such premises being constructed to be used as such, if the landlord has given not less than six months' written notice to the tenant of his intention to apply for an order for the recovery of the possession of, or the ejectment from, the premises;*

This provision has been interpreted by our courts in many cases, one of which is the case of SA TURQUI & BROS V DAHABIEH (1987-88)2 GLR 486-514.

In that case the court distilled the requirements that a Landlord of a business premises must meet in order to recover possession. These requirements are as follows:

a. That there had been an agreement whether oral or otherwise for the letting of premises by a Landlord to a tenant.
b. That the lease has expired.

c. That the premises are reasonably required by the landlord to be used by him for his own business purposes.
d. That the premises are constructed in such a way that they can be used for the said business purposes.
e. That the Landlord has given not less than six months' written notice to the tenant
f. That the written notice must inform the tenant of the Landlord's intention to apply for an order for (i)the recovery of possession, or (ii) the ejectment from the premises.

It is therefore very important for Landlords to bear in mind that recovery of possession of business premises is not granted by the courts on the whims and caprices of the Landlord. Any such application for recovery of possession of business premises must demonstrate compliance with the conditions laid down by the law without which the application will be refused.
In summary, it is suggested that Landlords intending to recover possession of business premises from tenants must allow cool heads to prevail in order to exercise their rights within permissible bounds.

Ps. This note is for education purposes only.