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Name (print): TWAGIRA GEORGE

ID Number: @00366655

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MSC REAL ESTATE AND PROPERTY MANAGEMENT

Dissertation Title: *Examining the Practice of Commercial Tenancy Agreements in Kigali City, Rwanda: How can Current Practice be Improved?*

Student Full Name: TWAGIRA George

Student ID: @00366655

Supervisor: Professor Les RUDDOCK

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Abstract

The purpose of the study is to critically examine the practice of commercial tenancy agreements in Kigali city paying particular attention to; the nature and content of key tenancy terms, whether these terms enhance landlord's property value while meeting the tenants' business requirements, and tenants' perceptions about their current tenancy agreements. The research was based on the empirical data gathered mainly from a questionnaire survey of 247 office and shop tenants occupying both prime and secondary properties as well as interviews from few selected property professionals in Kigali city. The findings revealed that majority of commercial tenancy agreements were substandard since they lacked key tenancy terms of modern leases mainly because of; lack of specific commercial landlord and tenant law to guide the practice, commercial property market in Rwanda is a landlord market (landlords normally dictate the lease terms), and most landlords and tenants do not seek professional advice in negotiating tenancy terms and drafting leases. Furthermore, the findings showed that majority of the tenancies lacked security of tenure and they were gross leases meaning rental incomes obtainable by landlords are not net of operating expenses. Moreover, the findings indicated that majority of the tenants were dissatisfied with their overall current tenancy arrangements. The study recommends among others; enactment of the commercial landlord and tenant law, use of professionals in commercial tenancy negotiations, use of standard leases that contain all the key tenancy terms, and negotiating long fixed term leases that will ensure security of tenure to tenants and security of income to landlords.

Key Words: *Tenancy/Lease, Tenancy/Lease agreement, landlord/lessor, Tenant/Lessor, Business Tenancy, Commercial Property, Prime property, Secondary property.*

Dedication

I dedicate this dissertation to my forever sweetest later mother. She left after she has built an invaluable education foundation for me. Through her sweat and hard work, I was able to attend school and complete University. Ever since she suddenly left, every happy moment I get, I think about how we could have shared the joy which makes me sad and at the same time every sad moment I go through, I start imagining how she could have comforted me but God who loved her more than we did took her in a better place. I wish to wholly heartedly thank you for everything you did for me, Rest in Eternal Peace mum.

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List of Abbreviations

ADR:	Alternative Dispute Resolution
CBD:	Central Business District
CIPE:	Center for International Private Enterprise
CLBP:	Code of Leasing Business Premises
FRI:	Full Repairing and Insuring
IPF:	Investment Property Forum
IR:	Internal Repairing
IRPF:	International Real Property Foundation
KIAC:	Kigali International Arbitration Centre
LPA:	Law of Property Act
LTA:	Landlord and Tenant Act
OMR:	Open Market Rent
RDB:	Rwanda Development Board
RICS:	Royal Institution of Chartered Surveyors
VAT:	Value Added Tax

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CHAPTER ONE: INTRODUCTION

1.1 OVERVIEW

For the recent years, Kigali City has continued to attract a number of local and foreign investors to bridge supply gap existing in commercial property sector (Rwanda Development Board, 2014) and most of already existing as well as upcoming commercial space is for renting to tenants. Any legal and valid contract between the parties should specify the contractual rights and obligations of each party to the contract. Since most businesses in Kigali City including local and foreign companies as well as individuals ranging from small, medium and corporate organizations are operating in rented premises, the type and content of their tenancy agreements can have a crucial impact on their success and sustainability. These tenancy agreements are equally important to the landlords/investors as Jarvis (1983) argues that the capital value of a commercial property is majorly influenced by the quality of its income stream which is partly dependent on the structure of the lease. The Code for Leasing Business Premises in England and Wales 2007 explains that some of the tenancy terms may not be in the minds of landlord and tenant as primary considerations at the time of negotiating and entering into a lease agreement but may affect the future tenant's business requirements as well affecting the investment returns from the property. This implies that the key tenancy terms such as tenancy duration, rent obligations, rights of alienation, rent reviews, lease renewals, outgoings, repairing and insuring obligations should be well structured to provide the technical and professional content that ensures the fairness and balances the interests of both landlord and the tenant. However, there has never been a research to explore the Rwanda-Kigali's commercial lease market and reveal the practice of commercial landlord and tenant arrangements which may be beneficial to landlords/investors, tenants, policy makers as well those advising on commercial lettings.

1.2 AIM

To critically examine the practice of commercial tenancy agreements in Kigali City; paying particular attention to key tenancy agreement terms and tenants' perceptions about their current tenancy agreements.

1.3 OBJECTIVES

1. To review landlord and tenant related laws in Rwanda.
2. To explore the level of real estate professionals' involvement in commercial tenancies.
3. To identify the key terms and covenants used in commercial tenancy agreements.
4. To investigate the tenants' perceptions about their current commercial tenancy agreements.
5. To make recommendations to landlords, tenants, real estate professionals and policy makers for improving the current practice of commercial tenancy arrangements.

1.4 JUSTIFICATION

Commercial lease terms majorly influence the commercial property value and investment decision (RICS & IPF, 2007). Also, Austin (1994) argues that the quality of income stream which is a key factor in determining the commercial property value depends on the quality of the lease terms and covenants, landlord and tenant laws, and local market practice associated with commercial property leases in a given country. The same view is shared by Greenwood (1983) who reveals that investors will always secure the form, structure and content of a commercial lease which ensures best protection and enhancement of their investment value.

A huge shortage of commercial premises in Kigali City has created a landlord market (Knight Frank Research, 2013) and as a result, landlords charge high rents and impose unfair restrictions on the tenants forcing a number of tenants to vacate their business premises (The East African, September 2014). Rwanda has no specific commercial landlord and tenant laws to regulate the commercial tenancy and there are inadequate experienced real estate professionals (CIPE & IRPF, 2009) to guide and streamline the practice. As a result, a general law on contract (Law No.45/2011) is normally used in case of landlord and tenant issues making reference to tenancy agreements between the parties and also the Decree of 30/07/1888 with very limited and general provisions about landlord and tenant relationships is usually consulted. Therefore the content of the lease agreements often lack suitable tenancy terms which are efficient enough to ensure fairness to both landlord and tenant in best commercial lease practice.

Such key lease clauses include but not limited to; rent review clauses, tenant's right of; alienation, user/alteration, renewal and security of tenure which should suit the tenant's business requirements while maintaining the landlord's investment value as recommended by The Code for Leasing Business Premises in England and Wales 2007.

It is against this background that the researcher seeks to carry out an independent study that will critically examine the current practice in commercial tenancy agreements in Kigali city paying particular attention to the nature and content of key tenancy agreement terms and whether these terms promote fairness to both landlord and tenant so as to enhance landlord's property value while meeting the tenant's business requirements. The research will further investigate the tenants' perceptions about their current tenancy agreements and what can be done to improve the practice. The information from this study will be useful to potential foreign investors, local landlords, tenants, real estate professionals and policy makers.

1.5 THE STRUCTURE/ORGANISATION OF THE REPORT

The rest of this dissertation report is composed of four chapters namely; Chapter two (review of literature) which includes critical analysis of the key texts of existing knowledge relevant to the study topic; chapter three (research methodology) which discusses options of research theoretical perspectives, approaches, and strategies highlighting the specific research theoretical perspective this particular research is based on and the specific research approach and strategy that has been undertaken for this research with justification. In addition, the chapter explains the geographical scope of the study and sampling strategy (target population, sampling frame, sampling technique, and sample size). The chapter further discusses the research practical implementation including; data collection approaches, research techniques, approach to data presentation and analysis. The second last chapter is research findings (data presentation, discussion and analysis, description of ethical approach and considerations as well as limitations to this research). The chapter five which is the last chapter includes conclusions from the study and recommendations of the study. The final bits of the report are appendices (research questionnaire used and confirmation of ethical approval) and references used to underpin and inform the research.

CHAPTER TWO: REVIEW OF LITERATURE

2.1 OVERVIEW

The focal literature of the study topic was categorized into two; Rwanda's literature review and UK literature review. Due to inadequate relevant literature in Rwanda, UK literature was used as the best practice. This is due to the fact that UK has adequate landlord and tenant legislations as well as significant common and case laws relevant to the study topic. Also, UK's commercial lease market is hugely advanced and is one of the world's industry best practices with enough qualified and specialized property professionals and with reputable professional bodies such as Royal Institution of Chartered Surveyors (RICS) which are vital in regulating and guiding the practice. In addition, a number of researches in this field have been done in UK to enrich the industry practice.

The key texts that will be critically discussed in detail include; definitions of key terms, regulatory framework governing commercial tenancies in both UK and Rwanda, types of leases, the structure and content of commercial leases in UK.

2.2 DEFINITIONS OF KEY TERMS

Tenancy Agreement refers to a "legal document that defines the relationship between the landlord and the tenant" (Dabara, Olatoye, & Okorie, 2012, p.55). This agreement contains the rights and obligations of either party and it is either referred to as a tenancy or lease agreement. RICS (2013, p.11) defines a lease as a "binding contract in law which sets out the terms and conditions of the tenancy agreement between landlord and tenant". It explains the parties' rights and obligations which enforce it and therefore neither party to it can simply terminate or walk out of it.

The case of *Street v Mountford* (1985) defines a lease as a tenancy whereby the property occupier has exclusive possession for a fixed term in consideration for rent or premium payment. The parties to a lease are mainly landlord and tenant normally referred to as lessor and lessee. Landlord also includes subsequent assignees and successors in title and the tenant includes any person entitled to the interest in the property under the lease (Moran, 2007).

Commercial property is a business tenancy that is a non-domestic property (property other than residential or agricultural) such as retail, office, industrial, shops, leisure and business parks (Howard, 2008; Moran, 2007). 'Prime' properties are newly constructed/refurbished buildings with better quality facilities situated in better locations usually let to corporate tenants while 'secondary' properties are second-hand properties which are not strategically located but which are of good quality (Crosby, Gibson & Murdoch, 2003).

2.3 REGULATORY FRAMEWORK

2.3.1 UK Commercial Landlord and Tenant Laws

In UK, commercial leases are governed by common law, case law and specific statute laws (Moran, 2007). The key relevant legislations governing commercial landlord and tenant practice include the following;

-Landlord and Tenant Act 1954 Part II (Business Tenancies) as amended. Section 23(1) of LTA 1954 stipulates that the Act protects any tenancy where the premises comprised in it are occupied by the tenant for purposes of carrying out business. Subsection 2 of this section defines 'business' to include: "a trade, profession, or employment and includes any activity carried on by a body of persons, whether corporate or uncorporate". The LTA 1954 mainly regulates lease renewals/security of tenure, termination procedure, tenant's statutory compensation on tenancy termination, and dispute resolutions procedure when parties to the lease cannot agree on lease renewal. Section 24(1) of LTA 1954 states that a business protected tenancy shall continue to exist until it is terminated as provided by the Act. Section 24(2) contains provision for termination as; tenant's notice to quit, surrendering the tenancy or landlord's forfeiture of the tenancy.

In reference to section 24(2) of LTA 1954, the UK common law methods of terminating tenancies as explained in (Moran, 2007; Rooney & Cridge, 2006; Wilkie, Luxton, Morgan & Cole, 2006) include the following:

- Forfeiture is where the landlord brings a tenancy to an end due to the breach of tenant's covenant (especially when the tenancy agreement contains a forfeiture clause) which can be exercised in form of peaceable re-entry or through court forfeiture proceedings.

- Surrender is the “consensual act of the tenant offering, and the landlord accepting, the return of the tenancy to the landlord thereby bringing it to an end” (Rooney & Cridge, 2006 p.39). This is possible; where parties execute a deed of surrender; where the tenant vacates the premises and the landlord accepts the keys back which is often referred to as implied surrender known as ‘surrender by operation of law’ and the parties can also enter an agreement to surrender at some point in future.
- Notice to quit is used by either landlord or tenant to bring an unprotected periodic tenancy (one with no fixed term for example running weekly, monthly or quarterly) to an end.
- Break option is the situation where either party with the benefit/right to break usually contained in ‘a break clause’ terminates a fixed term tenancy pre-maturely.
- Expiry of the fixed term. When the fixed term of an unprotected tenancy expires, then the tenant’s right of occupation in premises comes to an end and if the tenant does not give vacant possession to the landlord, they become a trespasser liable to pay mesne profits (use and occupation charges) to the landlord usually at market rent for the period they remain in the premises.

If landlord and tenant fail to negotiate and agree about granting a new tenancy at termination of current tenancy, the court shall make an order for granting a new tenancy as provided by section 29(1) of LTA 1954.

This means that in UK, a business protected tenancy enjoys security of tenure throughout the tenancy term and unless otherwise, the tenant is assured of automatic statutory right of renewal at expiration of the tenancy as long as the tenant still wants to remain in the premises.

However, section 30(1) of LTA 1954 provides seven grounds under which the landlord can oppose granting a new tenancy to the tenant on the termination of the existing tenancy and these are known as grounds (a)-(g) which include the following:

- (a) -the tenant has failed to carry out repairs as stipulated in the lease.
- (b) -there have been persistent delays in rent payment by the tenant.
- (c) -the tenant has breached any substantial lease covenant.
- (d) -the landlord has offered alternative accommodation.
- (e) -where the premises are let to head tenant who has sublet the premises and landlord feels letting or disposing off the premises as a whole would fetch higher rent than separate sublettings.
- (f) -when the landlord intends to occupy the premises for his own business.
- (g) -when the landlord intends to demolish part or whole of the property and he cannot do it without obtaining possession.

Section 38A (1) of LTA 1954 as amended allows a provision to landlord and tenant for contracting out of sections 24 to 28 of the Act. Rooney and Cridge (2006) explain that contracting out of LTA 1954 protection can be in three ways namely; that the tenant agrees to give up the statutory right of tenancy renewal implying there will be no security of tenure when the existing lease expires, that the tenant may be required to surrender an existing tenancy in future, and that the tenant loses their statutory right to compensation on termination of the tenancy.

Rooney and Cridge explain that exclusion of LTA 1954 protection is normally done because of the following:

- for new tenancy, it may be the only landlord’s offer available to a prospective tenant who either accepts the contracted-out tenancy or risks not being granted a tenancy.
- also, since the tenant’s statutory right to tenancy renewal results in higher rent, some tenants may prefer to pay lower rent with contracted-out tenancy if they think that the right to new tenancy is not so important to their future business plans.
- where the landlord wants to keep flexibility with their property of which shorter and contracted-out tenancies allow them to respond more easily with market demands where they will need and be able to regain possession for refurbishment, demolition and redevelopment of premises.
- sometimes tenants who require the right to subletting are forced by landlords to take contracting out tenancy so that when the head tenancy comes to an end, the sub tenancies also come to an end to avoid hustling with subtenancies of the whole or part of the premises who may be covered by the protection of LTA 1954.

-Law of Property Act 1925. Section 146(1) of this Act provides for a landlord’s right of re-entry or forfeiture of the lease in case of tenant’s breach of any lease’s covenants including non-payment of rent as may be stipulated in the lease but the landlord is required to first serve a notice to the tenant informing him of the particular breach, requiring

him to remedy the breach or requiring monetary compensation for the breach. Section 146(2) of LPA 1925 allows the tenant to apply to court to be relieved of the forfeiture at the discretion of the court. Also, subsection 4 of this section protects subtenants who may otherwise suffer from forfeiture of the head tenancy.

-Landlord and Tenant (Covenants) Act 1995. Section 5 of this Act provides for the tenant to be released from his obligations and ceases from getting benefits of the lease on assigning the remaining term of the tenancy. Section 6 of the same Act also releases the landlord from his covenants and ceases from benefits he is entitled to under the lease on assignment of reversion. This means the original lessee is not responsible for lease obligations once the premises are formally assigned to a new lessee (assignee) likewise the landlord is relieved from lease obligations once the reversion is formally sold out to a new buyer.

-Landlord and Tenant Act 1927. Section 1(1) of LTA 1927 provides that the tenant is entitled to right of compensation for any improvements made on the premises which improves the value of the premises provided that such improvements are not fixtures which by law the tenant is required to remove at the tenancy termination or on quitting the premises.

-Arbitration Act 1996. This law sets guidelines for disputes resolution among the parties using Arbitration procedures. The law is helpful in case landlord and tenant decides to use an arbitrator to settle their grievances.

-The Code for Leasing Business Premises in England and Wales 2007. This is not legislation but purely voluntary code of best industry practice that was drafted in 2007 after comprehensive consultation and discussion between representatives of government, landlords and tenants to come up with a document that helps in promoting efficiency and fairness between landlords and tenants of commercial leases in their lease arrangements.

Therefore, UK has enough relevant landlord and tenant laws that guide relationships of commercial landlords and tenants.

2.3.2 Rwanda's Landlord and Tenant Related Laws

In Rwanda, there is no specific law governing commercial landlord and tenant relationships. However, in relation to landlord-tenant issues, the following relevant laws come into play;

-Law No. 45/2011 Governing Contracts. This is a general law on contracts. Article 2(1) of this Act defines 'contract' as "a promise or a set of promises the performance of which the law recognizes as obligation and the breach of which the law provides a remedy". The general requirements for formation of a valid contract include; mutual assent of the parties; capacity of either party to contract; object matter of the contract; and licit cause/ cause of the contract that is acceptable by law (Article 4). Article 8 of this law provides that mutual assent of parties shall consist of an offer by one party and acceptance by the other party whereas; Article 33 states that a contract requires consideration. A contract concerning the right on immovable property shall be evidenced in writing (Article 42(1)). Articles 136 and 137 provide for judicial remedies and lawful damages of contract respectively.

-Decree of 30/07/1888 Relating to Contracts or Conventional Obligations. This is every old piece of legislation about the general contracts and conventional obligations. However, Articles 373-426 of this law cover very limited and general provisions for landlord and tenant relationships for residential, commercial and farmland properties.

A summary of articles of this law relevant to landlord and tenant issues in the context of the study topic include the following:

- Article 373: One can rent all kinds of real or personally property.
- Article 374: A lease is not subject to any specific form, it is valid when the parties to it have agreed on the leased asset and its rent consideration. The written lease agreement serves as just documentary evidence.
- Article 375: The lessee reserves the right to sublet or assign the lease to another party as long as such right has not been prohibited in the lease. However, such right may be prohibited wholly or partially. This clause must be clearly and expressly stated in the lease agreement.
- Article 376: The lessor has three implied obligations which include; providing the lessee with the rented asset, keeping and maintaining well the leased asset so that it is fit and suitable for the purposes for which it was rented, and ensuring the lessee enjoys quiet enjoyment of the asset during the lease term.

- Article 377: The lessor has obligation to deliver the rented asset in good state of repair. He must carry out all the necessary repairs during the lease term apart from those repairs that are supposed to be carried out by the lessee as required by the lease agreement.
- Article 378: The landlord is liable for all the faults or defects of the rented asset that may undermine and interrupt its use by the lessee even if the lessor was not aware of such faults or defects at the lease commencement. The lessor is responsible for all the damages and losses the lessee may suffer as a result of such faults and defects.
- Article 385: The lessee has two main obligations which are; to use the rented property in good faith, strictly using the property for permitted use or the expected and reasonable use considering the nature of the premises if there was no permitted use specified in the lease, and to pay rent when it falls due as specified in the lease.
- Article 386: when the lessee puts the leased property into use other than the original permitted use or such use that may cause loss to the lessor, depending on the circumstances, the lessor may request to terminate the lease.
- Article 387: If both landlord and tenant had a schedule of condition and agreed on the condition of the leased property at the lease commencement, the tenant must ensure the property is returned to the landlord in the same condition he received it a part from the damages caused by; natural wear and tear and force majeure.
- Article 388: If there was no schedule of condition agreed between the parties at the lease commencement, it is assumed that the tenant received the property when it was in good tenable condition and in good state of repair and he must therefore return it in good state unless the tenant can prove that he received it when it was not in good condition.
- Article 389: The tenant is under obligation to incur costs of repairs for damages caused during the lease term unless he can prove that such damages were not caused by his fault.
- Article 393: It is implied that a fixed term lease expires when its duration comes to an end (effluxion of time) without need for notice. If the lease has no fixed term, it can be terminated by one party serving a termination notice to the other party in accordance with the norm in the area where the property is located.
- Article 394: When the lease automatically ends on term expiration, and the tenant remains in possession of the premises while residing in it for more than the maximum time either agreed in the lease, required by law or determined by the norm, it is assumed that a new tenancy is granted basing on implied consent of both tenant and landlord.
- Article 397: The lease agreement is terminated when the leased property is destroyed or either the landlord or tenant fails/faults in fulfilling their lease obligations.
- Article 398: The lease agreement is not terminated by the death of either landlord or tenant.
- Article 399: If another person buys rented property from landlord, the buyer cannot evict the tenant or subtenant who has a written valid lease with fixed duration unless such right is reserved in the lease agreement.
- Article 400: If it was agreed in the lease agreement that in case the leased property is sold, the buyer can evict the tenant or subtenant and there was no compensation specified, the landlord must compensate the tenant or subtenant in accordance with the provisions of Articles 401,402 and 403 of this decree.
- Article 404: The buyer who wants to exercise his right reserved in the lease of evicting tenant or subtenant, is required to notify the tenant and inform him of when the eviction will take place and must at least notify the licensee of a farm land one year prior to eviction.
- Article 405: In the absence of the landlord, the compensation to tenants or subtenant to be evicted must be paid by the buyer.
- Article 406: If the lease is not created by written valid agreement or deed or without a fixed term, the buyer is not required to pay compensation.
- Article 414: If the tenancy is terminated due to the tenant's fault, the tenant must pay rent equivalent to the void period until the premises get another occupier and the tenant may also be required to pay other damages resulting from tenancy termination.
- Article 415: The landlord cannot terminate the tenancy even if he wants to use/occupy the premises himself unless such right is reserved in the lease.

- Article 416: If the landlord is entitled to the right of terminating the lease with intention to occupy the property himself, he must serve the notice in accordance with the norm of the area where the property is located.

-Law No. 59/2011 Establishing the Sources of Revenue and Property of Decentralized Entities and Governing their Management. Article 7 of this law requires a property owner who holds a freehold title to pay fixed asset tax which is (1/1000) of the market value of fixed asset payable annually. The landlord who receives income from rented fixed assets in Rwanda must pay annual rental income tax (Article 48). This implies that property tax payment is a landlord's obligation by law even though the tenant may be an occupier.

Therefore, Rwanda's commercial tenancy market is majorly governed by tenancy agreements between the parties based on general contract principles. As discussed above, though the Decree of 30/07/1888 includes most of the important implied and express rights and obligation of both landlord and tenant such as; tenant's right to sublet/assign; parties' obligations of repairs; tenant's right of quiet enjoyment; tenant's obligation to keep well the leased property and pay rent as agreed; landlord's obligation to deliver rented property in good state as well as the protection of the tenant or licensee from eviction by the buyer, the decree misses out on some of the critical and key terms of modern tenancy agreements seen in best practices like UK such as; rent review clause; lease renewals and security of tenure; and tenant's statutory right to compensation for improvements, all of which ensure fairness between the parties to the tenancy agreement.

2.4 TYPES OF TENANCY/LEASE AGREEMENT

The type of lease agreement is recognized by the arrangement of lease length agreed between the parties. Lease length is a period during which you may occupy the property, liable for rent and other covenants (RICS, 2013). (Moran, 2007; Wilkie et al., 2006) reveal that in UK, the following are recognizable lease types: fixed term lease, periodic tenancy, tenancies terminable on death or marriage, perpetually renewable leases, reversionary leases, concurrent leases, tenancies by estoppels, tenancies at will, and tenancies at sufferance.

Fixed term lease (a lease for a fixed period of time) and periodic (usually month to month) tenancy are the most common in many countries (Dabara et al., 2012). Foster (1989) argues that periodic tenancies may be insecure to the tenants despite a number of advantages like ability of tenants to quickly move in the premises, tenants right to terminate the tenancy within a month's notice, and no much rent deposits/security guarantee requirements. Although a fixed long term lease ensures security of tenure to tenant as well as security of income to the landlord, it implies a long term financial commitment which may not be favourable and acceptable by the tenant and therefore shorter term occupancy may be the best option. On the other hand, the landlord may need to create short term occupancy in the event it is hard to rent the property for long term or when the landlord does not want to create security of tenure to obtain possession in future. Foster recommends that to protect landlord who offers a periodic tenancy, yearly rent reviews should be adapted to open market rent and rent payment should be monthly in advance.

Moran (2007) reveals that in UK, most commercial lease agreements are fixed term leases with long term up to 25 or 20 years to ensure security of income to the landlords and security of tenure the tenants. However, neither party can terminate it before the expiration of contractual term unless under particular circumstances specified in the lease within the provisions of the law.

2.5 THE STRUCTURE AND CONTENT OF COMMERCIAL LEASES IN UK

2.5.1 Drafting the Commercial Leases

Moran (2007) reveals that professionally, the commercial property leases may involve the services of one or more professionals such as valuation surveyors, lawyers and estate agents. Moran reveals that in UK, the drafting of lease agreement involves solicitors and chartered surveyors using their different specialized skills, knowledge and experience and working closely together to meet and achieve their mutual client's interests.

For example Moran (2007, p.3) explains that:

The surveyor recommends basic lease terms, draws up plans for proposed leases and markets the units. When prospective tenants are found, the surveyor sends instructions to the solicitor indicating the parties' names and addresses, the name of the prospective tenants' solicitors, a plan of the premises and the basic lease terms. These

terms may be brief indeed, even as little as 'FRI' that is 'full repairing and insuring', meaning that the burden of these matters is to be borne by the tenant. The solicitor will ask the client to confirm these instructions and then prepare a draft of the proposed lease which is always done by the landlord's solicitor.

The same view was anchored by Stapleton (1994) who argues that the terms of the lease may be negotiated between lessor and lessee or their advisors, then the landlord's surveyor prepares heads of lease agreement and the landlord's solicitor prepares a draft agreement which includes all lease covenants. Finally, the landlord's surveyor has to proof read the draft lease to ensure practicability to meet the intentions of the parties before a final lease agreement is signed. The tenant's solicitor may as well request the draft lease and read through the terms of the offer for appropriate advice to the tenant. Ideally, an estate agent may be required to market the property and to bring landlord and tenant together, the chartered surveyor's role is to advise on technical implications of the lease terms on the property value and tenant's business requirements whereas the solicitor's role is to provide a legal advice on the legal implications of such terms and expanding the surveyor's heads of terms using a legal language and possible legal references. Also, RICS (2013) encourages the business tenants to seek professional advice of chartered surveyors and solicitors when negotiating the lease terms to better understand the implications of different terms of the lease on their current and future business requirements such as security of tenure, repairing and insuring obligations, rent and rent review clauses, alteration and user clauses, rights to assign and sublet, service charge provisions, obligations of outgoings, lease renewal procedures and procedures for dispute resolution.

2.5.2 Key Commercial Lease Terms

Lease terms refer to covenants (promises) between the landlord and tenant contained in the lease clauses, a breach of which entitles the innocent party to take any appropriate action available as may be reserved in the lease and in accordance with the provisions of the law (Wilkie et al., 2006).

The key commercial lease terms commonly used in UK as discussed in (Bannister, 2009; Moran, 2007; Stapleton, 1994; Tromans, 1996) include the following:

The Demise. This is full description of the leased premises including internal floor area, floor plan and physical boundaries.

Lease Term. This is the duration of the tenancy and any option to break for long term leases. Tromans (1996) argues that to a tenant, a break option may be useful to allow him escape from his future obligations whereas the landlord may require the break option to be able to obtain vacant possession of the property in future. The tenant requiring a break option may be required to pay a 'penalty rent'.

Rent, Deposits and Guarantors. This indicates initial annual rent secured in the lease and its frequency of payment usually equal quarterly payments in advance. Any rent free period or premium paid by tenant as well as guarantors to the tenant will be mentioned. Tromans (1996) reveals that where the tenant's covenant strength is believed to be weak, the landlord may require surety (guarantor) to guarantee that the tenant's obligations will be performed and to ensure that the landlord will be indemnified in the event of any tenant's covenant breach. Therefore a guarantor is required to sign authorized guarantee agreement. Where there are no sureties, the landlord may demand rent/security deposit from the tenant to ensure any tenant's default will be covered. Dabara et al. (2012) reveal that tenants are usually required to pay security/guarantee money for one or more months to be kept by the landlord in case the tenant defaults in payment or damages the property otherwise it will be given back on termination or expiration of the tenancy.

Rent review clause. (Jarvis, 1983; Male QC & Jefferies, 2005; Pawlowski, 2002; Rooney & Cridge, 2006; Tromans, 1996) argue that a tenancy agreement should invariably contain an express rent review clause that specifies the rent review pattern and basis of rent review. The standard rent review clause is significant; to increase rent to match inflation and to reflect the property's market value there by improving the property performance, and sometimes to allow landlords obtain a share of the tenants' profits in form of 'turnover rent'. The common rent review pattern in UK is 5 years or 3 years and less for shorter leases. Rent reviews can be on bases of; fixed increases, index-linked, ground rent reviews, geared rent reviews, turnover and open market rent (OMR) 'upwards only or upwards/downwards rent reviews'. The common basis of rent review in UK is open market rent reviews 'upwards only' which has been considered the norm. This is because landlords predominantly want to have a secure return from their investments and therefore they do not wish to get future rent lower than passing rent as a result of changes in economic circumstances

and property market (Tromans, 1996). The new rent at review will either be negotiated/agreed between landlord and tenant or it will be determined by a third party (usually an expert or an arbitrator) (Haddock, 1986).

User/alteration clause. This covenant stipulates the permitted use of the premises and the tenant's right of alteration of premises if necessary and any procedures required for such purpose. Tromans (1996) explains that any unnecessary tighter control and unjustified limitations on the potential use of the premises will be considered onerous likely to depress the value of the landlord's interest and reduce rent obtainable from the property especially at review.

Alienation (Assignment/subletting) clause. This clause explains any limitations to the tenant's right of assignment or subleasing of the whole or part of the demised premises. Pawlowski (2002) reveals that the tenant's right to assign or sublet the leased premises can be expressly stated in five different ways namely; no restriction that is no landlord's consent required for alienation, absolute covenant against alienation meaning the tenant is prohibited from alienation, qualified covenant which implies that a tenant is required to seek the landlord's consent before alienation, express provision that is landlord's consent should not be unreasonably withheld, and a covenant by the tenant to surrender the lease before assigning/subletting. Most modern leases will allow the tenant a right of assignment and subletting with landlord's consent to be sought first and such consent not to be unreasonably withheld. Jarvis (1983) recommends that for better portfolio performance, landlords should not impose unnecessary restrictions on tenant such as tenant's inability to change use of premises (restricted user clause); tenant's restriction on altering the premises, and restrictions on alienation (assignment/subletting) of business premises. This is because any reasonable tenant is likely to demand a significant rent discount so as to pay less than market rent due to such restrictions.

Repairing and insurance obligations. Smith (1990) reveals that most commercial leases for single occupiers are on full repairing and insuring (FRI) terms whereas internal repairing (IR) terms are usually for multi-tenanted buildings. For IR terms, landlords retain the obligations of repairs and insurance of the buildings and then recover these costs through service charge. This implies that In UK, whether FRI or IRI terms, tenants incur the costs of insurance and repairs. The tenant should ensure that a schedule of condition of premises is prepared by a building surveyor with photographs as evidence which will be annexed to the lease before lease commencement to avoid future dispute over any wear and tear resulting from ordinary and reasonable use of property or as a result of natural forces (Tromans, 1996). At the lease expiration, the landlord will recover damages for breach of repairs from the tenant by quantifying the repair claim in form of schedule of dilapidation (Debere, 1983).

Outgoings. Landlord incurs the operating expenses in gross lease whereas in a net lease leases, operating expenses are incurred by tenants. A net lease ensures certainty of net return while providing best services to the tenants and gross leases encourage uncertainty of returns to the landlord while failing to meet the tenants' needs (Halvitigala, Murphy & Levy, 2011). In UK, Tenants incur business rates, property taxes and pay utility bills. This means most UK leases are net leases which imply the rent received by the landlord is a net income and the investment return from a property can be forecasted with certainty.

Service charges. Abraham (1985) defines service charge as either direct or indirect amount paid by the tenant for repairs, insurance, maintenance, management, services and other costs of common areas/facilities. Abraham explains that service charge is; reserved as rent, as additional rent or left as a sum which the tenant agrees to pay. However, the first two options are safest for landlord to recover any unpaid service charges. The commonly methods/bases of service charge allocations include; floor areas, weighted floor area, rateable values, degree of use of services, fixed proportion/percentage, and fair proportion (Adams, 1991). Adams emphasizes that each method has challenges but the choice of allocation depends on the circumstances of each case. The service charges are exclusive of rent and are charged and managed separately from rent. This is to ensure that repairs and other costs are met in time to the satisfactory of the tenant while the landlord receives net rent. If rents were inclusive of service charge, landlords would be very reluctant to increase services in order to save the rental income. Proper service charge management ensures that the tenant's changing business requirements are timely met (Smith, 1990).

Tenure security. This expresses the tenant's automatic right to renew their leases at expiration or whether such rights are contracted out in accordance with provisions of Landlord and Tenant Act 1954.

Dispute Resolution Procedures. The traditional approaches to dispute resolution in commercial tenancies are litigation and arbitration (arbitrator/independent expert). However, other forms of alternative dispute resolution (ADR) such as use of mediation or mini-trial has been promoted because of their advantages such as; keeping status of the parties confidential, preserving the relationship between the parties, cost effective and saves time (Macdonald, 1992).

Macdonald reveals that the three common dispute areas in landlord and tenant relationship are; service charges, rent reviews, and lease renewals.

Regarding the overall quality of a good commercial lease, UK institutional investors always prefer what is commonly known as an ‘institutionally acceptable lease’ which is:

one which will enable the investor to secure the best return from the property leased and where landlord is without residual liability. The obligations of both landlord and tenant are clear on such vital matters as repairs, user, alienation, rental payments, rent reviews, insurance, and service charges. A lease meeting these requirements is termed as a ‘clear lease’. The landlord or investor must be certain and confident about the income which will flow from the investment to ensure that the income can be relied upon (Smith, 1990, pp. 246-247).

A similar view is shared by Jarvis (1983, pp5-6) who defines an ‘institutionally acceptable lease’ as:

a prime lease with the four essential qualities which are: secures the best return possible from leased property, it is a clear lease (ensures landlord is free from residual liabilities and obligations to spend on), obligations of the parties are clearly defined, and protects the property from effects of inflation.

In their research of 2006, Hamilton, Lim and McCluskey revealed that in UK, most modern leases tend to be flexible to meet the tenants’ requirements with shorter terms, break options and incentives for long leases instead of traditional 20 or 25 year lease term of 5 years rent review pattern upwards only. They also discovered that stable businesses like big local and international companies opt for long leases compared to small, medium and non-established businesses with inadequate financial capacity for long term commitment.

In 2009, the Code of Leasing Business Premises in England and Wales 2007 was amended to include Model of Heads of Terms to guide negotiations between commercial landlords and tenants when entering into lease agreements. These model Heads of Terms are supposed to be used by Landlord’s surveyor as reference to prepare heads of terms to be sent to the lawyer for drafting a formal lease. See table 1 showing a summary of the Code’s Model Heads of Terms.

Table 1: Model Heads of Terms provided by CLBP in England and Wales 2007 as amended

1.0	Initial information	Lease to be Code compliant: Yes/No.
1.1	Property address	Detailed description (and Land Registry compliant plan if available) and measured area if relevant, e.g. for rent, service charge and rent reviews.
1.2	Landlord	[] (Registered no.[]) Registered office: Correspondence address: Contact name: E-mail: Telephone: Fax: Mobile:
1.3	Tenant	[] (Registered no.[]) Registered office: Correspondence address: Contact name: E-mail: Telephone: Fax: Mobile:
1.4	Rent	£ per annum exclusive of VAT. Payment dates, monthly/quarterly. Is the property VAT elected?
1.5	Rent free period (and other incentives)	
1.6	Type of lease	Head lease or sublease
1.7	Landlord’s initial works (including timing)	Long stop date by which works must be done. Is the specification agreed if not who is providing it?
1.8	Tenant’s initial works (including timing)	
2.0	Guarantor/rent deposits	(a) Identity of guarantor (if any). (b) (b) Rent deposit amount (if any).
3.0	Lease length, breaks,	

	extensions and rights				
3.1	Lease length and start date				
3.2	Break clauses or renewal rights	(a) Notice periods for exercising? To be at least []. (b) Any break clause payments?			
3.3	1954 Act protection	Does the lease have 1954 Act protection?			
3.4	Rights	e.g. Satellite dish, air conditioning platforms, remote storage areas, signage etc. Any rights of access, servicing, wayleaves or other matters including fire escape. For car-state number and attach plan if relevant.			
4.0	Rent reviews	(a) Type (market rent, fixed increases, link to index?). (b) How often do reviews occur? (c) For market rent, are there any unusual disregards or assumptions? Arbitrator or expert			
5.0	Assignment and subletting See check box >		Prohibited	If not prohibited is CNUW	Permitted without consent
		Assignment of whole	Yes/No	Yes/No	Yes/No
		Sub-Lease whole	Yes/No	Yes/No	Yes/No
		Sub-Lease part	Yes/No	Yes/No	Yes/No
		Sub-Sub-Lease	Yes/No	Yes/No	Yes/No
		Concession	Yes/No	Yes/No	Yes/No
		Group sharing	Yes/No	Yes/No	Yes/No
For sublettings consider: Maximum number of occupiers, limitations. Code requires subletting to be at market rent. CNUW= Consent not to be unreasonably withheld.					
6.0	Services and service charge	Provide estimate or actual budgets and confirm proportion. Any special provisions e.g exclusions, special services e.g. enhanced security? Any unusual provisions e.g. sinking fund? Note: owners and occupiers should be aware of the RICS 2006 code of practice on service charges in commercial property and seek to observe its guidance in drafting new leases and on renewals.			
7.0	Repairing obligations				
7.1	FRI and schedule of condition	(a) Is it full repairing? If so (b) Is the landlord who repairs and recovers the cost or the tenant who repairs at its own cost? (c) Is there to be a schedule of condition?			
7.2	Collateral warranties	Who is giving them?			
8.0	Alterations and use				
8.1	Alterations See check box >		Prohibited	If not prohibited is CNUW	Permitted without consent
		External	Yes/No	Yes/No	Yes/No
		External structural	Yes/No	Yes/No	Yes/No
		Internal structural	Yes/No	Yes/No	Yes/No

		Internal not structural	Yes/No	Yes/No	Yes/No
		Note: is an agreed form of licence to be attached to the lease			
8.2	Permitted use	Specify use and any ability to change use			
9.0	Insurance	(a) Landlord insures and recovers the premium from the tenant (b) Will terrorism be an insured risk? (c) Mutual break clause on -Insured damage? -Uninsured damage?			
10.0	Lease management				
10.1	Dilapidations	e.g. Dilapidations to be scheduled and given to the tenant six months before the termination date.			
11.0	Other issues				
11.1	Rates and utilities	Confirm that the tenant is responsible. Tenant must check actual amount with local authority provider			
11.2	Legal costs	Each party to pay own including costs of approval for tenant's outfit.			
11.3	Conditions	e.g. 1. Board approvals 2. Planning 3. Local authority consents 4. References 5. Superior landlord's consent 6. Survey			
11.4	General	1. DDA 1995? 2. Asbestos register? 3. Environmental issues? 4. Health and safety file and other issues? 5. Energy efficiency certificate? 6. Carbon reduction commitment issues? E.g. memorandum of understanding. See Environmental Good Practice Guide.			
11.5	Landlord's Solicitors	[] Company address: Contact name: E-mail: Telephone: Fax: Mobile:			
11.6	Tenant's Solicitors	[] Company address: Contact name: E-mail: Telephone: Fax: Mobile:			
11.7	Timing and other matters	e.g. Exclusivity period, target for exchange?			
11.8	No contract	These Heads of Terms are subject to contract			
11.9	Landlord's agent(s)	[] (Registered no.[]) Registered office: Correspondence address: Contact name: E-mail: Telephone: Fax: Mobile:			
11.10	Tenant's agent(s)	[] (Registered no.[]) Registered office: Correspondence address: Contact name: E-mail: Telephone: Fax: Mobile:			

Source: Adopted from Code of Leasing Business Premises in England and Wales 2007 retrieved from www.leasingbusinesspremises.co.uk/downloads/heads_terms_print098005.pdf on 22nd April 2015

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 RESEARCH APPROACH AND STRATEGY

The two theoretical perspectives that underpin the research are epistemology (existing knowledge) and ontology (nature of reality). These theories are linked with two research processes of; deductive process (hypothesis testing), and inductive process (generation of theories from empirical data) (Creswell, 2003; Gray, 2009, 2014). Gray reveals that research studies can be exploratory, descriptive or interpretive and that the choice of research methodology depends on whether the research is quantitative, qualitative or mixed. The research strategies include; experiment/quasi experiment, longitudinal/cross sectional surveys, action research, evaluation, case study, ethnographic study, phenomenological study, grounded theory, and heuristic inquiry).

This particular study was underpinned by epistemology since it was based on the existing knowledge of the study topic. The research approach was a deductive process as the study sought to gather primary data that would be compared to the existing literature. The research was majorly a quantitative one since most of the information the researcher was looking for were facts not respondents' opinions (Weisberg & Bowen, 1977). However, to a smaller extent, qualitative method was used to obtain in-depth opinions of few selected property professionals (lawyers, valuation surveyors and estate agents) that would further strengthen the recommendations of the research.

The research strategy was a descriptive survey that sought to answer questions of what is happening in commercial tenancy practice in Kigali City in order to establish the extent of existing problems which could later provoke why type questions of explanatory research that could lead to policy reforms/actions. It was a cross-sectional survey in a short time to obtain descriptive information from a representative sample that could be generalized to the population (De Vaus, 1995, 2002).

3.2 SAMPLING STRATEGY

3.2.1 Target Population and Sampling Frame

The target population was all tenants of commercial properties in Kigali City-Rwanda. The sampling frame was composed of tenants occupying offices and shops in Kigali City. Industrial premises are mainly owner occupied and retail premises are very few and these two submarkets were excluded from the sampling frame. The number of elements in a sampling frame was unknown but expected to be big never the less most of social research is carried out on populations with unknown sampling frame especially field research projects (Bernard, 2000).

3.2.2 Sampling Technique and Sample Size

There are two types of sampling techniques namely; random sampling (simple random sampling, stratified random sampling, cluster sampling, and stage sampling) and non-random sampling (purposive sampling, quota sampling, convenience or volunteer sampling and snowball sampling). The choice of the sampling technique depends on the nature and circumstances of the study (Gray, 2009, 2014; Punch, 1998). The sample size depends on the degree of accuracy required and the extent of variations in main characteristics of target population (Gray, 2004).

The three districts that form Kigali City were considered, however, since Kigali City covers a reasonably large geographical area with a large portion being peri-urban in each District with low concentration of business activities, then only two commercial zones in each district were selected purposively on grounds of concentration of business activities. In Nyarugenge District, Kigali Central Business District (CBD) and Nyabugogo Centre were chosen. This is because Kigali CBD is a home to the City's Commercial Centre with a number of newly constructed and prime buildings such as Kigali City Tower, Kigali City Market, Grand Pension Plaza, Union Trade Centre, City Plaza, Rubangura House, Centenary House and so on which accommodate a number of big and medium shop and office occupiers. Nyabugogo Centre was chosen since it is the biggest transport harbour of the city linking all major national roads leading to the country borders and the level of business activities is high. In Gasabo District, Kisenjwe and Kimironko Centres were chosen. Kisenjwe has a number of service providers, supermarkets, shops and offices while Kimironko has a taxi park with a number of surrounding shops and offices. In Kicukiro District, Remera and

Center/Sonatubes Centres were chosen. Remera has a taxi park with a number of surrounding shops while Kicukiro Center/Sonatubes is another commercial part of the district

Due to the big size of the elements in the sampling frame, a representative sample was selected. A representative sample of 310 respondents was selected comprising of 50% in Nyarugenge District since it is a home to Kigali's Central Business District and with majority of business activities, and then 25% for each of the remaining two Districts. There was stratification of the sample where 50% of each District's respondents were office tenants and the remainder was shop tenants to have equal chance of establishing whether different property uses would have an influence on the tenancy arrangements. Both tenants of prime (newly constructed/refurbished) properties and tenants of secondary (second hand) properties were included in the sample. Individual respondents were chosen by systematic random sampling from a database of list of tenants under landlords registered for paying rental income tax in respective Districts' commercial zones. The researcher was convinced that this sample size was reasonable and representative of target population since similar studies (Crosby, Hughes, & Murdoch, 2006; Henneberry, 1991) have used relatively close sample sizes. Considering the time frame of the research, a bigger sample size would make it practically unachievable.

3.3 PRACTICAL IMPLEMENTATION

3.3.1 Data Collection Approaches

Both primary and secondary data was collected. Primary data was collected from respondents in the field and secondary data was obtained from secondary sources such as; text books, academic journals, conference and workshop papers, official statistics, professional and technical reports, newspaper articles and internet. The researcher made effort to ensure that only credible and reliable secondary data sources were used to avoid incomplete, inaccurate and biased data which may be misleading.

3.3.2 Research Techniques

The choice of data collection techniques depends on; sample size, time, availability of resources, sensitivity of data to be collected, and complexity of the study (De Vaus, 2002). Creswell (2003) reveals that questionnaires and interviews are commonly used in surveys.

Questionnaires were used for this research since the sample size was relatively large and the research questions were standardized to suit the objectives of the study instead of allowing respondents to give detailed and in-depth information which would have required use of interviews (Gray, 2009). Questionnaire piloting was done to get feedbacks which were useful in designing a better questionnaire with clear and concise questions prior to data collection. Most of the questions in the questionnaire were closed ended questions which were seeking factual answers with very few open ended questions that sought respondents' opinions. The questionnaire respondents were contacted and found using their addresses and contacts from landlords/tenants' register obtainable from District Finance Office. Gray (2009) argues that despite many advantages of using questionnaires, there are potential limitations such as low response rate and wrong interpretation of questions by respondents. In order to minimize these main limitations for use of questionnaires, the researcher decided to personally administer the questionnaires that is delivery of questionnaires to respondents face to face and later collecting them to ensure effective and timely delivery. In situations where particular respondents required help in interpreting technical questions, the researcher was able to read and interpret the questions to such respondents, get the answers from them to fill the questionnaires and then go with completed questionnaires immediately. In addition, the researcher had to make a follow up through telephone calls to respondents who had not completed and returned questionnaires to do so as to increase the response rate.

A total of 310 questionnaires were administered and 247 questionnaires were returned implying a response rate of 79.7% of which 40.7% was from office tenants while 39% was from shop tenants. In addition, one valuation surveyor, two commercial lawyers, one in-house property manager as well as one estate agent were briefly interviewed using same questions in the questionnaire to seek their meaningful insights and views regarding the study based on their experience in Kigali's commercial lease market and this was intended to help in strengthening the recommendations of the study.

3.3.3 Approaches to Data Presentation and analysis

Raw data was categorized into; categorical (nominal and ordinal) data and quantifiable (interval and ratio) data to ensure appropriate statistical presentation for analysis. It was then cleaned, checked for missing data or errors, and laid in form of data matrix tables. (De Vaus, 2002; Fink, 2006; Gray, 2009). Data was analyzed by descriptive statistics using Microsoft Excel package and the descriptive information was then presented using graphical analysis in form of tables, bar charts, pie charts and histogram as recommended by De Vaus, Fink and Gray. The descriptive statistical data was later interpreted, discussed, and compared with the literature review for appropriate conclusions and recommendations.

3.3.4 Description of Ethical Approach

The researcher was very much aware that the ethical approach to modern professional research was very important for sound outcomes of the study. A number of potential ethical issues were likely to rise during data collection and thereafter and the researcher cautiously considered major ethical principles as recommended by Gray (2009).

The first part of the questionnaire contained statements that clearly identified the researcher and explained the purpose of the study. The role of participants was clearly explained and respondents were required to participate voluntarily and to respond to the questionnaires during their time of convenience and they had a right to withdraw from the study any time without giving a reason. The researcher ensured that there was no any form of harm to respondents and avoided use of deception. To allow verification by any of the respondents who would wish to, the questionnaire contained the name and contact address of the research supervisor for any queries regarding the research or any questions contained in the questionnaire and in few occasions the researcher provided his University Identity Card for purposes of identifying himself to respondents before they could allow him attention.

The information from participants was kept confidential and participants' identities were kept anonymous during and after research. This was possible by storing soft copy of collected data on personal password protected computer and making hard copies of questionnaire forms inaccessible to unauthorized persons. By willingly and voluntarily accepting to fill the questionnaire, it was assumed that participants had given informed consents after fully understanding the terms and conditions of the research. Also, the researcher obtained an ethical approval (see appendix 1 attached) from both the supervisor and college ethical approval panel for taught programmes prior to undertaking the research.

3.3.5 Research Limitations

This particular research had a number of limitations but the researcher managed to minimize most of them as follows:

- ❖ Time of the research was not enough for all the research processes. However, the researcher decided to narrow the scope of the study and use a reasonable sample size.
- ❖ Most of the research questions were technical because of the lease terminologies used and therefore in some cases the researcher had to assist by interpreting questions to respondents who needed help.
- ❖ Some of the respondents especially those operating shops in downtown were too busy to respond. The researcher had to target such respondents during the early and late hours of the day when they were less busy.
- ❖ There was limited relevant literature about the study topic in Rwanda, the researcher had to use UK literature review as the best practice and then gathered empirical data from Rwanda to be compared with UK literature.
- ❖ Some respondents delayed to respond until the researcher would present his University Identity Card as a proof of identity and sometimes the researcher would use someone who knows him for assurances.
- ❖ The research majorly used questionnaire to get the facts about the study topic but did not use interviews to get in-depth opinions of the respondents due to limited time frame to use mixed methods. Therefore use of interviews for similar studies can always be done in future.
- ❖ The research excluded other key stakeholders of commercial lease sector such as landlords and government representatives due to limited timeframe. The researcher would have loved to get their views and opinions about this study and it will be interesting to consider them in future while researching about similar topics.

CHAPTER FOUR: RESEARCH FINDINGS: DATA PRESENTATION, ANALYSIS AND DISCUSSION

4.1 PRESENTATION OF FINDINGS

4.1.1 Real Estate Professionals' Involvement in Commercial Tenancies

4.1.1.1 Daily Management of Tenants' Premises

The findings revealed that 53.5% of tenants' premises was managed by landlord, 35.6% of the space was managed by landlord's agent while 9.3% of tenants' space was managed by In-house property manager and only 1.6% of tenants' space was managed by outsourced property management firm on a daily basis as shown by table 2.

Table 2: The Daily Management of Tenants' Premises

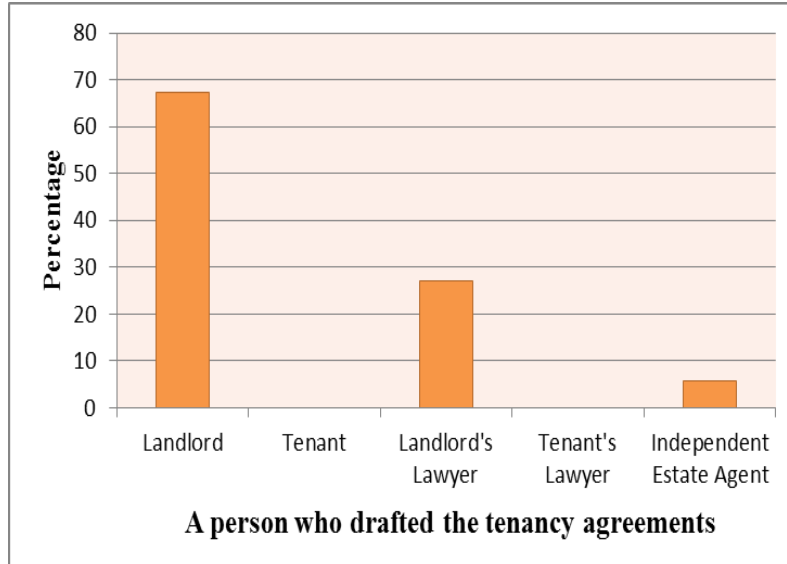
Property Manager	Frequency (%)
Landlord	132 (53.5%)
Landlord's Agent	88 (35.6%)
In-house Property Manager	23 (9.3%)
Outsourced Property Management Firm	4 (1.6%)

Source: Compiled from field data by the Author

4.1.1.2 Drafting of Tenancy Agreements

Out of the total tenancy agreements held by respondents, 67.2% was drafted by the landlord, 27.1% was drafted by landlord's lawyer, 5.7% was drafted by independent estate agent while there was 0% for both tenant and tenant's lawyer as illustrated by the figure 1.

Figure 1: A person who was used in Drafting the Tenancy Agreements

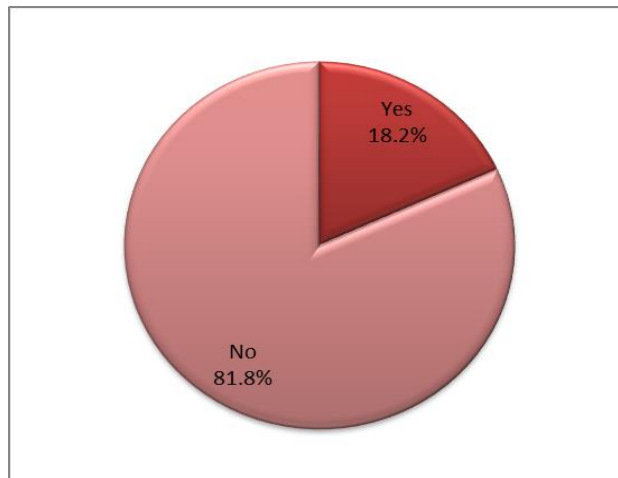


Source: Compiled from field data by the Author

4.1.1.3 Tenants' Professional Representation in Negotiating Tenancy Terms

The findings further indicated that only 18.2% of the tenants had a professional representation in negotiating tenancy terms while the remaining 81.8% was not professionally represented as indicated by figure 2 below.

Figure 2: Professional Representation in Negotiating Tenancy Terms



Source: Compiled from field data by the Author

4.1.1.4 Professionals used in Negotiating Tenancy Terms

The tenants who were professionally represented in negotiate the tenancy terms, 23 of them were represented by a Lawyer, 17 used an Estate Agent while only 2 tenants were represented by Valuation surveyor as shown in table 3.

Table 3: Professionals Used in Negotiating Tenancy Terms

Professional	Number
Valuation Surveyor	2
Estate Agent	17
Lawyer	23
Others	0

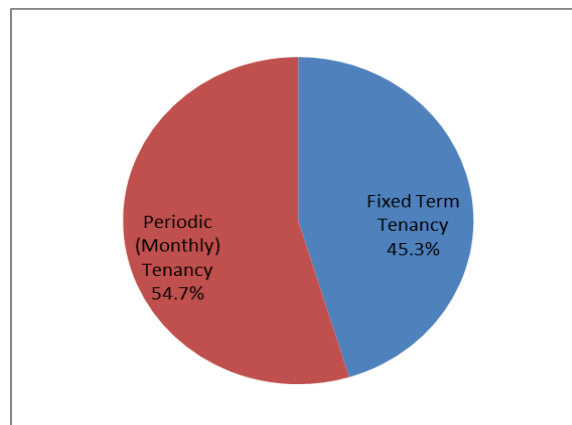
Source: Compiled from field data by the Author

4.1.2 The Key Tenancy Terms

4.1.2.1 Type and Duration of Tenancy Agreement

Majority of tenancy agreements were periodic (monthly) tenancies represented by 54.7% and fixed term tenancies were 45.3% as shown by the figure 3.

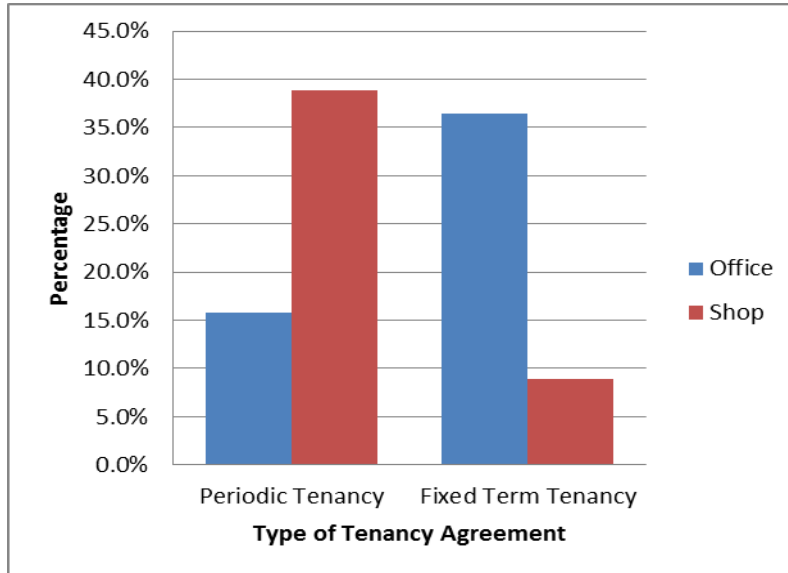
Figure 3: Types of Tenancy Agreements held by Tenants



Source: Compiled from field data by the Author

The findings further showed that out of the total periodic tenancies, 38.9% was shop tenancies while 15.8% was office tenancies. On the other hand, the highest percentage of fixed term tenancies was from office tenancies (36.4%) whereas shop tenancies only formed 8.9% of fixed term tenancies as shown by the figure 4.

Figure 4: Distribution of Tenancy Types between Types of Commercial Space



Source: Compiled from field data by the Author

The average duration of the fixed term tenancy was 2.1 years. 1 year was the most common term (22.2%) and 10 years was least frequent term (1.6%). The fixed term tenancies and their respective percentages are shown in the table 4.

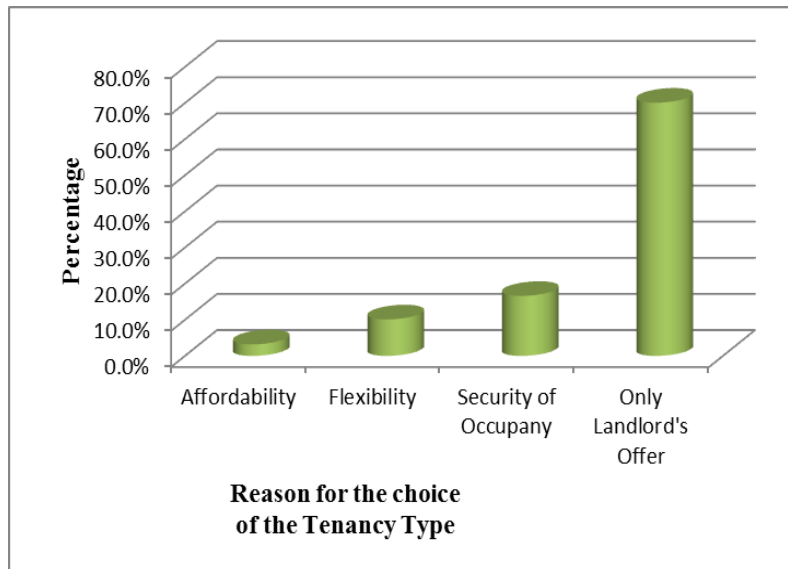
Table 4: The Duration of the Fixed Term Tenancies

Tenancy Duration (Years)	Number
½	12 (4.9%)
1	55 (22.2%)
2	14 (5.7%)
3	17 (6.9%)
5	10 (4.0%)
10	4 (1.6%)

Source: Compiled from field data by the Author

The only Landlord's offer was the major reason behind the choice of the tenancy type by both shop and office tenants represented by 70.1%, followed by security of tenure (16.6%), then followed by flexibility (10.1%) and minor reason given was affordability (3.2%) as illustrated by the figure 5 below.

Figure 5: The main factor that influenced Tenant's choice of the Tenancy Type

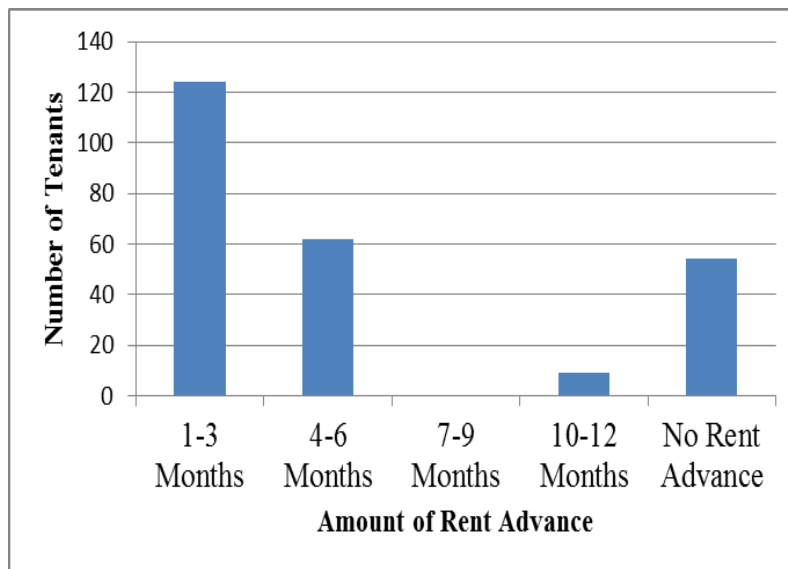


Source: Compiled from field data by the Author

4.1.2.2 Rent Advance, Rent/Security Deposit and Frequency of Rent Payments

Most tenants (124) were required to pay rent Advance of 1-3 months, the second highest number (62) of tenants paid 4-6 months' rent advance, the third highest number (54) of tenants was not required to pay rent advance at the beginning of the term and the smallest number (9) paid 10-12 months' rent advance as indicated by figure 6.

Figure 6: The Amount of Rent Advance paid by Tenants



Source: Compiled from field data by the Author

The frequency of rent payment was mostly monthly in advance (53.9%) and quarterly in advance (36.1%) was the second most common, followed by 2 months in advance (5.7%). Very few tenants paid their rent half yearly in advance (3.2%) and yearly in advance (2.3%). There were no tenants allowed to pay rent in arrears as shown in table 5 below.

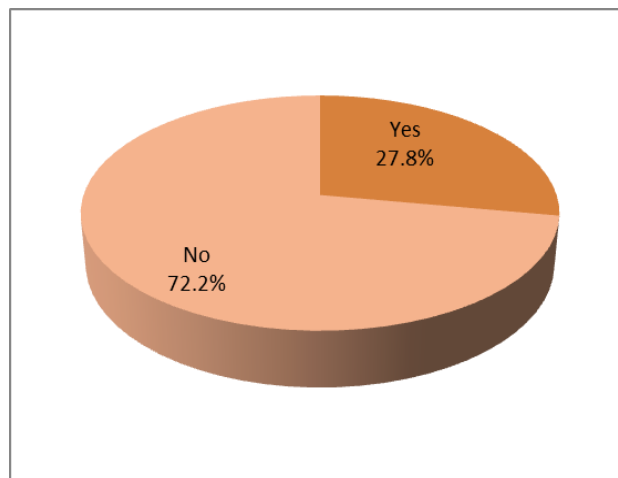
Table 5: The Frequency of Rent Payments

Frequency of Rent Payment	Percentage
Monthly in advance	53.9%
Monthly in arrears	0%
2 Months in advance	5.7%
Quarterly in advance	35.6%
Half yearly in advance	2.8%
Yearly in advance	2.0%

Source: Compiled from field data by the Author

Most of tenants were not required to pay rent (security/guarantee) deposit while about 28% of the respondents confirmed that they were required to pay security deposit under their leases as shown by the figure 7.

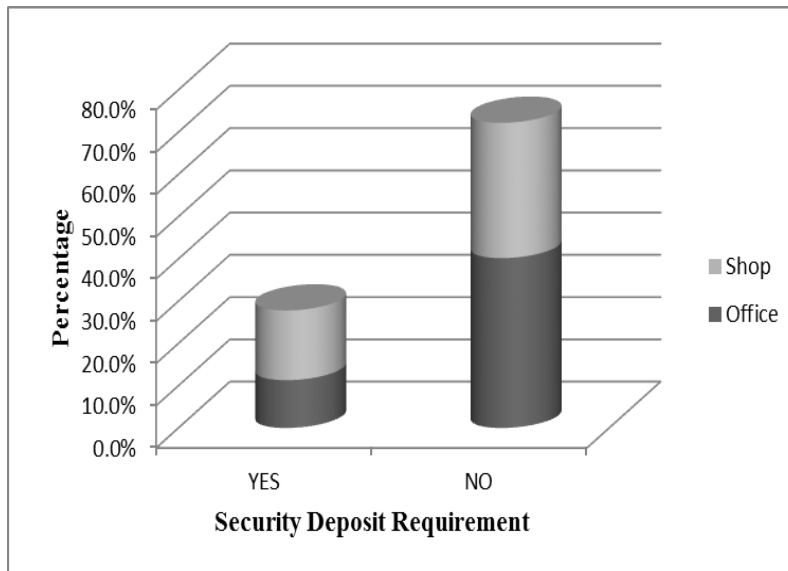
Figure 7: The Percentage of Tenants that paid Rent (Security/Guarantee) Deposit



Source: Compiled from field data by the Author

It was revealed that out of the total number of tenants who paid security deposit, most of them were shop tenants (16.5%) compared to 11.3% office tenants who paid security deposit. Also, 32% of shop tenants were not required to pay security deposit which is less than 40.2% of office tenants who were not required to pay security deposit. See figure 8 below.

Figure 8: Distribution of Security Deposit Requirement between Types of Commercial Space



Source: Compiled from field data by the Author

Out of 27.8% tenants that were required to pay security deposit, a big number was required to pay an equivalent of 1 month’s rent followed by 2 months’ rent equivalent. None of the tenants paid 1 year security deposit but a few of them paid 3-6 months’ security deposit. See Table 6.

Table 6: Amount of Rent (Security/Guarantee) Deposit Paid by Tenants

Amount of Security Deposit	Frequency
1 Month	34
2 Months	19
3 Months	5
4 Months	6
6 Months	5
1 Year	0

Source: Compiled from field data by the Author

The findings indicated that there were no incentives received by tenants from landlords in form of rent free periods, lower rent than market rent or any other form of incentives. This is because landlords need not to attract tenants to the properties since there is already a supply gap.

4.1.2.3 Rent Review Clause

The highest number of tenancy agreements did not specify the rent review pattern (88.7%), about 4.0% stipulated that there was no rent review during the current term. Only 4.5% and 2.8% had a rent review pattern of 2years and 1 year respectively as shown by Table 7 below.

Table 7: The Rent Review Pattern Provisions in the Tenancy Agreements

Period	No. (%)
6 Months	0 (0%)
1 Year	7 (2.8%)
2 Years	11(4.5%)
3 Years	0 (0%)
Not Specified	219 (88.7%)
No review during the Term	10 (4.0%)

Source: Compiled from field data by the Author

The basis of rent review was not specified in most of the tenancy agreements (91.5%), 3.7% of the lease agreements indicated unspecified percentage increase to be agreed by both parties while 2.8% and 2.0% stipulated market rent and fixed increases/percentage respectively. There were no agreements that included bases such as; turn over, OMR upwards only or OMR upwards/downwards as seen in table 8.

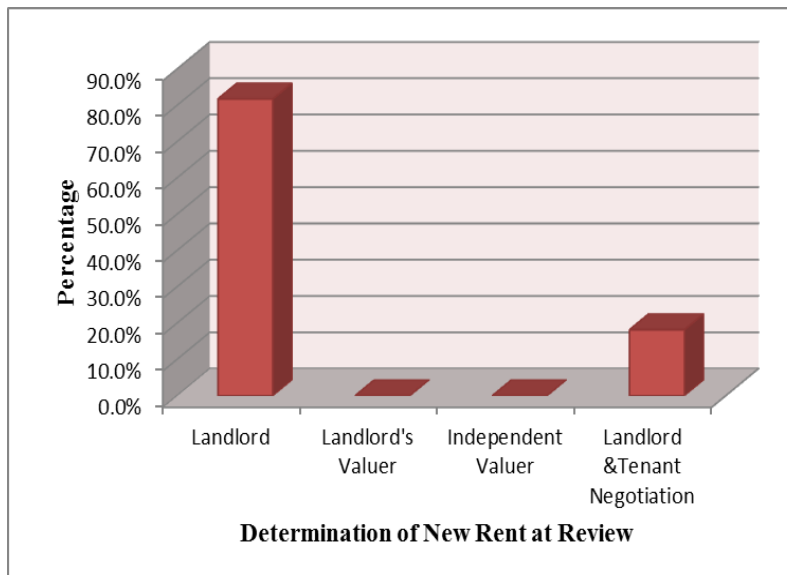
Table 8: The Basis of Rent Reviews indicated in the Tenancy Agreements

Basis of Rent Review	No. (%)
Fixed increases/Percentage	5 (2.0%)
Turn Over	0 (0%)
OMR Upwards Only	0 (0%)
OMR Upwards/Downwards	0 (0%)
Market Rent	7 (2.8%)
Un specified percentage to be agreed	9 (3.7%)
Not Specified	226 (91.5%)

Source: Compiled from field data by the Author

The new rent to be paid by the tenant at rent review was mostly determined by landlord (81.8%) and only 18.2% of tenancy agreements indicated that the new rent will be negotiated between landlord and tenant. No agreement indicated the use of Landlord’s Valuer or Independent Valuer to determine the new rent at review. See figure 9 below.

Figure 9: The Percentage of WHO determined New Rent at Rent Reviews

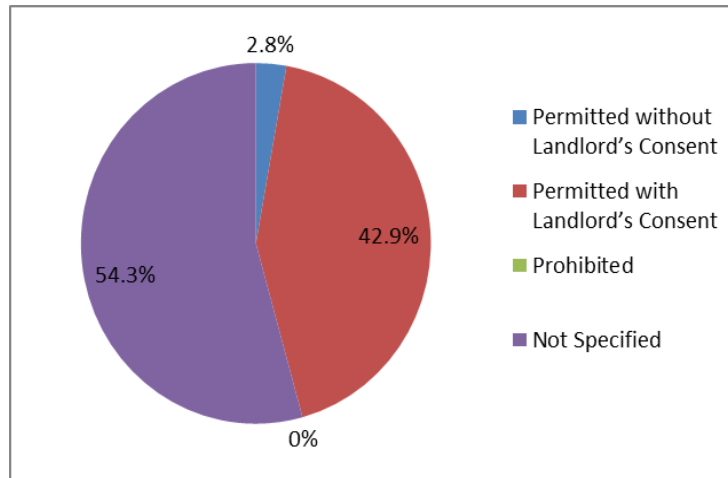


Source: Compiled from field data by the Author

4.1.2.4 Tenant’s Right of alteration or change of use/business of Premises

The results indicated that tenant’s right of alteration of premises to suit the business requirements was not specified in most tenancy agreements (54.3%), followed by 42.9% that confirmed that this right was permitted with landlord’s consent. Then 2.8% was permitted without landlord’s consent and there was no indication that this right was prohibited wholly or partially (0%) as per figure 10.

Figure 10: Tenant's Right of Alteration of Premises to suit Business Requirements



Source: Compiled from field data by the Author

Most agreements did not specify the tenant’s right to change use or business of the leased premises; the second highest number contained a clause that permitted the tenant to change use or business with landlord’s consent while the least number expressly stated that tenant was prohibited from changing use or business. See table 9.

Table 9: Tenant's Right to Change use or business of Premises

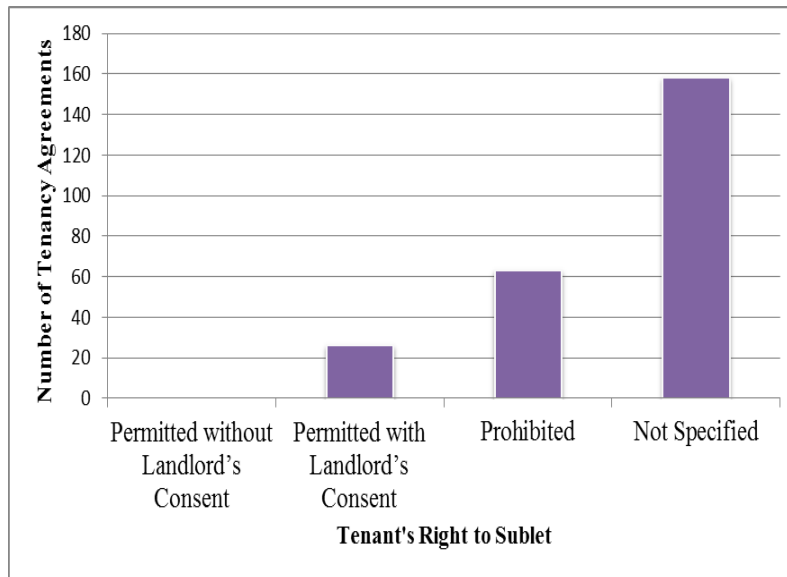
Tenant’s Right to change use or business	Frequency
Permitted without Landlord’s Consent	0
Permitted with Landlord’s Consent	66
Prohibited	14
Not Specified	167

Source: Compiled from field data by the Author

4.1.2.5 Tenants Right of alienation (assignment and subletting)

The findings showed that tenants were prohibited to assign the remaining tenancy term to another party (assignee) whether expressly stated or not. Further, it was found out that the highest number (158) of tenancy agreements did not specify the tenant’s right to sublet the leased premises to subtenants, the second highest number (63) expressly stated that tenant was prohibited to sublet, only about 26 agreements contained a clause that permitted the tenant to seek landlord’s consent before subletting the leased premises as indicated by figure 11 below.

Figure 11: Provision for Tenant's right to Sublet Leased Premises

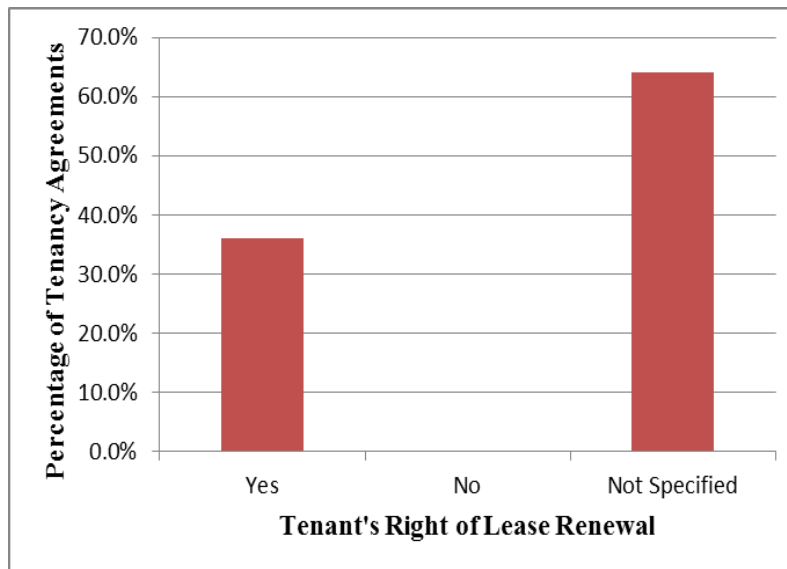


Source: Compiled from field data by the Author

4.1.2.6 Provision for Tenancy Renewal and Terminating the Tenancy Pre-maturely

The provision of tenancy renewal at lease expiration was not specified in most agreements (64.0%) while 36.0% of the agreements had a provision for the tenancy renewal at the end of the term as shown by figure 12 below.

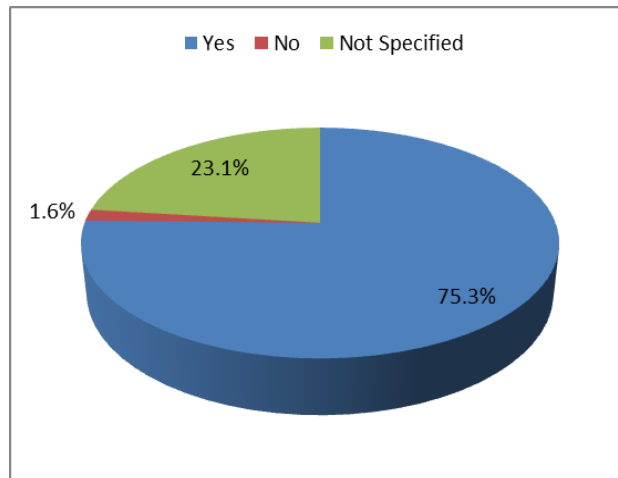
Figure 12: Provision for Tenancy Renewal reserved in the Lease



Source: Compiled from field data by the Author

Other than under the breach of any of the tenancy agreement's covenants, the findings showed that most of the tenancy agreements (75.3%) contained a Provision for either party to terminate fixed term tenancy pre-maturely or end periodic tenancy with a notice, 23.1% did not specify that provision and only 1.6% did not allow either party to terminate the tenancy before expiration as shown by the figure 13.

Figure 13: Provision for Terminating Fixed Tenancy pre-maturely/Ending Periodic Tenancy



Source: Compiled from field data by the Author

Considering the tenancy agreements that contained the provision for terminating the fixed tenancy pre-maturely or ending periodic tenancy, either party (tenant or landlord) was required to serve a termination notice with or without a specific reason within the agreed period. The most frequent notice period was 1month notice (52.2%), followed by 3 months' notice (16.2%), then 2 months' notice (6.5%) and the least frequent termination notice period required was 6 months' notice (2.0%). Those agreements that did not specify the termination notice period accounted for 23.1% as shown in table 10 below.

Table 10: Notice Period for pre-mature Termination of Fixed Term Tenancy/Ending Periodic Tenancy

Notice Period	Percentage
1 Month	52.2%
2 Months	16.2%
3 Months	6.5%
6 Months	2.0%
Not Specified	23.1%

Source: Compiled from field data by the Author

The findings further revealed that there was no any form of remedy available to the landlord when tenant terminates the tenancy pre-maturely such as rent equivalent for the void period or finding alternative tenant. Also, landlords were not under obligation to provide any remedy to the tenant if the tenancy was pre-maturely terminated by the landlord as stipulated in the tenancy agreement.

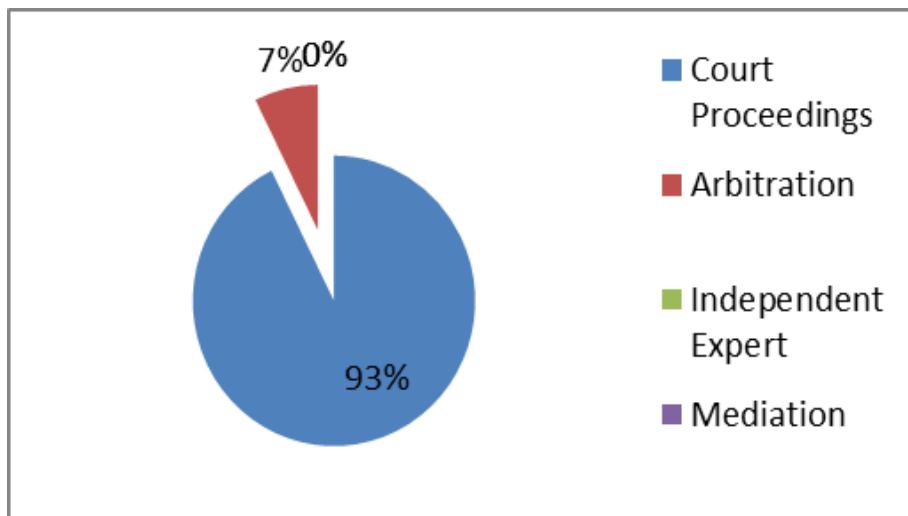
4.1.2.7 Outgoings and Service Charge Clauses

The findings revealed that in Rwanda’s commercial lease market, the operating expenses and outgoings associated with leased premises were shared between landlord and tenant. Tenants were responsible for payments of electricity and water bills directly to utility authority. In addition, tenants were responsible for the payments of costs of; general security, street cleaning, and refuse/garbage/waste collection directly to respective local authorities and these charges are determined by the local authority without involving the landlord. Landlords were responsible for both external and internal repairs (save for tenant’s obligation of internal redecoration of premises before handing it over to landlord on lease termination), insurance of the premises and payments of property taxes. Though, most landlords of the newly constructed/prime buildings levied service charges to their multi-tenants, this service charge was limited to common costs such as; lift and escalator maintenance, cleaning of common areas, security of the premises, parking, lawn compound maintenance, standby generator fuel and any other cost applicable to common facilities. The two common bases of service charge allocation used were fixed lump sum/percentage and floor areas. Also, very few landlords charged VAT on the rent to help in the payment of annual income tax but the fixed asset tax for freehold titles and ground rent fees for leasehold interests were incurred by the landlords.

4.1.2.8 Dispute Resolution Procedure

All the tenancy agreements specified that in case of any disputes, the parties to the lease agreement shall try to settle the disputes amicably as the first priority. However, if amicable settlement fails, majority of the tenancy agreements provided for use of Rwandan competent courts through court proceedings (93.0%) to settle the grievances between the parties, arbitration was the second common option at 7.0% while other alternative dispute resolution options (Independent Expert and Mediation) had 0%. See figure 14.

Figure 14: Dispute Settlement Options specified in Tenancy Agreements



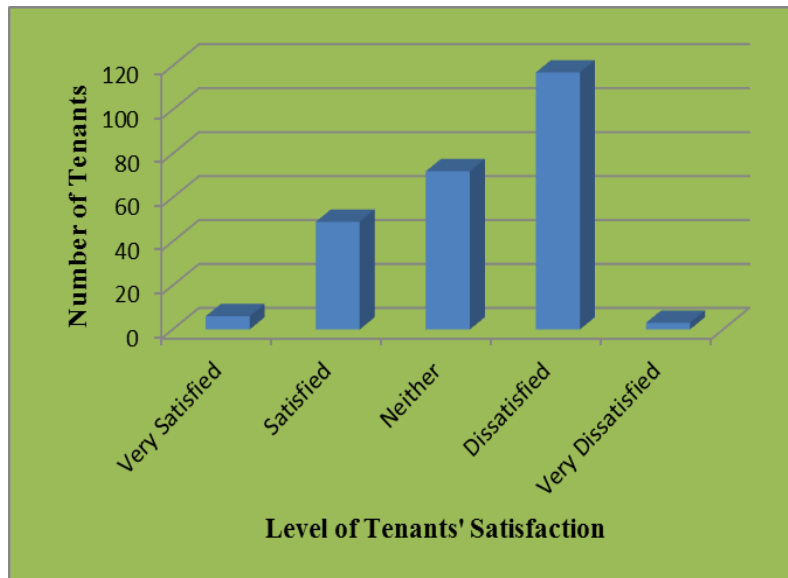
Source: Compiled from field data by the Author

4.1.3 The Tenants' Perceptions about their Current Tenancy Agreements

4.1.3.1 Tenants' Satisfaction about their overall Current Tenancy Terms

The findings indicated that tenants had different satisfaction levels about their overall current tenancy arrangements. However, the highest number of tenants confirmed that they were dissatisfied (117), followed by those who were neither satisfied nor dissatisfied (72) and the third highest number was satisfied (49). The smallest and second smallest numbers were very dissatisfied (3) and very satisfied (6) respectively as shown by figure 15.

Figure 15: The Level of Tenants' Satisfaction about their Current Tenancy Terms



Source: Compiled from field data by the Author

4.1.3.2 Tenants' Rating of Key Individual Tenancy Terms

The results further showed that the key individual tenancy terms were rated differently by tenants using the scale of 1 to 5 where 1 represented very unfavourable and 5 represented very favourable. The rating reflected the tenants' perceptions of the extent to which the key individual tenancy terms were favourable to meet their business requirements. The most worst rated key tenancy term was the Basis of rent review with 23.1%, 51.4%, 23.1%, 2.4% and 0% tenants indicating that the clause was; very unfavourable, unfavourable, neutral, favourable, and very favourable respectively. The second worst rated tenancy term was right to assign/sublet with 2.0%, 44.1%, 45.4%, 8.5% and 0% of tenants indicating this tenancy clause was; very unfavourable, unfavourable, neutral, favourable, and very favourable respectively. The third worst rated tenancy term was rent review pattern with 10.1%, 33.2%, 45.4%, 11.3% and 0% of tenants confirming the clause was very unfavourable, unfavourable, neutral, favourable and very favourable respectively. The fourth worst rated tenancy clause was tenancy duration where it was confirmed that 2.4%, 35.6%, 36.1%, 23.1%, and 2.8% of tenants noted that the tenancy duration was; very unfavourable, unfavourable, neutral, favourable and very favourable respectively. The fifth worst rated tenancy term was the right of tenancy renewal where 5.3%, 28.3%, 58.7%, 6.1%, and 1.6% of tenants were of the opinion that this clause was; very unfavourable, unfavourable, neutral, favourable, and very favourable respectively. The least worst rated tenancy term was user/alteration clause with 0%, 7.7%, 46.2%, 44.1% , and 2.0% of tenants stating that this tenancy term was; very unfavourable, unfavourable, neutral, favourable, and very favourable respectively. The tenants' perceptions about key tenancy terms are shown on the table 11 below.

Table 11: Tenants' Rating of Key Individual Tenancy Terms

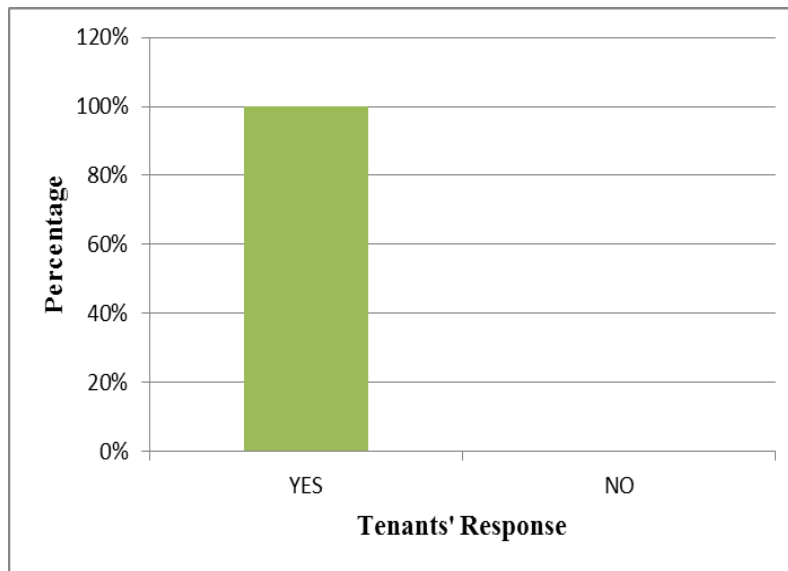
Key Terms	Tenants' Perceptions (n/%)				
	Very unfavourable	unfavourable	neutral	favourable	Very favourable
Tenancy duration	6 (2.4%)	88 (35.6%)	89 (36.1%)	57(23.1%)	7 (2.8%)
Rights to assign/sublet	5 (2.0%)	109 (44.1%)	112 (45.4%)	21 (8.5%)	0 (0%)
User/alteration clause	0 (0%)	19 (7.7%)	114 (46.2%)	109 (44.1%)	5 (2.0%)
Rent review pattern	25 (10.1%)	82 (33.2%)	112 (45.4%)	28 (11.3%)	0 (0%)
Basis of rent review	57 (23.1%)	127 (51.4%)	57 (23.1%)	6 (2.4%)	0 (0%)
Right of tenancy renewal	13 (5.3%)	70 (28.3%)	145 (58.7%)	15 (6.1%)	4 (1.6%)

Source: Compiled from field data by the Author

4.1.4 Tenants' Preference to have a Commercial Landlord and Tenant Law in Future

The study sought the tenants' opinions on whether they would prefer to have a commercial landlord and tenant law that could govern landlord and tenant relationship and regulate commercial tenancy arrangements in future, everyone seemed to be in the total support of the enactment of such law and therefore the response of yes was 100% as shown by figure 16.

Figure 16: The Support of a Commercial Landlord and Tenant Law in Future



Source: Compiled from field data by the Author

4.2 ANALYSIS AND DISCUSSION OF FINDINGS

It is not surprising that the smallest percentage of tenant's space was being managed by outsourced professional property management firms and these were only managing few prime properties in the city. This is because property management profession in Rwanda is still at its infant stage and landlords who are dominated by local investors prefer to either manage the properties themselves or employ relatives to manage the properties on their behalf. Therefore most landlords have not yet appreciated the professional services of a property manager as one trained in-house property manager was quoted saying during the interview that:

Some landlords say that if they can hire architecture and an engineer to design and build the property and at the same time they supervise the projects themselves up to successful completion without any specialist project manager, then should they hire a property manager to just collect rent.

The findings also revealed that most of the in-house property managers were not trained real estate professionals but are of other professional backgrounds. These in-house property managers are mostly found in prime buildings which are owned by cooperatives formed by local investors. Most of the secondary properties were managed by landlords or their agents. Some tenants revealed that landlords or their agents are not always there on site to solve the tenants' issues on time. Therefore lack of professionalism in property management hinders the balance of fairness between landlord and tenant (meeting the tenants' business requirements while ensuring the maximum returns from the property for landlord).

The fact that majority of tenancy agreements were drafted by landlords without seeking professional advice of valuation surveyors and solicitors, it explains why these agreements missed key heads of terms with specialized technical content that would ensure maximum property value and meet tenant's business requirements as argued by (Moran, 2007; Stapleton, 1996). However, most of lease agreements of prime properties occupied by corporate or foreign tenants were drafted by professionals because this type of tenants required strong and elaborate lease agreements and were professionally represented in negotiating tenancy terms. The findings indicated that most of local tenants and landlords do not normally seek the professional advice as revealed by some lawyers and estate agents in the interview. During the interview, one estate agent explained that:

Some of the tenants are told to bring their professional advisors when negotiating tenancy terms and they do not do so or you give them the lease offer to go and read through to come up with proposed amendments before the formal lease is signed, however, after lease commencement they sometimes come to you and raise an issue which is properly and expressly provided for in the lease agreement implying they did not take the initiative to read and understand the content of the lease before accepting it.

Some tenants claimed that they were not aware that property professionals would help them with technical advice in negotiating the appropriate and reasonable tenancy terms and drafting the tenancy agreements, yet tenants need the help of professionals to understand the impacts of lease terms on their current and future requirements as recommended in literature review (RICS, 2013).

Most of tenants had periodic tenancies meaning that their businesses may lack security of tenure since their tenancies can be ended any time by landlords as explained by Foster (1989). This type of tenancy arrangement also has a negative effect on the property value as it is hard to predict the certainty and reliability of income from the property since the tenant can end the tenancy any time and the property may take some time without another tenant occupying it and therefore no security of income stream as argued by Moran (2007). As seen in the presentation of findings, majority of shop tenants had more periodic tenancies and few fixed term tenancies and reverse was true for office tenants, the common reasons given were that:

landlords of shops normally charge rent advance and security deposits and they do not mind about securing a fixed duration, that landlords of shop premises prefer to offer periodic tenancies in order not to be bound by long fixed term tenancies so that they can increase rent any time due to high demand of shops compared to offices, and also landlords prefer monthly tenancies since they can terminate them any time on a short notice without any hustle or legal claim associated with fixed term leases.

Most of medium and established tenants negotiated for fixed term of 2 or 3 years and corporate tenants such as telecommunication companies, banks, insurance and retailers negotiated for 5 or 10 years for security of tenure because they have a strong bargaining power and financial capacity to commit themselves to long term leases compared to small tenants and this result seems to be in agreement with the views of literature review (Hamilton et al., 2006). The choice of tenancy type was majorly determined by the landlord since it is a landlord market and the tenant has to either take the landlord's offer or leave it.

The findings revealed that this tendency of offering periodic and short term tenancies by landlords sometimes affects the stability of business and may discourage foreign investors to invest in the country as one foreign valuation surveyor who was interviewed noted that: *'one year renewable is not effective and secure for investors and a long fixed term for at least up to 5 years renewable should be allowed to tenants'*.

The findings showed that most of the tenants were required to pay a lump sum called 'rent advance' for more than one month when entering the premises and this advance payment would form part of rent. Small tenants were charged 1-3 months' rent equivalent, medium businesses were charged 4-6 months, corporate/anchor tenants were charged 10-12 months' rent advance, and sometimes non-established businesses and those which will pay rent quarterly or above were not required to pay the advance.

Also, majority of small and medium tenants were required to pay their rent either monthly or quarterly in advance while some corporate/anchor businesses paid their rent half yearly or yearly in advance. Some tenants claimed that sometimes their landlords could change the frequency of rent payment for example requiring them to change from monthly in advance to 2 months in advance by giving the tenant a month's notice which may be a burden to the tenant but because tenants wanted to keep a good relationship with the landlords, they had to accept the burden.

In consistency with the existing literature (Tromans, 1996; Dabara et al., 2012), about 28% of tenants was required to pay security/guarantee deposit commonly referred to as rent deposit mainly to cover the landlord in case of tenant's default in payment of rent and costs of repairs at the expiration or termination of the tenancy. Most of the tenants, who were required to pay security deposit were charged 1 month's rent equivalent which was fair to them. Never the less, some shop tenants complained that landlords take an advantage of high demand for commercial space and charge more security deposit than necessary especially those who were charged between 4-6 months' rent equivalent, they claimed this money is too much to serve the purpose and landlords use this money at their expenses and it is only given back to the tenant when leaving the premises and without interest. One tenant who occupied a locker-up shop was quoted saying: *'Imagine I was charged about 2.5million Rwandan Francs as a security guarantee and as long as I remain in the possession of the premises even for more than 20 years, the landlord will keep my money without interest and this money would have helped to boost my business capital, it is just unfair'*.

Another challenge highlighted by the findings regarding this matter was that at the beginning of most leases, there were no schedules of condition prepared as a check list of the condition of the premises as recommended by Tromans (1983). Worse still at the expiration/termination of the tenancies, there were no schedules of dilapidations prepared by a professional to confirm the costs of repairs to be incurred by the tenant as highlighted by Debere (1983). Therefore, usually landlords claim repairs in unfair and none-transparent way which cause disputes with tenants but tenants are the losers in such circumstances because it is their fault since they did not insist on recording the schedule of condition at lease commencement as required by law (Decree of 30/07/1888, Article 388).

About 88.7% of tenancy agreements did not specify a rent review pattern which implies that most tenants were not certain of when their rent will be increased. Majority of small and medium local tenants were at risk of their rent to be increased anytime with more than 80% agreements specifying a month's written notice to tenant before the landlord could increase the rent and the rest required 2-3 months' written notice before rent increase could take an effect. However, most of foreign tenants specified that there was no rent review before 1st or 2nd year of the tenancy and big corporate tenants insisted that there was no rent review during the term (5 or 10 year term). Moreover, more than 90% of tenancy agreements did not specify the basis of rent review with only 2% indicating fixed increases/percentage and the common bases of rent review such as; open market upwards only or open market upwards/downwards used as best practices in UK were not considered at all. The new rent at review was mostly determined by landlords themselves

without any clear basis of open market evidence or additional facilities added to the property to reflect increases and tenants claimed this was the source of disagreements and normally if both landlord and tenant cannot agree on the new rent, then the tenant had no option apart from losing the premises as landlords did not fear losing tenants since demand is higher than supply. This finding is contrary to the best practice in UK as discussed in the literature review (Pawlowski, 2002; Rooney & Cridge, 2006) that a commercial lease should contain a standard rent review clause because of its significance mainly to the landlord. Also, the finding is inconsistent with existing UK literature (Tromans, 1996; Haddock, 1986) that in case parties cannot agree on new rent at review, an independent party (independent expert or arbitrator) should be used to transparently determine the professional opinion of the open market rent. Some tenants confessed that there are common challenges faced by tenants due to lack of specific rent review pattern and clear basis of rent review in the lease agreements which include:

Sometimes landlords deliberately decide to increase the rent since they want tenants to give up premises so that they can do the same businesses, also, that landlord may jealously think that the tenant is making a lot of profits while occupying his premises and decides to increase the rent unreasonably to have a share on the profits, and that for purposes of evading taxes, some landlords normally have a separate short agreement specifying less amount of rent than the actual rent paid by the tenant and in order to continue evading taxes even when rent review is done, it is done verbally and is not reflected in the agreement.

In the researcher's view, this practice posed a serious challenge to business tenants since they could not predict their near future rent costs with certainty yet rent forms a big portion of their operating expenses and may hinder the business' success. Again from the investor's point of view, it is very difficult to estimate the future returns from the property for investment decision since rent reviews are done verbally and there are no clear rent review patterns and basis of review reflected in the tenancy agreements for one to be able to estimate how income stream from the property will increase over time and for how long the investment will pay back.

Though most of the tenancy agreements (54%) did not specify whether tenants had a right of alteration or building extension of the premises to meet their business requirements, some tenants explained that whenever the tenant required alteration such as internal partitioning and other internal fittings which were not provided in the premises, they were allowed to carry them out with landlord's consent and approval of their design and standards at the tenant's cost or landlord would carry them at the tenant's request as long as the tenant paid for it. At the expiration/termination of tenancy, a tenant was required to remove all additions from the property at their own cost. If the partitions were required by the landlord, there would be negotiation on the compensation to be paid to the tenant. Comparing to UK leases as highlighted in the literature review (Bannister, 2009), leases will always specify whether tenant has a right to alter the premises and any improvements added by the tenant entitles him to statutory compensation as per section 1(1) of LTA 1927.

Majority of the tenancy agreements did not specify the tenant's right to change use of premises or even change their businesses, although, tenants revealed that they were allowed to change use or businesses with landlord's consent and approval. This practice is contradicting with recommendations by Tromans (1996) that landlords should always keep watch of the kind of businesses tenants bring in the promises which can affect the property value or other tenants' businesses but there should not be unnecessary restrictions which would be onerous. A number of tenants revealed that this lack of clear restrictions on the change of tenant's business had led to: *'tenants and sometimes landlords copying the business ideas of their fellows and started the same businesses in the same premises which have caused competition and loss of profits forcing some tenants to abandon the businesses and leave the premises'*.

The findings revealed that tenants were totally prohibited from assigning remaining terms of their tenancies to other parties. Some landlords specify that once a tenant has failed in the premises, he should request to terminate the lease other than assigning it. This is considered an onerous clause that can potentially depress the property value (Jarvis, 1983). The limitation of tenant's right to assign their leases could be one of the reasons why tenants did not take up long term tenancies for fear of long term financial commitment without a break option. The highest number of tenancy agreements did not specify the tenant's right to sublet the premises. However, in practice, most of shop tenants were subletting their premises without even seeking the consent of their landlords, and all the landlords cared about was the

fact that the head tenants were paying the agreed rent. Therefore lack landlord's involvement in approving subletting is improper as Pawlowski (2002) and Tromans (1996) argue that for purposes of proper and good property management practices, a landlord needs to be aware of the occupants of the building and the kinds of businesses being carried out within the premises.

Due to lack of proper tenant's right of subletting in the lease, a number of issues were common as some tenants revealed which include:

some landlords would wake up one day and chase all the subtenants since head tenants had not sought landlords' consents before subletting, some new landlords after buying the properties would chase the subtenants, and that sometimes when the head tenant got more rent from subtenants, the landlord would claim an increment on the original rent agreed or else the head tenant would be told to leave the premises and landlord dealt with subtenants directly.

This practice is unlawful since the tenant's right to assign/sublet should clearly be defined in the lease (Decree of 30/07/1888, Article 375) and the buyer is not allowed to evict lawful tenants/subtenants (Decree of 30/07/1888, Article 399). The decree goes ahead to specify that where eviction is necessary, the occupiers must be compensated by either the landlord or buyer (Articles 400 and 405). Article 415 of the Decree emphasizes that landlord cannot evict a lawful tenant/subtenant even if he wanted to occupy the premises himself. Therefore, in the researcher's view, those landlords or buyers who evict tenants/subtenants are doing it unlawfully simply because tenants are not aware of their rights reserved by law.

Most of the tenancy agreements (64.0%) did not specify whether the tenant reserved the right to renew the tenancy at the expiration. This was majorly because most of the tenancies were periodic with no specific expiration date. Those tenancies that specified the provision for tenancy renewal stipulated that tenants willing to renew their tenancies should serve a range of 1-3 months' notice to the landlords before expiration of the term. Although, 36.0% of tenancy agreements contained the provision for tenancy renewal, this right of renewal was uncertain and not guaranteed to the tenant as most of the agreements specified that the tenancy renewal would be subjected to negotiations between the landlord and tenant. In the researcher's opinion, this provision was too weak to be violated by the landlords who would decide not to renew the tenancies since tenants had no automatic right of renewal despite the tenants' obligations having been fulfilled. This implies that Rwanda's business tenancies have no protection and are not entitled to security of tenure as it is the case for other industry's best practices like UK where business tenancies are protected by Landlord and Tenant Act 1954 particularly section 24 (1) of the Act.

As discussed in the review of literature, UK's protected tenancies are entitled to automatic renewal unless such rights are contracted out as provided by section 38(1) of LTA 1954 or unless the landlord can prove 7 grounds for which the new tenancy could not be granted (Section 30(1) of LTA 1954).

In the researcher's opinion, Rwanda's landlords may deliberately refuse to renew the tenancies without an obligation to give any reason as to why they are not willing to renew a tenancy since there is no law that presses such obligation on their shoulders as long as the lease agreement has not secured such a right.

Some tenants revealed that due to lack of proper and strong right to renew tenancy agreements, *'some landlords could end up renewing the tenancies of desperate tenants at unfair terms which were different from original terms such as high rent since the terms for new tenancy were not pre-determined. This sometimes forces businesses out of premises and they incur losses while trying to establish elsewhere'*.

Most of the tenancies (75.3%) permitted either party to terminate periodic tenancy or fixed term tenancy pre-maturely without specific reasons save for breach of any tenancy covenants by either party. Only 1.6% of the leases were not supposed to be terminated by either party before the term expires and these were mainly for anchor tenants occupying big space whose priority was security of tenure. This provision though sounds a flexible option to release either party of contractual obligations, in the researcher's view, it may have serious implications on both the tenant and the landlord. On the side of the tenant, when the tenancy is terminated pre-maturely or landlord refuses to renew the tenancy, the business is likely to suffer economic losses including; inconveniences for shifting to new areas, loss of goodwill, loss of trade income during the shift period and all sorts of losses that come with change of business location at the tenant's disadvantage. On the side of the landlord, when the tenant has a right to leave the premises any time by

servicing an agreed notice, there are high risks that the property may take long without securing another tenant (long void period) thereby affecting the property's value in terms of investment returns.

However, at the moment, this provision has more effect on the tenant than landlord since it is easier for a landlord to get a tenant than it is for a tenant to get another business premises because of demand being higher than supply in Kigali's commercial property sector especially for shop space. Majority of small and medium tenants were required to serve a month's notice whereas, some medium and large business tenants were required to serve 2-3 months' and 6 months' notices respectively and likewise to for their respective landlords before terminating their tenancies. In the absence of a specific termination notice period in the lease, 15 days' notice is considered a norm. Surprisingly, there were no remedies receivable by innocent party at pre-mature termination which is contrary to the provision of Article 414 of Decree Of 30/07/1888 which allows the landlord to recover from tenant amount equivalent to rent loss until another tenant is obtained plus any addition damages in case a tenancy is terminated as a result of the tenant's fault.

The researcher's interaction with some tenants revealed some of the challenges tenants usually face due the landlord's provision for pre-mature termination and general lack of tenancy protection as follows:

landlord may terminate the tenancy agreement and re-let the premises to another tenant who is willing to pay more rent that is over and above the market rent as a 'special tenant', sometimes the landlord terminates the tenancy with selfish reasons like wanting to use the property for same business, there is no security of tenure despite the fixed term tenancy since landlord reserves the right to terminate the tenancy, some tenancy agreements can spend even 5 years when they still mention 6 months which was initial tenancy term and renewals are done verbally and informally, and buyers after purchasing premises can decide to evict tenants and rent to their own people.

Regarding the outgoings, as discussed in the presentation of findings, landlords incurred costs of repairs, insurance of premises and property taxes meaning that what landlords received were gross rental income. This implies that it is very difficult for an investor to predict with certainty the future returns from the investment since the rental income obtained is gross and the net rental income can fluctuate from year to year depending on the operating expenses and inflation as argued by Halvitigala et al. (2011). This is different from UK's commercial property investment which is more secure since most of the leases are on FRI terms meaning the tenant is responsible for all outgoings and those on IR terms, the landlords still recover costs of insurance and repairs from service charges as explained by (Smith, 1990; Bannister, 2009; Wilkie et al., 2006).

It is a good practice that almost all tenancy agreements had a priority for settling disputes amicably. However, the findings indicated that the alternative dispute resolution options were not widely used in Rwanda as 93% of the tenancy agreements indicated that the court litigations will be used in case parties cannot settle their disputes amicably which is costly, time consuming, and damages parties' reputation as discussed in literature (Macdonald, 1992). The use of arbitration (7%) was mostly preferred by foreign and corporate tenants and this option is beginning to pick up since the formation of Kigali International Arbitration Centre (KIAC). The options for use of independent expert or mediation were not known since there were no known experts in this field such as commercial valuation surveyors and commercial property lawyers.

From the findings, the fewest number of tenants who indicated that they were satisfied or very satisfied and these were only corporate tenants who had reasonable standard lease agreements since they had bargaining power to secure long term leases for security of occupancy, they had an upper hand to renew their leases on termination, and they were not affected by frequent rent reviews at the landlord's discretion as most of their leases capped rent until lease termination and there after they had bargaining strength to negotiate reasonable rent. Small and medium tenants who are the majority were dissatisfied or neutral because of substandard lease agreements which lacked; security of occupancy, security of tenure, clear rent review clauses, and tenant's right of alienation, change of use, alteration among others.

The findings revealed that; the basis of rent review, the right of assigning/subletting, and rent review pattern respectively were the worst rated among individual key tenancy terms since most of the tenancy agreements either missed these crucial clauses or they were unclear and incomplete. In summary, all individual key tenancy terms were not to the satisfaction of most tenants since in majority of tenancy agreements, these terms were not favouring tenant's business security, flexibility and sustainability.

CHAPTER FIVE: CONCLUSSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

From the critical analysis of the literature, it has been highlighted that in the best industry practice, modern and standard commercial leases should contain the key tenancy terms which promote fairness between landlord and tenant that is lease terms should enhance landlord's interest at the same time meeting tenant's business requirements. Also, the literature review emphasized that for the practicability of such standard leases to be achieved there must be relevant regulatory framework to regulate the practice and that landlords and tenants should seek the professional advice from surveyors and solicitors to fully understand both technical and legal implications of different lease terms.

However, this study has revealed that commercial tenancy practice in Kigali City falls short of industry best practice of modern leases because majority of tenancy agreements were sub-standard leases since they missed key tenancy terms such as rent review clause, security of tenure, tenant's right of alienation and user/alteration clause among others all of which have a negative impact on both property's investment value and the current and future tenant's business requirements. This was majorly because of three reasons. Firstly, there is no specific commercial landlord and tenant law and even the limited provisions for landlord and tenant matters provided by Decree of 30/07/1888 are not obeyed by most landlords and tenants seems not to be aware of this disobedience. Secondly, most of landlords and tenants do not seek the professional advice when negotiating and drafting tenancy agreements. Thirdly, commercial property market is a landlord market and therefore tenants have weaker bargaining power to negotiate fair terms as landlords normally dictate terms they want. Therefore, the practice is not properly regulated and it is under direct control of landlords.

Also, it was noted that business tenancies are not protected implying that tenants do not enjoy security of tenure and there were no major differences in tenancy arrangements among shop and office tenants. All leases are gross lease meaning that it is difficult to determine future investment returns.

In relation to tenants' satisfaction about their current tenancy terms, majority of them noted that they were dissatisfied with their overall current tenancy terms save for few corporate tenants.

The current commercial tenancy practice in Kigali seems to pose serious direct risks to the stability, flexibility, success, and sustainability of tenants' businesses because tenants are at the receiving end of pro-landlord market. However, landlords' interests are also affected indirectly by these onerous lease terms especially investment values of properties and if the practice is not improved and regulated in future, investors/landlords are likely to face direct investment return risks after supply has begun to balance with demand and by then landlords will only be saved by standard leases in a win-win situation.

Therefore improving the current commercial tenancy practice will benefit all stakeholders and will boost the confidence of foreign real estate investors who will be willing to invest in properly regulated and organized commercial property market with less investment return risks. Nevertheless, in the researcher's opinion, the turning point of the current practice largely lies in the hands of property professionals who should ensure the government and general public are well informed about how and why the industry should be professionalized.

5.2 RECOMMENDATIONS

The recommendations of this study are directed to landlords/investors, tenants, real estate professionals and government/policy makers. These recommendations are based on the respondents' views and opinions (tenants and professionals) as well as the author's critical analysis of the literature review and the study findings and they include the following:

- The government should enact the commercial landlord and tenant law that will govern, regulate, and streamline the commercial tenancy practice so as to ensure fair protection to both landlords and tenants. The primary emphasis of the law should be to protect the weaker party (tenants) who are the majority.
- Both landlords and tenants should always seek the professional advice from commercial property professionals especially valuation surveyors/property managers to advise them on the technical impact the key tenancy terms will have on the property value and on the tenant's business requirements. Commercial lawyers also will be useful to advice on the legal implications of such tenancy terms.
- The tenancy agreement should contain clearly and expressly the standard rent review clause which should explain the rent review pattern, basis of rent review and who to determine the new rent at review such as use of independent expert/valuer in case the parties cannot agree on the new rent.
- The tenant's right of assigning/subletting, changing use/business of premises or alteration of premises should be clearly stated in the agreement. That is whether such right is prohibited, permitted without landlord's consent or whether permitted with landlord's consent but of which consent should not be unreasonably withheld.
- Both landlords and tenants should be encouraged to negotiate long term fixed tenancies other than periodic tenancies to ensure security of income stream to the landlords while ensuring security of occupancy to the tenants. For any fears of long term financial commitment by tenants or landlords' future loss of property possession, the agreements can include future break clauses (tenant break option, landlord break option or landlord and tenant break option) as well as allowing tenants to assign their remaining tenancy term or subletting of the premises.
- The business tenancy should have strong security of tenure. There should be tenant's automatic right of renewal at the expiration of a fixed term tenancy unless under specified circumstances stated in the lease. Where possible the tenant should be entitled to compensation if his right of renewal is taken away by the landlord. The terms of the new tenancy at renewal should be pre-determined in the current lease save for rent that is likely to change at review.
- Neither the landlord nor the tenant should be allowed to terminate the tenancy pre-maturely other than under the breach of the substantial tenancy covenants or any other pre-specified circumstances. In the case of pre-mature lease termination, the aggrieved party should be entitled to compensation/damages as may be specified in the agreement or as it may be determined by a competent court/arbitrator/independent expert.
- There is an urgent need for Institute of Real Property Valuers in Rwanda (IRPV) and its members to carry out public awareness about the importance of using professionals in negotiating commercial leases and explain the potential role the property professionals can play in professionalizing commercial lease industry.
- There should be formation of Commercial Tenants Association to protect the rights and interests of the tenants in a landlord market.
- The government should facilitate and put in place a commercial lease tribunal to be composed of property professional members who should be responsible for handling issues of rent reviews and lease renewals among others. Therefore leases should be registered with the government authority to allow government and experts to advise the parties on the key tenancy terms.
- Future research should focus on the role of the landlords/real estate investors and government in professionalizing commercial tenancy practice in Rwanda and seek their views and opinions on the same.

APPENDICES

Appendix 1: CONFIRMATION OF THE GRANTING OF ETHICAL APPROVAL



School of the Built Environment

Ethics Feedback Form

Student Name:	George Twagira	Student ID:	@00366655
Supervisor:	Professor Les Ruddock	Ethics Reviewer:	Marcus Ormerod
Project Title:	Examining the Practice of Commercial Tenancy Agreements in Kigali City, Rwanda: How can the Current Practice be Improved?		
Feedback on Ethical Approval Application			
Based on the documentation submitted ethical approval is granted.			
Description			Decision
No Supervisor Approval – Resubmit No evidence that your supervisor has approved this application. Please secure approval and resubmit.			RESUBMIT
Type 1 - Approved This is a Type 1 project which has been validly approved by your Supervisor			APPROVED
Type 2 – Resubmit This is a Type 2 project, but approval cannot be granted until you have addressed the issues raised in the feedback above. Please do so, then secure your supervisor’s approval again, then resubmit.			RESUBMIT
Type 2 – Approved This is a Type 2 project. Provided that you address feedback set out above (if any) to your Supervisor’s satisfaction, and that you carry out your data collection substantially in accordance with the procedure you have described, and using the explanatory and confirmatory documentation supplied, then you have ethical approval for your research.			APPROVED
Type 3 – Supervisor to Submit to College Ethical Approval Panel for Taught Programmes Owing to the nature of the research described, this is a Type 3 research project and you need approval from the College Ethical Approval Panel for Taught Programmes before undertaking this work. Please take account of feedback above (if any) and liaise with your Supervisor in order to submit this to CEATP.			SUBMIT TO CEATP

IMPORTANT REMINDER - EXTENSIONS

CHECK THAT YOU KNOW WHEN YOUR RESEARCH PHASE ENDS. REQUEST ANY EXTENSION BEFORE YOUR CURRENT RESEARCH PHASE ENDS BY REQUESTING AN EXTENSION FORM FROM sobe-programme-support@salford.ac.uk (include your Student ID) AND THEN RETURNING IT BEFORE YOUR RESEARCH PHASE ENDS

Appendix 2: RESEARCH QUESTIONNAIRE



College of Science and Technology
School of the Built Environment
MSC REAL ESTATE AND PROPERTY MANAGEMENT

Research Questionnaire for Commercial Tenants

Research Title: *EXAMINING THE PRACTICE OF COMMERCIAL TENANCY AGREEMENTS IN KIGALI CITY, RWANDA: How can Current Practice be Improved?*

Name of Researcher: TWAGIRA George

Supervisor's Name: Professor Les Ruddock

Dear Participant,

I am currently a full time postgraduate student at the University of Salford-Manchester, UK offering MSc Real Estate and Property Management. As part of my programme, I am carrying out a study about the above mentioned topic purely for academic purposes only. The research findings will help to reveal the current commercial tenancy practice in Kigali City and what can be done to improve it for the benefit of all stakeholders.

I therefore request you to participate in this study; your cooperation is extremely important and greatly appreciated. You will complete this questionnaire which may take you about 15 minutes. The information provided will be kept confidential and your identity will be kept anonymous. You are participating voluntarily in which case you can withdraw with no explanation required.

Participant's contacts:

Researcher's e-mail and Mobile: g.twagira@edu.salford.ac.uk +250784524545/+447404503766

Supervisor's email address: l.ruddock@salford.ac.uk

Instructions: Please Tick one appropriate choice where applicable

1 (i). What type of commercial space are you occupying?

- (a) Office [] (b) Shop []

(ii). Which type of business/service are you involved in?

2. Who is responsible for daily management of your premises?

- (a) Landlord [] (b) Outsourced Property management firm []
(c) Landlord's agent [] (d) In-house property manager []

3. Who was involved in drafting your tenancy agreement?

- (a) Landlord [] (b) Tenant [] (c) Landlord's Lawyer []
(d) Tenant's Lawyer [] (e) Independent Estate Agent []

4 (i). Did you have a professional representation in negotiating the tenancy terms?

- (a) Yes [] (b) No []

(ii) If yes, who was the professional you used in negotiating the tenancy terms?

- (a) Valuation Surveyor [] (b) Estate agent []
(c) Lawyer [] (d) Others specify.....

5 (i). What type of tenancy agreement do you have?

- (a) Fixed term tenancy [] (b) Periodic tenancy (Monthly) []

(ii). If the tenancy is a fixed term, what is the duration of the term?

- (a) 6 Months [] (b) 1 year [] (c) 2 years [] (d) 3 years []
(e) 4 years [] (f) 5 years [] (g) 10 years [] (h) Others specify.....

(iii). What was the main factor that influenced the choice of your tenancy type?

- (a) Affordability [] (b) Flexibility [] (c) Security of tenure []
(d) It was the only Landlord's offer [] (e) Others specify.....

6 (i). How much rent advance were you required to pay at the beginning of the tenancy term?

- (a) 1-3 months' rent [] (b) 4-6 months' rent [] (c) 7 -9 months' rent []

(d) 10-12 months' rent [] (e) No rent advance []

(ii). When are you supposed to make your subsequent rent payments?

(a) Monthly in advance [] (b) Monthly in arrears [] (c) 2 Months in advance []

(d) Quarterly in advance [] (e) Half year in advance [] (f) Yearly in advance [] (g) Others specify.....

7 (i). Were you required to pay security/guarantee deposit on taking up the tenancy?

(a) Yes [] (b) No []

(ii). If yes, how much was security/guarantee deposit in terms of rent equivalent?

(a) 1 month [] (b) 2 Months [] (c) 3 Months [] (d) 4 Months []

(e) 6 Months [] (f) I year [] (g) Others specify.....

(iii). Which incentives did you receive from the landlord on taking up the premises?

(a) Rent free period [] (b) Lower rent than Market Rent []

(c) No incentives [] (d) Others specify.....

8 (i). What is the rent review pattern specified in your tenancy agreement?

(a) 6 months [] (b) 1 year [] (c) 2 years []

(c) 3 years [] (d) Not specified [] (e) Others specify.....

(ii). What is the basis of rent review provided in your tenancy agreement?

(a) Fixed increases [] (b) Turn over [] (c) Open Market Rental upwards only []

(d) Open Market Rental (OMR) upwards or downwards [] (e) Not specified []

(iii). Who determines the new rent to be paid on rent review?

(a) Landlord [] (b) Landlord's Valuer [] (c) Independent Valuer []

(c) Negotiation between landlord and tenant [] (e) Others specify.....

9 (i). Are you permitted to carry out alteration on the premises such as internal partitioning and building extension for your business requirements? (a) Permitted without landlord's consent []

(b) Permitted with Landlord's consent [] (c) Prohibited [] (d) Not specified []

(ii). Are you permitted to change use or business of premises from original use/business agreed in your tenancy agreement with in the planning provision?

- (a) Permitted without landlord's consent [] (b) Permitted with Landlord's consent []
 (c) Prohibited [] (d) Not specified []

(iii). Does your tenancy agreement permit you to assign/sublet your premises?

- (a) Permitted without landlord's consent [] (b) Permitted with Landlord's consent []
 (c) Prohibited [] (d) Not specified []

10 (i). Does your tenancy agreement reserve you a right to renew your tenancy on its expiration?

- (a) Yes [] (b) No [] (c) Not specified []

(ii). Is there a provision in the tenancy agreement that allows either party to terminate the tenancy prematurely other than under the breach of tenancy agreement's covenants?

- (a) Yes [] (b) No [] (c) Not specified []

(iii). If yes, how much notice is required for either party to terminate the tenancy?

- (a) 1month [] (b) 3 months [] (c) 6 months []
 (d) Not specified [] (e) Others specify.....

(iv). What are the remedies for the aggrieved party when the tenancy is pre-maturely terminated?

- (a) 1month's rent [] (b) 2 months' rent [] (c) 3 months' rent []
 (d) Finding alternative tenant [] (e) Not specified [] (e) Others specify.....

11 (i). What are your repairing and insurance obligations?

- (a) FRI (Full Repairing & Insuring) terms [] (b) IR (Internal Repairing & Insuring) terms []
 (c) External & Internal repairing only [] (d) Internal repairing only []
 (e) No repairing & insurance obligations []

(ii). If you are paying a service charge, what is the basis of determining it?

- (a) Fixed proportion/Percentage [] (b) Floor area []
 (c) Use of Services [] (d) Others specify.....

(iii). What are the operating expenses covered by service charges.....

12. Which form of dispute resolution procedure provided in your tenancy agreement?

- (a) Court proceedings [] (b) Arbitration [] (c) Independent Expert []
 (d) Mediation [] (e) Not specified [] (e) Others specify.....

13 (i). To what extent are you satisfied with the overall current terms of your tenancy agreement?

- (a) Very satisfied [] (b) Satisfied [] (c) Neither []
 (d) Dissatisfied [] (e) Very dissatisfied []

(ii). Please rate in the scale of 1 to 5 (1= very unfavourable and 5= very favourable) as to what extent each of the key individual tenancy terms are favourable to meet your business requirements). **Tick appropriate box**

Key Terms	Very unfavourable	unfavourable	neutral	favourable	Very favourable
Tenancy duration					
Rights to assign/sublet					
User/alteration clause					
Rent review pattern					
Basis of rent review					
Right of tenancy renewal					
Basis of service charge					
Others specify					

(iii). What are your suggestions on how your current tenancy terms can be improved to make them favourable to your business requirements?

14. Would you prefer to have a commercial landlord and tenant law that governs landlord and tenant relationship in future? (a) Yes [] (b) No []

You have finished the questionnaire, thank you for your time and participation

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