

The Improvement and Problem about Housing Lease Protection Act Article 9 in the Information Society

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정보사회에 있어서 주택임대차보호법 제9조의 문제점에 대한 개선방안

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Abstract In order to ensure the housing stability of homeless people who living in the information society, the Korean Housing Lease Protection Act was enacted as a special law of Civil Code in March 5, 1981, Law No. 3379. And until January 6, 2015 there were 15 times revisions. In the meantime, many issues have been resolved by legal revisions through several times however, it is true that many problems are exposed after enforcement because processing without sufficient review of legislation. Among them, at the 1st revision in 1983 the purpose of Article 9 for lease succession was admitting succession to a spouse who has no inheritance rights. Then it can protect common-law relationship and on the other hand protect the residential life of a spouse. But many questions have been raised. Therefore, in this paper, analyze the problem of lease succession carefully, proposes an improvement to contribute to the residential stable livelihood.

Key words : Information Society, Housing Lease Succession, Lessee, Spouse in Common-law Marriage, Housing Rights Protection

요약 정보사회속에 살아가는 무주택서민들의 주거안정을 보장하기 위하여 탄생한 주택임대차보호법은 1981년 3월5일 법률 제3379호로 민법의 특별법으로 제정되어 2015년 1월 6일까지 15차례의 개정이 있었다. 그동안 수차례에 걸쳐 법률개정으로 인하여 많은 문제점들이 해소된 경우도 있었지만, 입법 당시에 충분한 검토가 없이 졸속으로 처리된 까닭에 시행 후 여러 가지 문제점이 노출되었던 것이 사실이다. 그 중에서 1983년 제1차 개정 시 임차권의 승계규정 제9조를 신설하였던 입법취지는 상속권이 없는 사실혼관계의 배우자에게 승계권을 인정함으로써 사실혼관계 자체를 보호하고, 다른 한편으로는 사실혼관계에 있는 배우자의 주거생활안정을 보호하고자 하였으나, 이에 대해 해석상 여러 가지 의문이 제기되고 있다. 따라서 본 논문에서는 임차권 승계에 대한 문제점을 세밀하게 분석하고, 국민들의 주거생활 안정에 기여하고자 그에 대한 개선방안을 제시하고자 한다.

주제어 : 정보사회, 임차권승계, 임차인, 사실혼배우자, 주거권보호

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1. Introduction

The Housing Lease Act which enacted from March 5, 1981 as Law No. 3379 and there were 15 times revisions until January 6, 2015 defining an exception to the civil code with respect to the lease of a residential building. Cause of house living stability, industrialization and urbanization the housing problem was highlighted seriously so, it was enacted to resolve the homelessness phenomenon of economic disadvantaged. After then, many of the problems were solved many through the several legal revisions, but still many uncertain parts cannot follow the legislative intent. So, to guarantee the tenant's residential life and legal status many provisions need to repair to match the reality. Among them, at the first revision in December 30, 1983 the succession provisions of lease was newly established and it regulate the exception of inheritance system by recognizing the lease succession of someone who was in the marital relation with tenant. These succession systems of the right of lease of house admit the succession of the right of lease to the spouse of common-law relationship who cannot be recognized the succession right. It specifically admitted to the stability of residential living for spouse but about this content some questions are occurred. Thus in this paper, try to find some of the issues about lease succession and propose a reasonable improvement for them.

2. The legislative background and lease succession of Housing Lease Act

2.1 The legislative background of Housing Lease Act

Since the 1970s in Korea, due to development boom with industrialization and rapid population concentrated in urban phenomenon the housing problem began seriously. As the housing shortage is deepened the housing problems of homelessness was also deepened

and many homeless tenants were kicked out on the street by tyranny of lessor[1]. Despite this problem occurs, conventional leasehold rights and leasing provisions on the civil law residential stability of homeless people actually difficult to guarantee so, the necessity of a special law was raised [2]. When look the promote background, Article 1 of this law the law is aimed at ensuring the stability of the residential life of the people by regulating the exception of the lease of residential buildings on the civil code. Like this, to the lease of a residential building, this law is take precedence than civil code and it as an attempt to ensure the stability of the residential life of the people. And this law was enacted by the National Security Legislative Council when there was an emergency system in Korea.

2.2 The problem presentation of the Housing Lease Act

For the purpose of stability of the residential lives of the people the Housing Lease Act was enacted however, it processed quickly without sufficient review in the legislative process, so after enforcement a lot of trouble has been exposed and then, the law was revised several times to strengthen the tenant's status [3]. However, more enhanced the tenant's status, some tenants are abusing the system by changing their damage situation, due to this, it increasing the damage of the another party. Also, under the pretext of protecting the tenant's housing stability, it is focusing on the tenant protection and it did not have enough consideration to lessor, eventually, it reduce the rental housing supply, especially when applying the legal principles of inheritance in lease succession the reality is that still a lot of problems being raised by ambiguous interpretation.

2.3 Succession of the housing lease right

Of course, it is important to make more pleasant and comfortable living environment for the people who own

homes, but as the lead residential living stability and basic livelihood for the housing tenants who social weak person, if the tenant died during the communal living with renting a house then, inheritance is initiated to the heir by succession laws[4]. But the problem is that if tenant died, his partner who lived with tenant can live their current housing like before. Therefore, if a lease deals with only inheritance issues, a spouse who in a common-law relationship or subordinate heir who lived with tenant can live in continue to live in that space, whether or not the ancestor and inheritance is the question. In this regard, this paper shall examine the problems about the Housing Lease Act Article 9.

2.4 Review of previous research

After enactment, through the several modifications and complements, the Housing Lease Protection Act has been in charge of the function and purpose as the stability of residential living. In this regard, several papers on the lease succession were announced, and the results of a review of previous research were as follows.

Yoon-Ok Kim(2010) through her paper "Study on remedy under the protection law of house lease", she analyzed the system of the Housing Lease Protection Act and introduced the fair rent fee system. That, inhibited the excessive rent increases for tenant protection. Yeo-Ok Song(2011), through her paper "Study on the Housing Lease Protection System" she proposed the improvements which yet have not been able to resolved the institutional details of the housing tenant protection through judicial precedent and prior research. And Sang-Ryong Ko(1988) at the "Lease succession system", he studied the improvement for the protection of tenants, who are the weak of housing lease to meet the reality based on judicial precedent, the Yeong-Ha Ahn(2008) through his paper "A Study of Succession to Right of Lease of House by Housing Lease Protection Act Article 9" he deriving the problems and proposed the improvement to fit the

stream of times. Lastly, Yeol Lee(2012) from the "A Study on the Improvement of the Housing Lease Protection Law for Lessee's Housing Stability", he proposed the improvement by reviewing and comparing the Housing Lease Protection Act with foreign legal system.

3. Issues for the right of lease

3.1 Relationship with right of lease and succession law

3.1.1 Conflicts with the succession law

During the house living period, even if the tenant dies, the existing tenancy relationship is not terminated and it is maintained. Therefore, the right of lease generally belongs to property rights, so any rights and obligations arising from the right of lease are succeed to the heirs by Inheritance Act and this is the principle [5]. In contrast, however, if applying the inheritance Act to this, there are no problems to family who had been living together with tenant who is the ancestor, but if an heir is not living with the tenant then the right of lease succeed to the an heir who are not living together, and the spouse of a common-law relationship no longer authorized to continue living and she lose the residential area these situation can arises. Therefore, the Article 9 introduced by the first amendment regulate the exemption law about succession of the right of lease when the tenant died for protect the person who living with the tenant.

So, if there is an heir among the people who living together with tenant and an heir who live with tenant or not the Article 9 does not regulate. So, there is a problem to apply the succession law.

3.1.2 Right of lease succession range problem

Ancestor, in other words if the tenant died or there are no heirs, someone who lived with tenant and has the marital relations virtually inherits tenant's rights

and responsibilities(Housing Lease Law Article 9, paragraph 1). And the meaning of communal living in the house should be viewed as the means to support each other while living together and cooperated [6]. Therefore, some cases such as a business trip or trip by certain circumstances it can consider as communal living, but just internal combustion relationship is not available here[7].

The actual marital relation means that maintaining a substantially marital relationship with an intention of marriage but does not formally marriage. In here, someone who in actual marital relations do not need to listed on resident registration as a tenant's partner.

3.2 Interpretation problem of Housing Lease Act provisions

3.2.1 Interpretation of Article 9 Paragraph 2

Currently, the Housing Lease Act Article 9 paragraph 2 defined as "if the tenant died, any heirs did not lived with him in that house, other partner who lived with him and the relatives under the second degrees of relationship can succeed of their rights and obligations" [8][9]. In this regard, there are two theories are opposed, one is that who succeed the right of lease is heir who under the second degrees of relationship or common-law marriage partners and another is that the heir who do not communal living cannot succeed right of lease only relation who under the second degrees of relationship or common-law marriage partners can succeed.

3.2.2 Successor of the Lease

The successor of the lease by current Housing Lease Act Article 9 paragraph 4 regulate the successor of the lease is attributed to heir who succeed the tenant's rights and obligations[10]. However, there are some problems about succeed right of lease that the succeed right of lease means just not the residency right or include the all property rights with the deposit restitution claims. Generally the beneficiary right of

rental housing which has the remaining lease period can attributable to the successor and the residency right can be regarded as a protective clearly. On the other hand, at the end of lease the right to request a deposit return can succeed to heir is also have been opposed to two theories taking issue, one is that only residency right succeed another is that the residency right as well as right to request a deposit for lease return can succeed.

3.3 The problem of Housing Lease Act Article 9

3.3.1 Range of relatives according to amendment of Family-law

A range of relatives are expanded by amendment of family-law in the 1990s, actually there is no special means to third cousin [11], Housing Lease Act Article 9 paragraph 2 regulate that if the tenant died and in that time the heir did not living in the house with tenant, relatives who under the second degrees of relationship or common-law marriage partners can succeed the status of tenancy jointly.

And see the current standards, the range of heir includes all men and women who are the relatives under the second degrees of relationship or spouse of brother and sister. Therefore, at the succession of right of lease, include the property rights such as the restitution claims the right of lease deposit, heir is exempt except from inherit because he did not communal living, and at the time of the 1983, succeed right of lease to a range of unanticipated just reason of communal living. It looks have problems.

3.3.2 Discrimination issues in the current regulations

If applying the Housing Lease Act Article 9 paragraph 2 intactly, the legally married spouse who have to be protected under the law get the reverse discrimination[12]. For example, one case that the tenant live with spouse in the house but, child is living

separately. This was an unexpected part at the time of the 1983 legislation and it can make a problem that the legally married spouse can get discriminated against than a common-law spouse.

4. Improvements to right of lease

4.1 Measures for the succession laws

If inheritance is disclosed in accordance with the succession laws, the case of that the heirs did not communal living and the common-law spouse, who had a communal living, if the tenant has the parent right of lease inherited to whom is the problem. About this, the Housing Lease Act Article 3 paragraph 2, as the special provisions of the inheritance, except the heir and protect someone who had communal living at home. Therefore, the crash that protection of inheritance rights and right to housing for someone who had communal living with tenant is occurs. Thus, it is considered that the inheritance rights and protection of the right to housing for someone who had communal living with tenant have to not shift to either part and fair and in-depth legislative action is needed.

4.2 Measures of range for the right of lease succession

The interpretation about Housing Lease Act Article 9 paragraph 2, following the theory that "those who inherit the right of lease are at least heirs under the second degrees of relationship and common-law partner" if there is one heir to tenants but did not do the communal living in rental housing, someone who lived with him such as common-law spouse and the relatives under the second degrees of relationship can succeed their right of lease jointly[13]. In this context, the meaning of 'under the second degrees of relationship' means someone who had communal living under the second degrees of relationship among the heirs.

And according to another theory that "the heirs who did not communal living cannot inherit the right of lease, only relatives under the second degrees of relationship and the spouse who had communal living with tenant can inherit the right of lease[14]", if tenant has the heirs but who did not communal living with tenant in the house, the common-law partner who had communal living with tenant also preclude the heir who relatives under the second degrees of relationship and inherit the right of lease. At this point, because it can be changed depending the attention to facing the succession, the interpretation of The Housing Lease Act Article 9 paragraph 2 requires careful legislation.

4.3 Stipulated measures for the range of the right of lease

A detail of the Housing Lease Act Article 9 does not stipulate the scope of the lease succession. So in this regard, how far recognize the scope of succession, according to the "only the right to housing be succeeded theory[15]" successor can succeed only the right to housing of the right of leases. And according to the "theory that the claim to return deposit for lease and all claims can be succeeded[16]" the right which is succeeded to successor of lease is not limited to the right to housing, claim to return deposit for lease also would be succeed. in here, if succeed only residency right and claim to return deposit for lease which is property rights succeed to heir, it does not need to modify the current regulation. However, understanding as the legislative intent that the right can succeed with property rights it seems to a little of dispute. So, it needs to change.

4.4 Restructuring measures for range of relatives on Family law

January 13, 1990, due to the revision of family law, the scope of relatives under the second degrees of relationship was expanded. If the range of relatives to protect between at the time of enactment and now,

through family law revision and it need to enact a range of under the second degrees of relationship to fit the reality. Therefore, it would be desirable that the Housing Lease Protection Act excludes the principle of succession laws and trying to protect the person who in the common-law marriage relationship and had family communal life by the principle of personal succession.

4.5 Differentiation measures between spouses

If applying the Housing Lease Act provisions as reality, legally married spouse who is protected by regulations could be getting the discrimination than common-law partner. Therefore, if the tenant live with spouse and his children are living separately, this situation can occur that the legally married spouses jointly inherited the lease with children and common-law partner inherit the lease alone, except for children. In other words, it did not expect in 1983, so, it is necessary to revision through legislation to the future. And The Housing Lease Protection Act still has many insufficient problems. When think about our reality, many ordinary people are living in the status of tenant. I think that we have to solve the above problems as soon as possible.

4.6 Review

Succession issues of housing leases should be made as equitably and fairly between heirs and someone who had communal life. Not only mentioning the protection of common-law partner but also claims that protect both by legislation. And eliminate the conflict of interested parties by specific present about a range of lease successor, the scope of the lease and range of relatives. And hope the legislation to meet the equality without reverse discrimination between the common-law and legally married spouses. Thus, in spite of the many studies have been carried out by prior researchers, many problems are exposed for housing stability of housing tenant. Therefore, many

research and discussion are needed continually.

5. Conclusion

Until now as seen at the Housing Lease Act Article 9, this paper agree with the intent that exclude the principle of succession laws and accordance with the principles of its own succession so protect the common-law partner that common life. However, expand its range to relatives who had common life in the house rather than restricted to the under the second degrees of relationship and recognize the succession rights to the common-law spouse and her children also parents is deemed to be desirable for stable housing. So, the Housing Lease Act Article 9 for the succession of the lease, it remained as a task that have to solve in conflict with inheritance rights protection and protection of the right to housing of families that had community life. Therefore compare with our reality the Housing Lease Act still has many tasks that have to solve the residential stability for the underprivileged person. Furthermore, the fairness legislation of the Housing Lease Act for happy of people have to take place as soon as possible.

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