



Is A Contract Termination Fee Riba?

Question #: q-12475076

Date Posted: 2007-07-04

<QUESTION>

I have signed a housing contract. The terms stipulate that if I wish to vacate the property before the contract period finishes, I will be charged a monetary penalty. If I withdraw from the contract before occupying the housing, I will also be charged a (lesser) fee. Are either of these fees riba?

<ANSWER>

In the name of Allah, Most Compassionate, Most Merciful,

If an agreement of lease for a fixed period takes place, it becomes necessary on both parties to honour the signed contract and abide by it. It is not permitted for either party to go against the lease agreement and unilaterally terminate the contract before its term without an Islamically valid excuse (udhr).

Allah Most High says:

"O you who believe! Fulfil the contracts." (Sura al-Ma'ida, 1)

And:

"And fulfil (every) engagement (promise), for every engagement will be enquired into (on the day of Reckoning)." (Sura al-Isra, 34)

It is stated in Al-Fatawa al-Hindiyya:

"If he (the landlord) says: "I lease this property to you for a period of one year, with one Dirham to be paid for each month, then this is permitted by consensus, since the period [of lease] is known and the rental is known, hence this is permitted. Thus, none of the two parties will have a right to terminate the lease agreement before the one year is up without a [valid] excuse." (al-Fatawa al-Hindiyya, 4/416)

As such, if a tenant goes against a signed agreement and vacates the property early without a valid excuse, then he will be guilty of committing the sin of breaking a promise. He will thus need to repent and ask forgiveness from Allah Most High over his actions.

However, Islamically, it is not permitted to charge him a monetary penalty or an early termination fee. Monetary penalties (ta'widh mali) are alien to Islamic teachings, hence placing a condition of a monetary charge in the contract is not permitted and invalid. Even if such a condition was expressly stipulated, the tenant will not be responsible for paying this amount, although he will be sinful for breaking the promise. Likewise, rent will be payable only up to the date of termination and not beyond. Claiming rent for any period after termination, even if stipulated in the contract, is not valid under Shari'ah.

The above is when a contract is terminated without a valid excuse. According to the Hanafi jurists, if a tenant has a genuine and valid excuse because of which he is forced into terminating the contract, then it is permitted for him to do so and he will not be sinful for doing so.

The jurists explain that due to personal circumstances, if the tenant is greatly harmed in carrying the contract to its full term, then it is permitted for him to terminate the contract after giving due notice to the landlord. (See: al-Fatawa al-Hindiyya, 4/458)

In conclusion, stipulating a condition in the terms of the contract of a monetary penalty in the case of non-fulfilment is against the principles of Shari'ah, hence not permitted. It will not be considered Riba per se, but nevertheless a non permissible clause in a valid contract.

And Allah knows best

Muhammad ibn Adam

Darul Iftaa

Leicester , UK

Please make a donation to help in the running of Darul Iftaa