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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

Tenant's Rights Brochure for

CROATIA

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II. Tenant's Rights Brochure Questionnaire (max ca. 20-30 pages per country)

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1. Introductory information

- **Give a very brief introduction on the national rental market (MAX 2 Pages)**

Croatian national rental market is still strongly marked by the consequences of privatisation and the restitution processes that took place in the 90s, after the country gained its independence from the former Socialistic Federal Republic of Yugoslavia in 1990. Due to these two processes Croatia became a country of private housing owners (living in their own apartments and houses), dominating the housing market. This group reaches a staggering 89.4% of all the housing tenures types (Census 2011)¹. Group of tenants renting on private market is still relatively small, presenting around 5.4% of the market. Social tenure is even smaller and presents only 1.2 % to 2 % of the housing market². Social housing units are predominantly owned by Local authorities while the government determines the level of rent. The protected or social rent is very low, amounting to 2.61 HRK/m² (0.35 EUR/m²)³.

A recent research⁴ focused on the comparison between the rent level for private rental housing, social rental housing and public rental housing (housing intended for young families with small children, offered by Local authorities) in location Novi Jelkovec, Zagreb:

Size of flat in m ²	Up to 60	80	100
Rent on the free market in EUR	378 per month	513 per month	757 per month
Rent of public housing in EUR	199 per month	253 per month	283 per month
Rent of social housing in EUR	29 per month	38 per month	48 per month

○ **Current supply and demand situation**

Currently, lack of social housing is still one of the main features of the Croatian housing market.

Supply on private rental market seems to be sufficient.

Problems occur only in coastal area (Istria and Dalmatia) where landlords are reluctant to conclude tenancy contracts for durations that include summer period, since in this period the landlords prefer to rent the apartments to tourists.

¹See: <www.dzs.hr/>, Popis stanovništva 2011, 5 January 2014.

²P. Sunega and G. Bežovan, 'Regional differences' 10.

³1 HRK=7.571771 EUR on 14 January 2013, <<http://www.hnb.hr/tecajn/htecajn.htm>> , 14 January 2013.

⁴Baturina, Bežovan & Matančević, 'Welfare innovations at the local level in favor of cohesion, City report: Zagreb', 26.

- **Main current problems of the national rental market from the perspective of tenants**

- Affordability of private rentals; high prices and low legal protection (in practice)
- Legal uncertainty and lack of effective legal remedy due to long court procedures
- Lack of alternative dispute resolution forums or courts specialized for tenancy cases
- Tenancy contracts concluded orally (not in writing) leading to several problems for the tenant (impossibility to be awarded social transfers intended for subsidizing rent and heating costs)
- Impossibility to register at the address in cases of no written contract
- No tenant associations offering quality legal advice

- **Significance of different forms of rental tenure**

Because in practice the private rental housing market in Croatia is uncontrolled and its biggest part is the 'black market', there is no accurate data on the overall size of this market and the supply and demand.⁵

However, it can be said that private renting (still) represents a significantly bigger portion of the rental market than the social and public renting offered by Local municipalities, Towns (social and public housing) and the State (POS rent-to buy scheme).

- **Private renting**

The estimation is that the overall number of households that are renting housing units on private market is around 120,000 (30,000 in Zagreb, 20,000 in Split).⁶ This corresponds to the number estimated by the professionals from the Bureau of Statistics.

- **“Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc)**

Social housing is governed by special Rules adopted by the Local authorities offering social apartments. Usually the Local authorities issue a public tender governing the selection process. Rules governing social rentals are issued at the same time. The level of rent is fixed (protected rent); in accordance with Article 7 and 8 of Lease of Flats Act determined by the Croatian Government's Decree.

In 2009, public rental programs have been offered for the first time. Through these programmes some local authorities (mostly bigger cities⁷) are starting to rent out municipal housing to families/households that are not eligible for the housing with protected rent, but do not have the means to rent on private market. Public rents are higher than social (protected) rents and lower than private rents.

According to the available data the rent of public renting in the City of Zagreb monthly amounts to:

- (1) 80 EUR + 2.00 EUR/m² for the dwelling up to 59,99 m²;

⁵See: 'Studija tržišta nekretnina u Republici Hrvatskoj' Ministarstvo pravosuđa, 100.

⁶See: <www.udruga-pragma.hr/index.php?option=com_content&view=article&id=112%3Apatanja-stanara&catid=44%3Astanovanje&Itemid=202&lang=hr> 26 November 2012.

⁷This program has been first introduced by the City of Zagreb in the 2009. See the Decision on the lease of public housing from 26.02.2012, <www.zagreb.hr/default.aspx?id=12296>. The basis for this program is set in the Social policy program of the City of Zagreb for 2009 – 2012 (Program socijalne politike Grada Zagreba od 2009. do 2012.). The Program planned to allocate 600 housing units for public renting on the site Sopnica - Jelkovec.

- (2) 115 EUR + 1.75 EUR/ m² for the dwelling from 60-99,99 m²; and
- (3) 135 EUR + 1.50 EUR/ m² for the dwelling from 100 m² and larger⁸.

The most recent development in the rental sector has been the introduction of rent-to-buy scheme under the POS Programme. In accordance with the Art 24 of the Publicly Subsidised Residential Construction Act (*Zakon o društveno poticajnoj stanogradnji*⁹) – also called Publicly Subsidised Residential Construction Program (POS programme), the Agency for Transactions and Mediation in Immovable Properties (*Agencija za pravni promet i posredovanje nekretninama*) passed a new scheme. According to the programme the apartments that were not sold in the POS programme, are offered for rental. The programme is very successful, since all the apartments have been rented before the 15th of August 2013. the Agency is gathering information on citizens' interest in new similar programmes¹⁰. A form can be found on their internet page: www.apn.hr.

- **Some general recommendations to foreigners on how to find a rental home (including any specificities with respect to the position of foreigners on the national rental market)**

Landlords in possession of available market rental dwellings usually submit their advertisement in the local newspapers, to the internet sites specialized for renting and selling of dwellings, through family and friends. Therefore the tenant is advised to use these options. Finding an apartment through Rental agency is also a viable alternative, especially in cases of renting a high end apartment.

According to data gathered in Survey on renting¹¹, 46% of the interviewed tenants found the rented dwelling through advertisements in newspapers, 43 % through family and friends, 28 % on internet sites and only 7% with a help of real estate agencies (more than one answer to the question could be given). 49% of landlords found their tenants through family and friends, 43% on the internet and in the newspaper ads, and 14% from real estate agencies (more than one answer to the question could be given).

- **Main problems and “traps” (circa 5) in tenancy law from the perspective of tenants**

- contracts not concluded in writing
- Tenancy contract concluded with notary eviction form
- Renting from a person that is not the Landlord (checks in the Land registry are necessary)
- Payment of rent in advance for 6 months or more
- Renting in coastal area; landlords excluding possibility to rent during the summer time

⁸See: 'Na t j e č a j za davanje u najam javno najamnih stanova u naselju Sopnica-Jelkovec' from 12.09.2012, available at <www.zagreb.hr/UserDocImages/stanovi/Natjecaj%20-%20javno%20najamni.pdf>, 26 November 2012.

⁹Official Gazette of RC, No. 109/01, 82/04, 76/07, 38/09, 86/12.

¹⁰ See: www.apn.hr.

¹¹Istraživanje o iznajmljivanju nekretnina, 12: http://www.centarnekretnina.net/download/istrazivanja/2009/01_Istrazivanje_o_iznajmljivanju.pdf.

- Compile a very brief section of “*Important legal terms related to tenancy law*” by quoting their original in the national language (MAX 1 Page; if relevant, e.g. for States using Cyrillic characters, please add a transliterated Latin character version of these terms)

• Croatian	Translation to English
Ugovor o najmu	Tenancy (lease) contract
Zakon o najmu stanova	Lease of Flats Act
Zakon o obveznim odnosima	Civil Obligations Act
Ugovor u pisnom obliku	Contract in writing
Bitni sastojci ugovora o najmu	Essential elements of tenancy contract
Javnobilježnička potvrda	Notary stamp
Najam stana	Lease of an apartment
Najam kuće	Lease of a house
Podnajam	Sublease
Najamnina	Rent
Zaštićena najamnina	Protected or social rent
Najmodavac	Landlord
Vlastnik stana	Owner of the apartment
Najmoprimac	Tenant
Socialni stan	Social housing
Registracija kod porezne uprave i jedinice lokalne samouprave	Registration with the Tax office and Local Authority
Porez	Tax
Najam na određeno doba	Tenancy contract limited in time
Najam na neodređeno doba	Open ended tenancy contract

Troškovi	Expenses
Pričuva	Mandatory maintenance fee
Materialni nedostatci	Material defects
Pravni nedostatci	Legal defects
Kršenje ugovora o najmu	Breach of contract
Otkaz ugovora o najmu	Termination of tenancy contract
Otkazni rok	Termination period
Razkid ugovora o najmu	Cancelation of tenancy contract
Opomena	Admonition
Sudski proces	Legal process
Ovrha	Execution process
Postupak na izseljenje	Eviction procedure

2. Looking for a place to live

2.1. Rights of the prospective tenant

- **What bases for discrimination in the selection of tenants are allowed/prohibited? What about, for example, status as a foreigner, student, unmarried partner, or person with a short-term work contract?**

Discrimination on bases of nationality (against foreigners) and marital status (unmarried partner) is prohibited. However, rejecting a student or a person with a short-term employment contract as a tenant would not be in breach of antidiscrimination legislature if this status indicates that the tenant might have real problems with paying the rent or the expenses.

Article 14 of the Constitution of Republic of Croatia (*Ustav Republike Hrvatske*)¹² ensures human rights to everyone regardless of his or her personal status. Discrimination on grounds of race, color of skin, gender, language, religion, political or other convictions, social status etc. is prohibited.

Antidiscrimination Act (*Zakon o suzbijanju diskriminacije*)¹³ is a general statute on antidiscrimination. There are several special acts governing antidiscrimination in specific fields¹⁴: Constitutional Law on Rights of Minorities (*Ustavni zakon o pravima*

¹²Official Gazzete of RC, No . 56/90, 135/97, 8/98.

¹³Official Gazette of RC, No. 85/08, 112/12.

¹⁴See: <http://www.ombudsman.hr/dokumenti/vodic.pdf>.

nacionalnih manjina)¹⁵, Law on the equality of genders, (*Zakon o ravnopravnosti spolova*)¹⁶, Law on homosexual unions (*Zakon o istospolnim zajednicama*)¹⁷ and Criminal Code (*Kazneni Zakon*)¹⁸. Antidiscrimination Act has been amended in 2012 to comply with multiple EU Directives¹⁹. Art 8 of the Antidiscrimination Act explicitly prohibits the discrimination in the field of housing and prescribes penalties for any breaches. The penalties can go as high as up-to 350.000,00 kn (more than 45.000 EUR).

- **What kinds of questions by the landlord are allowed (e.g. on sexual orientation, intention to have children etc)? If a prohibited question is asked, does the tenant have the right to lie?**

Questions that are not in connection with the tenancy and tenant's ability to pay the rent are not allowed. Questions of personal nature such as: questions on religion, nationality, sexual orientation, intention to have children (such questions are forbidden even if they are affecting the number of persons to be living in the apartment in the future), are strictly forbidden. In cases that such questions are posed, the tenant has a right to lie.

In practice, especially due to prevailing black market (lack of proper regulation) in private renting sector, it is difficult to assess the degree of discrimination in the field of housing.²⁰ The Ombudsman Report from 2011 states that there were several cases in which the Office of Ombudsman has been contacted due to discrimination in the field of housing.²¹ Nationality, race and sexual orientation of the tenant still play an (although legally prohibited) important role.

- **Is a "reservation fee" usual and legal (i.e. money charged by the landlord to allow the prospective tenant to participate in the selection process)?**

Reservation fee is not usual and it would be considered illegal in such a form.

- **What kinds of checks on the personal and financial status of the tenant are usual and legal (e.g. the landlord requiring an independent credit report)?**

There is no legal possibility for the landlord to require an independent credit report of/ or /by the future tenant. In practice the landlord interviews the potential tenant and asks about his or her financial (possibility to pay for the rent and expenses) and marital status (in connection with the question of how many family members will live with the potential tenant).

¹⁵Official Gazette of RC, No. 155/2000.

¹⁶Official Gazette of RC, No. 22/08.

¹⁷Official Gazette of RC, No. 116/03.

¹⁸Official Gazette of RC, No. 125/11,144/11.

¹⁹See:<http://www.ombudsman.hr/dokumenti/vodic.pdf>.

²⁰Searching the internet one can find several newspaper articles dealing with this problematic. An interesting "mini research" on the topic of discrimination in housing leases against Roma and Bosniac (Muslim) population has been done by the national Newspaper Jutranji List, showing that discrimination against these two groups of people is still very strong in Croatia. Article titled: Mersiha? Sorry, the apartment has already been leased, Jutranji List, published on 19th of November 2011.

²¹Available at:
<http://www.ombudsman.hr/dodaci/lz/vje%C5%A1%C4%87e%20o%20pojavana%20diskriminacije%20za%202011.pdf>.

- **What is the role of estate agents in assisting the tenant in the search for housing? Are there other bodies or institutions assisting the tenant in the search for housing?**

The percentage of renting relationships concluded through real-estate agencies is small. Foreigners, especially foreign companies and various types of international organizations, usually use the services of estate agents. According to the real-estate agencies, the crisis on the housing market and decline of purchasing demand resulted in the structural shift of their business. For the time being, they are mediating in rental sector more than in sales.²² Since the rental relations are mostly concluded on 'the black market',

it can be argued that estate agents play a role in providing a certain level of security of tenure to tenants.

The rules of engagement for real estate agencies in Croatia are regulated by the Real Estate Brokerage Act (Zakon o posredovanju u prometu nekretninama²³). In cases of renting, the take of the real estate agency is not regulated by the law. Usually however one month's rent is paid to the agency.

There are no other bodies or institutions assisting the tenant to search for housing.

- **Are there any accessible "blacklists" (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?**

There are no blacklists of bad landlords or tenants or any similar system of rating and labelling preferred landlords or tenants.

2.2. The rental agreement

- **What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?**

Tenancy contract has to be made in writing to be considered validly concluded (Article 4 of Lease of Flats Act). This provision may represent a problem in light of the fact that some of the market (private) landlords are not willing to conclude tenancy contracts in writing. However, there is an exemption to this rule. According to Brežanski²⁴ as well as Gorenc²⁵, if the tenancy contract is not concluded in writing, the rule of consolidation (Article 249 of Civil obligation Act) may apply: if the contract has been fulfilled in its whole or in its important part, it is validly concluded regardless of its (written or oral) form. The rule of consolidation shall only apply to cases when both parties have fulfilled their obligations. Fulfilment of contractual obligations by one party only, will therefore not suffice²⁶.

According to Article 26 of the Lease of Flats Act, all landlords have a duty to submit the tenancy contract to the administrative department of the Local government (in case of City of Zagreb, to the local authorities of the city) and to the nearest Tax

²²See: <www.gorila.jutarnji.hr/vijesti/2011/01/31/podstanarstvo-ili-stambeni-kredit> , 27 November 2012.

²³Official Gazette of RC, No.107/07, 144/12.

²⁴Brežnski J. et al: Najam stanova i zakup poslovnog prostora u praksi, Novi Informator, 2006, p.29.

²⁵Gorenc and others: Komentar Zakona o obveznim odnosima, Prif plus, 2005,883.

²⁶Gorenc and others: Komentar Zakona o obveznim odnosima, Prif plus, 2005,883. According to the Decision of the Supreme Court of RC, Rev 208/96, from 19th of January 2000:"A tenancy contract fulfilled in its predominant part is valid"; similarly also in the Decision of the Supreme Court of RC, Rev 219/98, from 20th of September 2000.

office. Department of the local government responsible for housing is in charge of the list of apartments, landlords, tenants, sub-tenants and the amount of rent. Article 29 of the Lease of Flats Act prescribes a penalty in case of non-compliance with the law (paid by the landlord): "A fine in the amount of 1.000,00 to 5.000,00 Kn (approximately 130-650 EUR) shall be imposed on the landlord who does not comply with the provisions of Article 26 paragraph 1 of this Law." No fee is to be paid for the registration; however taxes paid by the landlord are assessed on the basis of the agreed rent.

- **What is the mandatory content of a contract?**

- **Which data and information must be contained in a contract?**

The minimum requirements for a valid conclusion of tenancy contract (Gorenc²⁷) pursuant to Lease of Flats Act are described in Article 5 and include:

- the nomination of tenant and the landlord
- description of the apartment (or its part)
- the amount of rent and the payment method
- type of costs to be paid by the tenant and the payment method
- information on persons living with the tenant
- duration of the tenancy.
- provisions for the maintenance of the apartment
- provisions on the use of common areas, common parts and facilities and land by the persons living in the building
- provisions regarding handing over of the apartment.

Requirements of Article 5 of the Lease of Flats Act are a mere reminder to the parties of what should be determined by the contract. The absence of any provision does not cause ex-lege invalidity of the contract.²⁸

- **Duration: open-ended vs. time limited contracts (if legal, under what conditions?)**

Contracts limited in time are legal under Croatian law. Moreover, no restrictions on the duration of the contract or even the level of rent exist.

- **Which indications regarding the rent payment must be contained in the contract?**

The tenancy contract has to include the amount of rent and the payment method; including the pay day.

- **Repairs, furnishings, and other usual content of importance to tenant**

- **Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?**

When concluding the tenancy agreement, the parties have to decide who will pay the costs. It is therefore legal for the landlord to shift costs of repairs to the tenant, especially if the parties in turn agree on a lower rent. However, the abuse of the landlord's position (as a party having prevailing power) may and will be sanctioned by the court. Such provisions will then be deemed as null and void.

Unless agreed otherwise, the landlord will pay for the major repairs, whereas the

²⁷ Gorenc and others: Komentar Zakona o obveznim odnosima, Prif plus, 2005, 853.

²⁸ Gorenc and others: Komentar Zakona o obveznim odnosima, Prif plus, 2005, 838.

minor repairs are paid by the tenant.

- **Is the landlord or the tenant expected to provide furnishings and/or major appliances?**

It depends on the tenancy agreement. In cases when nothing is agreed the tenant is expected to provide for furnishing and the major appliances.

- **Is the tenant advised to have an inventory made so as to avoid future liability for losses and deteriorations (especially in the case of a furnished dwelling)?**

The making of an inventory is an essential part of the tenancy agreement (Art 5 of the Lease of Flats Act). Therefore the tenant is strongly advised to make an inventory prior to moving in the apartment.

- **Any other usual contractual clauses of relevance to the tenant**

- **Parties to the contract**

- **Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?**

According to Article 31 paragraph 2/2 of Lease of Flats Act, the tenancy contract shall specify the persons who are allowed to move in together with the tenant. Article 19 paragraph 1/4 of Lease of Flats Act stipulates that the landlord can terminate the tenancy contract if a person not specified by the tenancy contract is living in the leased dwelling for a period of time longer than 30 days. This provision does not apply to tenant's spouse, children, parents or any person for whom the tenant is obliged to provide for by the Social Care Act²⁹, or a person providing aid or care to the tenant, until such need exists.³⁰

Article 37 paragraph 1 of Lease of Flats Act provides for a special right: family members (as defined in the former Law on housing relationships) are entitled to be listed in the tenancy contract as having the right to use the apartment.

if the landlord is not willing to include the specified persons into the tenancy contract, they (personally or by the tenant on their behalf) are able to enforce the right to be included (into the tenancy contract) by a court decision.³¹

- **Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?**

No specific obligation of the tenant to live in the dwelling exists under Croatian Law- neither under Lease of Flats Act nor under Civil Obligations Act. According to Gorenc,³² to use the dwelling is the tenant's right, not his duty (citing Article 18 (1) of the Lease of Flats Act). The actual use of the dwelling is not considered as essential part of the tenancy contract since one can enter into a valid tenancy contract and never use the apartment provided the rent is being paid.

²⁹Official Gazette of RC, No. 33/12.

³⁰Brežanski J.: Najam stana – položaj zaštićenog najmoprimca, 2004 http://www.vsrh.hr/CustomPages/Static/HRV/Files/JBrežanski-Najam_stana-2004-02mj.pdf, 15.

³¹ Ibid.

³²Gorenc and others: Komentar Zakona o obveznim odnosima, Prif plus, 2005; Commentary by Gorenc and others to Article 561, on page.846.

The tenant is however obliged to use the dwelling if such a duty arises from the nature of the contract (for example if the landlord wants someone to inhabit the apartment, provided that the tenant is aware of this), if the law prescribes such obligation (protected tenants, social renting) or when the parties have explicitly agreed on a tenant's duty to live in the dwelling.

○ **Is a change of parties legal in the following cases?**

- **divorce (and equivalents such as separation of non-married and same sex couples); or death of the tenant**

In the event of the death of the tenant or when the tenant ceases to live in the apartment, his or her rights and obligations are transferred onto his or her spouse. If there is no spouse, the rights and obligations are transferred to a child, stepchild or adopted child. In such cases, the person residing with the tenant shall inform the owner about the change within 30 days of the death or move of the former tenant. Similarly, these persons are obliged to inform the owner in case they do not want to terminate the contract (Article 24 of Lease of Flats Act). These provisions apply to any other person living with the tenant prior to the leave³³.

- **apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);**

A student moving out can always be replaced only with a permission of the landlord.

- **death of tenant;**

See the answer on divorce above.

- **bankruptcy of the landlord;**

In cases of bankruptcy the status of tenant remains unchanged despite the change of the landlord³⁴.

○ **Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?**

Cases of abuse of subletting by the landlord are not known in Croatia.

The tenant may sublet the apartment if the landlord agrees with the sublet (pursuant to Article 28 of the Lease of Flats Act). The tenant is obliged to deliver the sublet contract to the landlord who then informs the local authorities and the tax office. If the tenant sublets the apartment without the consent of the landlord, the landlord may (According to Article 19 of the Lease of Flats Act) terminate the contract.

○ **Does the contract bind the new owner in the case of sale of the premises?**

Yes. Change of the landlord does not influence the tenancy agreement. The new landlord takes all the rights and duties of the former landlord.

³³Decision of the Constitutional Court of RH No. U-I-533/2000, from 24th of May 2000:

The death of the tenant or his moving out of the apartment is not a reason for termination of the tenancy contract.

³⁴Gorenc and others:Komentar Zakona o obveznim odnosima, Prif plus, 2005, 864.

In cases of public auction pursuant to foreclosure proceedings against the landlord, the Execution Act³⁵ defines cases in which tenancy contract ceases to exist due to execution on the apartment. If the tenancy contract is not concluded or entered into a Land registry before the acquisition of a lien or right to settlement, the rights of the tenant cease to exist once the real estate is sold. In such cases the court determines the period, in which the tenant has to vacate the dwelling. Such period cannot be shorter than three months³⁶

- **Costs and Utility Charges**

- **What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?**

One of the essential provisions of the tenancy contract is the agreement on who will pay for the apartment utilities (pursuant to Article 5 of Lease of Flats Act).

In the absence of an agreement, the utilities such as water, electricity, garbage removal, gas supply etc. are paid by the tenant. On the other hand, utilities such as fee for mandatory maintenance of the building (pričuva) and taxes are paid by the landlord (Article 554 of Civil obligations Act).³⁷

- **Which utilities may be charged from the tenant by the landlord? What is the standard practice?**

Unless otherwise agreed, costs of regular use of the leased dwelling are borne by the tenant. All other costs are borne by the landlord.³⁸ Small repairs are repairs of smaller importance and changes of smaller parts (light bulbs). Regular use includes costs such as: heating, electricity, use of water, garbage disposal fee and similar. In practice the division of costs between tenant and the landlord is usually specified in the tenancy contract³⁹. Otherwise, the rules of usual (standard) practice in the particular region apply⁴⁰. The fee for mandatory maintenance for apartment buildings is however paid by the landlord if no special agreement has been made. The parties may also determine a fixed price for the lease (lump-sum). In such cases the utility costs are included in the lump-sum rent.

- **Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?**

All taxes are paid by the landlord.

- **Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?**

Fee for mandatory maintenance (pričuva) is paid by the landlord unless otherwise agreed by the parties (Article 554 of Civil obligations Act).⁴¹

³⁵Official Gazette of RC, No. 112/12, 25/13.

³⁶Article 130 of Execution Act.

³⁷Gorenc and others:Komentar Zakona o bveznim odnosima, Prif plus, 2005, 838.

³⁸Gorenc and others: Komentar Zakona o obveznim odnosima, Prif plus, 2005, 838.

³⁹Gorenc and others: Komentar Zakona obveznim odnosima, Prif plus, 2005, 838.

⁴⁰Ibid.

⁴¹Gorenc and others:Komentar Zakona o bveznim odnosima, Prif plus, 2005, 838.

It is a standing practice in Croatia that the landlord shifts the condominium costs (mandatory maintenance fee, pričuva) to the tenant. This is not illegal; however it has to be explicitly agreed upon in advance and in writing.

- **Deposits and additional guarantees**

- **What is the usual and lawful amount of a deposit?**

The Law does not prescribe the amount of the deposit. In practice, the usual amount of deposit in private rentals is between one and two monthly rents. The deposit is usually paid by the tenant at the moment of the conclusion of the agreement.

- **How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?**

The tenant and the landlord agree upon the rules regarding the deposit. In practice no interests are owed to the tenant; the landlord does not open a separate account.

- **Are additional guarantees or a personal guarantor usual and lawful?**

They are lawful, but are not used in practice.

- **What kinds of expenses are covered by the guarantee/ the guarantor?**

3. During the tenancy

3.1. Tenant's rights

- **Defects and disturbances**

- **Which defects and disturbances are legally relevant (e.g. mould and humidity in the dwelling; exposure to noise e.g. from a building site in front of the dwelling; noisy neighbors; occupation by third parties)?**

The landlord must ensure a normal use of a dwelling during the period of tenancy contract. Next to that the landlord has the duty to maintain the dwelling or the apartment in an appropriate condition, to restrict himself from the use of the apartment and to guarantee the tenant that the apartment is free from material or legal defects.

If humidity level or mould in the apartment become potentially hazardous to the tenant's health, the tenant has the right to terminate the tenancy contract without any termination period. This applies even to cases when the tenant was aware of that situation at the time of entering into the tenancy contract.⁴² The tenant may not waive this right⁴³.

Noise problem from a building site or problem with noisy neighbors seems not to violate the tenancy. In such cases the Police may fine the neighbors for breaching public law and order if the noise is too loud.

⁴²Article 576 (4) of the Civil Obligations Act.

⁴³Article 576 (5) of the Civil Obligations Act.

If a third party has a rightful claim that fully excludes the right of the tenant to use the dwelling, the tenancy contract is terminated *ex lege* (*ipso iure*) and the landlord is obligated to compensate the tenant for the damages he suffered thereof⁴⁴.

- **What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)**

Article 13 of Lease of Flats Act defines that the landlord has to maintain the apartment in habitable condition in accordance with the lease agreement. The tenant is obliged to inform the owner of the necessary repairs in the apartment and common areas of the building, which are then borne by the landlord. Tenant and other occupants have to allow the landlord or a person authorized by the landlord to enter the apartment in relation to the control of the use of the apartment⁴⁵. According to Civil obligations Act, the landlord has to reimburse the tenant for any repair costs borne by the tenant, either because the repairs could not wait or because the landlord failed to make them in due time after being notified⁴⁶. Costs of small repairs and costs of regular use of the dwelling are borne by the tenant⁴⁷. The tenant has a duty to notify the landlord without delay about any repair needed; failing that, he is liable for any damage⁴⁸. If, during the term of the lease, the dwelling deteriorates so it is no longer fit for the agreed use or where its use is significantly diminished over an extended period of time due to the needed repairs and the tenant is not responsible for that, the tenant has the right to obtain a reduction of rent from the court (unilateral reduction of the rent by the tenant is not allowed), or even terminate the contract if the dwelling is not made fit for use within an acceptable period of time⁴⁹.

Regarding third party claim, the tenant having the real possession of the dwelling has the right to demand from the landlord that the second tenant (not in possession of the dwelling) does not disturb his use of the dwelling. A claim seeking remedy for any damage suffered is possible (if the conditions are met, the possibility to seek remedy for the entire damages will be possible). Lease contract between the landlord and the second tenant, not in possession of the dwelling, is terminated *ex lege* (*ipso iure*). The second tenant will usually be able to prove fraud, deliberate non-performance or non-performance due to gross negligence on part of the landlord. Accordingly, the tenant is entitled to request from the landlord compensation for the entire damage (not only for the foreseeable) that was caused due to breach of the contract, regardless of the fact that the landlord did not know of the particular circumstances resulting in the damage caused⁵⁰.

⁴⁴Article 560(2) of the Civil Obligations Act.

⁴⁵Or as defined in Civil Obligations Act Article 554(1): to maintain the dwelling or the apartment in a condition fit for the agreed use, the landlord shall be obligated to make the necessary repairs in due time and at his own cost, and the tenant shall be obligated to allow that.

⁴⁶Article 554(2) of the Civil Obligations Act.

⁴⁷Article 554(3) of the Civil Obligations Act.

⁴⁸Article 554(4) of the Civil Obligations Act.

⁴⁹Article 555 of the Civil Obligations Act.

⁵⁰Article 346(2) of the Civil Obligations Act.

- **Repairs of the dwelling**

- **Which kinds of repairs is the landlord obliged to carry out?**

The landlord has to carry out major repairs, smaller repairs are born by the tenant.

- **Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?**

The tenant has a right to make smaller repairs at his own expense. If no previous agreement with the landlord exists, the deduction of rent is not possible.

According to Civil obligations Act, the landlord has to reimburse the tenant any repair costs borne by the tenant, either because the repairs could not wait or because the landlord failed to make them in due time after being notified⁵¹.

- **Alterations of the dwelling**

- **Is the tenant allowed to make other changes to the dwelling?**

No, the tenant may not make changes to the dwelling if the landlord does not agree.

- **In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

Such adaptations of the building have to be agreed with the majority of the owners of the building. The apartment may not be adapted without the landlord's prior consent.

- **Affixing antennas and dishes**

Affixing antennas and dishes is allowed.

- **Repainting and drilling the walls (to hang pictures etc.)**

These kinds of repairs and changes are allowed unless explicitly forbidden.

- **Uses of the dwelling**

- **Are the following uses allowed or prohibited?**

- **keeping domestic animals**

Keeping a domestic animal has to be agreed upon with the landlord.

- **producing smells**

Producing smells is not allowed.

- **receiving guests over night**

Unless otherwise agreed by the landlord and the tenant, receiving guests overnight is allowed, as long as they stay less than 30 days in a row.

- **fixing pamphlets outside**

This would not constitute a breach of the tenancy contract.

- **small-scale commercial activity**

Even small-scale commercial activity is under Croatian law explicitly prohibited unless otherwise agreed by the parties. There are no mixed residence/commercial

⁵¹Article 554(2) of the Civil Obligations Act.

contacts under Croatian Law. Under the Lease of Flats Act, running a business without the landlord's approval may be a reason for a unilateral termination of the contract. If the landlord gives approval to a tenant to run business in the apartment, the contract will have to be amended to comply with the Law on lease and sell of office space (*Zakon o zakupu i kupoprodaji poslovnog prostor*⁵²).

3.2. Landlord's rights

- **Is there any form of rent control (restrictions of the rent a landlord may charge)?**

There are no restrictions on rent the landlord may charge.

- **Rent and the implementation of rent increases**
 - **When is a rent increase legal? In particular:**
 - **Are there restrictions on how many times the rent may be increased in a certain period?**

The only restrictions on the rent increase are prescribed for open-ended tenancy contracts, which are extremely rare in Croatia (almost non-existent). In accordance with Article 11 of Lease of Flats Act, a rent increase can be proposed by the landlord in case of the open-ended tenancy contracts, but not prior to the passing of the first year. If the new proposed rent exceeds the legal maximum, which is set at 120% of the average rent in that area for a similar dwelling, the tenant has the right, within the time period of 30 days, to demand from the court to define the rent in accordance with the law. Until the court's decision the tenant is to pay the contracted rent. This provision is not used in practice.

- **Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?**

No, there is no such restriction.

- **What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?**

The landlord and the tenant have to agree on the rent increase. However in practice, due to mostly one-year tenancy agreements, the landlords are able to increase the rent at time of "prolonging" the tenancy agreements.

- **Entering the premises and related issues**
 - **Under what conditions may the landlord enter the premises?**

Tenant and other occupants have to allow the landlord or a person authorized by the landlord to enter the apartment in relation to the control of the use of the apartment⁵³.

- **Is the landlord allowed to keep a set of keys to the rented apartment?**

⁵²Official Gazette of RC, No. 125/11.

⁵³Or as defined in Civil Obligations Act Article 554(1): to maintain the dwelling or the apartment in a condition fit for the agreed use, the landlord shall be obligated to make the necessary repairs in due time and at his own cost, and the tenant shall be obligated to allow that.

The landlord is not prohibited by any Law from keeping a set of keys to himself; however he has to use them only in accordance with the Law and the tenancy agreement.

- **Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?**

No, such a situation would constitute a disturbance of tenant's possession. The tenant can file a disturbancy claim against the landlord in front of a court.

- **Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?**

Yes, in such cases the landlord may seize and even sell personal property of the tenant in a public auction.

4. Ending the tenancy

4.1. Termination by the tenant

- **Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?**

Pursuant to Article 23 of Lease of Flats Act, the tenant is allowed to terminate the tenancy agreement without any reason in cases of open ended agreements if he respects the obligation to notify the landlord in a written form, at least 3 months prior to the date on which he intends to move out of the apartment.

- **Under what circumstances may a tenant terminate a tenancy before the end of the rental term (e.g. unbearable neighbours; bad state of dwelling; moving for professional reasons)?**

The tenant may not terminate a limited in time contract before its expiry. On the other hand, there are several reasons for the tenant to terminate the tenancy agreement due to landlord's "at fault" behaviour. The tenant may cancel the contract if the dwelling or the apartment is not in an agreed or appropriate state to be used (Civil Obligations Act Article 553 (2) and (3)). The tenant is also allowed to terminate the tenancy contract at any given time without termination period, if the leased dwelling or the apartment is hazardous to his health. This applies even to cases when the tenant was aware of that situation at the time of entering into the tenancy contract.⁵⁴ The tenant may not waive this right⁵⁵.

Finally, a mutual agreement between the parties is always possible. For example an agreement between the parties that a different (new) tenant will continue the tenancy contract is possible. Contracting parties may in theory agree upon any termination period and sanctions for their breach, including penalty provisions. Such agreements are not common in practice and there is no case-law on this issue. The landlord has no statutory right to compensation.

- **May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?**

⁵⁴Article 576 (4) of the Civil Obligations Act.

⁵⁵Article 576 (5) of the Civil Obligations Act.

In such cases the landlord will have to explicitly agree upon such a change. In practice these situations in most cases do not present any problem.

4.2. Termination by the landlord

- **Open ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?**

The landlord may terminate an open ended tenancy contract if he, his descendants, parents or persons he is obliged to support under law, intend to move into the apartment. The notice period has to be given in writing and at least 6 months in advance.⁵⁶

If the landlord wants to renovate and use the apartment differently in the future, he may not terminate the tenancy contract.

- **Must the landlord resort to court?**

In cases when the tenant does not voluntarily leave the apartment, the court eviction procedure is needed. In other cases of termination no court procedure is needed.

- **Are there any defences available for the tenant against an eviction?**

There are no social defences available for the tenant against an eviction.

- **Under what circumstances may the landlord terminate a tenancy before the end of the rental term?**

Pursuant to Article 19 of the Lease of Flats Act (ordinary notice), the landlord has the right to terminate the lease if the tenant or other occupants of the apartment use the apartment contrary to the provisions of the Lease of Flats Act or the tenancy agreement, and in particular:

- if the tenant fails to pay within the agreed period of time the rent or other (contractual) costs in relation to housing,
- if the tenant subleases the apartment without the permission of the landlord,
- if the tenant or other occupants of the apartment disturb other tenants or occupants in peaceful use of the dwelling or of their business premises,
- if the apartment is used by a person who is not listed in the tenancy contract for more than 30 days without the permission of the landlord, except when such a person is a spouse, descendants or a parent of the tenant, a person the tenant is obliged by law to support, or the person who provides for the tenant or other occupant of the apartment with the necessary care and assistance until such a need exists,
- if the tenant or other occupants of the apartment do not use the apartment for housing, but use it in whole or in its part for other purposes.

The landlord may not terminate the tenancy contract without a written warning urging the tenant to eliminate the reasons for termination within 30 days. In case of non-compliance by the tenant, the landlord may terminate the tenancy contract with a 3

⁵⁶Article 22(2) of the Lease of Flats Act.

months' notice period⁵⁷. The notice has to be given in writing and has to include the explanation of the reasons for the termination. The notice has to be handed over directly to the tenant (who has to sign to confirm the receipt), or sent to the tenant with registered mail⁵⁸. If the tenant refuses to accept the mail, the termination period starts on the day when the notice was sent⁵⁹. The landlord however has the right to terminate the contract without any notice period if the tenant violates the contract or mandatory rules more than twice (third time no notice period is necessary).⁶⁰

Pursuant to Article 20 of Lease of Flats Act, the landlord may cancel (extraordinary notice) the tenancy contract if:

- the tenant or other users cause damage to the common areas, appliances and parts of the dwelling and do not remedy such a damage within a 30 days period,
- the tenant modifies the apartment, common areas and facilities of the building without the prior written consent of the landlord.

In these two cases the landlord may cancel the tenancy contract in writing, with an explanation and with the eviction date which cannot be shorter than 15 days.

○ **Are there any defences available for the tenant in that case?**

The tenant may challenge the termination in a legal procedure before the Municipal court (court of first degree). Possible objections to the termination may include reasons such as:

- there is no legal or contractual reason on which the termination of the tenancy contract could be given
- the termination notice was not given in a legally or contractually prescribed manner
- the tenant did not receive the termination notice
- the termination notice did not include legally prescribed dead-line in which the tenant has to stop with the breach
- the landlord has not respected the legally or contractually prescribed notice period
- the tenant was not given a moving-out time period
- **What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?**

If the tenant does not vacate the apartment within the notice period, or within the time specified by the landlord in cases of Article 20 of Lease of Flats Act, the landlord may file a claim for eviction of the tenant before the competent court. The procedure is urgent, which means it has priority⁶¹. After the decision of the court the tenant can be forcibly evicted in accordance with the rules of Execution Act.

4.3. Return of the deposit

- **Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?**

When the tenant has paid all the rents and expenses he owes and returned the apartment in normal condition to the landlord, the landlord has a legal obligation to

⁵⁷Article 22(2) of the Lease of Flats Act.

⁵⁸Article 19(2) of the Lease of Flats Act.

⁵⁹Article 22(3) of the Lease of Flats Act.

⁶⁰Article 19 (3) of the Lease of Flats Act.

⁶¹Article 22 (4 and 5) of the Lease of Flats Act.

return the tenant's security deposit.

- **What deductions can the landlord make from the security deposit?**
 - **In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?**

The tenant is not liable for fair wear and tear of the apartment resulting from its regular use or for any damages attributable to its ageing⁶². Normal wear and tear of the furniture is a form of damage to the leased apartment which is borne by the landlord. The landlord may therefore not deduct from the security deposit.

4.4. Adjudicating a dispute

- **In what forum are tenancy cases typically adjudicated?**
 - **Are there specialized courts for adjudication of tenancy disputes?**

No specialized courts for adjudication of tenancy disputes exist in Croatia.

- **Is an accelerated form of procedure used for the adjudication of tenancy cases?**

In cases of tenancy disputes (under the Lease of Flats Act) an accelerated form of court procedure is used. However in practice this still means that the procedures can take up to few months to be solved.

- **Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?**

Alternative dispute resolutions are not available for cases of tenancy disputes .

5. Additional information

- **How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?**

Social housing possibilities are very scarce in Croatia. National programme of social rental housing does not exist. This problem is left to the local authorities. Local municipalities or Regions pass two sets of Rules in accordance with which Tenders on allocation of social housing and Rules guiding such future tenancies are made. A prospective tenant has to directly apply to Tenders by Local municipalities or Regions in order to be eligible for social housing. In accordance with the needs of future tenants, the priority list is made.

In extreme cases, such as homelessness, local Social care units have a right to directly contact Towns or Municipalities to arrange prioritized social housing (without applying to Tenders).

Housing allowance is a part of the social care system and is the responsibility of local authorities. Local and regional authorities subsidise the costs of heating. On the state level, the housing allowance system is in the competence of Ministry of Social Welfare Policy and Youth (*Ministarstvo socijalne politike i mladih*). To apply for housing allowance (state and local), the applicant has to fulfil a form at the local Social care unit.

⁶²Article 566(2) of the Civil Obligations Act.

- **Is any kind of insurance recommendable to a tenant?**

The tenant may insure the apartment or house on the private market with any private insurance company. This would be advisable, since the insurance policies cover wide range of possible accidents to the apartment and its chattel (fire, earthquake, floods, minor accidents etc.).

- **Are legal aid services available in the area of tenancy law?**

The Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*)⁶³ defines two different kinds of legal aid: primary and secondary. Primary legal aid services include first legal information, representation in mediation and arbitration procedure, but exclude representation in court procedures. The applicant (the tenant) must fulfil criteria prescribed by the Free Legal Aid Act Art 10:

1. The applicant lacks legal knowledge
2. The applicant does not have a right to free legal help on the basis of any other Law or Act
3. The reasons for applying is not unreasonable
4. The applicant fulfils the census criteria- paying for legal help would undermine his or his family members living with him, the possibilities of vital maintenance

Primary legal service is offered by Free legal aid offices, Associations, Local administrative units (in case of City of Zagreb; the local government unit) and Legal Clinics.

Secondary legal service is legal help awarded for court procedures and provided by Attorneys. In cases of tenancy law the legal aid will be awarded only in exceptional cases, as prescribed under Art 14 of the Law; among other criteria the applicant has to fulfil strict legal and census criteria. The applicant (the tenant in this case) fulfils the application for such a help directly at a Local administrative unit, where she or he resides.

- **To which organizations, institutions etc. may a tenant turn to have his/her rights protected? [please indicate addresses, email addresses and phone numbers]**

The best option for a tenant to protect his or her rights is to get legal help from an Attorney.

In addition, there are three organisations which a tenant may contact as well:

1. Alliance of tenants' associations of Croatia (*SUSH – Savez Udruga Stanara Hrvatske*)⁶⁴,
2. Croatian association of tenants (*Udruga stanara Hrvatske*)⁶⁵, and
3. Association of co-owners of apartment buildings (*Udruga stanara -suvlasnika stambenih zgrada*)⁶⁶

⁶³ Official Gazzete of RC, No.143/13.

⁶⁴See: <https://sites.google.com/a/pravonadom.com/public/contact-us>.

⁶⁵Web page of the Association: <http://www.ush.hr/USH.htm>.

⁶⁶See: www.udruga-stanara.hr/.