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

Tenant's Rights Brochure for the

CZECH REPUBLIC

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

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Guidelines for Authors:

- Answers may be partly copied from the main questionnaire. However, the brochure should be understandable for non-lawyers.
- Formatting: 12 point Arial font, single space should be used.
- **The answers should be written directly into this file** (by leaving all the headings; only the header of this page from "ZERP" to the date should be replaced by "Country report on...").
- The following Kluwer style guide should be used for quotations etc.:
http://www.kluwerlaw.com/NR/rdonlyres/495596DD-0758-42EB-A7FF-2B822D7C6A5E/680/KLI_House_Style_v22_online.pdf

1. Introductory information

The Czech Republic is a democratic, independent country based on the rule of law, free trade and human rights protection. The state provides protection of minorities but decisions are made by the majority. Czech Republic consists of three lands – Bohemia, Moravia and Silesia, with the capital city in Prague. There are 10,5 million inhabitants living in the Czech Republic. The structure of the trade is well developed and focused on engineering, agriculture and education. There are over 26 public and 47 private universities. The political system is based on parliamentary democracy with bicameral parliament (The house of commons and the Senate).

- Give a very brief introduction on the national rental market (MAX 2 Pages)
 - Current supply and demand situation

Based on the data from the 2011 census the housing stock includes 4.104.635 permanently occupied dwellings, of which 35,8% are flats in family houses and 55% in blocks of flats. Rental apartments accounted for 22,4% of the permanently occupied dwellings. The total number of existing dwellings is 4.756.572. 55.9% of the Czech households live in their own house or flat, 17.6% of them lived in rental flats.

The data demonstrates the increase in the proportion of owner-occupied dwellings housing, especially at the expense of rental housing. Regionally, the smallest proportion of households living in their own house is in Prague, the highest in the Central Region (Středočeský kraj). 9,4 % of households in the Czech Republic live in cooperative housing, which is by its nature close to owner occupation. 35% of all households live in rental flats in Prague. 3,4% of flats are used for free (usually by relatives).

Comparing the 2001 and 2011 census data, the number of households equipped with a personal computer increased to 60.5% while the proportion of dwellings equipped with internet is now 56.6% (it wasn't observed in 2001). Finally, the proportion of all occupied dwellings equipped with a bath or a shower (or both) increased from 95.5% to 97.4%. Availability of flush toilets in occupied dwellings increased from 93.7% to 96.5%. This data shows that the neglect of housing stock has declined in recent years, but even so the Czech Republic still ranks the 10th among European countries. The average age of flats is 42.5 years. It is estimated that further 21.6 billion EUR worth of funding is required for repairs. The housing stock is owned predominantly by natural persons and developers. The developers do not own the apartments for long time since their objective is to sell them to individual owners.

The construction of new housing stocks is mainly financed by mortgages. Banks usually insist on a minimum equity requirement (15% of the value of the loan). A quarter of housing stock was privatized (a privatization *lato sensu*, see further) under the Apartment Ownership Act. Restitutions of apartments were usually handled by payment in kind instead of financial compensation of the owners.¹

There are 651937 vacant dwellings (2011 Census, the Czech Statistical Office) which represent approximately 13,7% of the housing stock. There are over 461 thousand vacant dwellings in family houses and approximately 176 thousand in apartment buildings. The highest number of vacant dwellings could be found in the central Bohemia. Vacant dwellings appear mainly in regions with high levels of unemployment - especially in the regions of Czech borderlands. But there is a huge amount (169468) of

¹ Martin Lux & Martina Mikeszová. 2011. „Restituce majetku a transformace soukromého nájemního bydlení v České republice.“ Pp. 7-18 in Martin Lux (ed.). *Standardy bydlení 2010/2011: Sociální nerovnosti a tržní rizika v bydlení*. (Praha: Sociologický ústav AV ČR, v.v.i.). 205 p.

dwelling that are vacant because they are used for recreation only. There are no data on the reason of vacancy of 399 thousand of vacant dwellings.

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

Currently a new problematic black market phenomenon has arisen. It is connected with the intermediate tenure (based on the accommodation contract). Low income persons receive subsidies from the state to ensure an accommodation. There is no limit on the amount of the accommodation payments. This culminated into a practice, where groups called "social housing entrepreneurs" provide living in hostels for low income people. Several people live in a small room and pay the entrepreneurs excessive "rents" with the subsidies.

There is also a black market phenomenon connected with subleasing. If a person wants to rent out an apartment, there are two legal ways to do it. One is based on a lease agreement, the second on the sublease. A sublease requires a lessee who is a party to a lease contract with a third person, the owner. What happens in practice is that the home owner pretends to have signed a lease agreement with a lessee (who is usually a person related to the lessor in some way, e.g. a sister, brother, or a friend), but such a lessee does not in fact pay any rent to the owner and serves only to further sublease the apartment to another person. The reason behind this deception is to secure more favourable terms to the original home owner, since the sub lessee is in a legally weaker position than a lessee (i.e. the one who signed a proper lease agreement). The sublease contract is more favourable to the lessor in comparison with a proper lease agreement (it is easier to terminate the contract, etc).

Another phenomenon is a repeated fixed period contract conclusion (usually one year) and its regular renewing, as well as frequent subleases of municipal flats not used by their original lessees.

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

An intermediate form of tenure is the accommodation contract. This contract is an agreement between the provider of accommodation services (with a special licence) and the client (a person who wants to use a room, apartment or even a house for a temporary period). This contract is used by hotels, hostels and some charity organizations to secure temporary accommodation. The main difference between the accommodation contract and the lease contract is that in the former, the client isn't protected against eviction. The provider may terminate the accommodation from day to day with no compensations to the client. The client doesn't have to pay the utility costs, because they are already included in the price of the accommodation.

A particular form of tenure is renting an apartment owned by a cooperative (e.g. the lessee is always a shareholder in the cooperative). It is not usual for the tenant to buy a share in a housing company (other than cooperatives).

Living in cooperatives is widespread in the Czech Republic. The essence of securing housing needs through cooperative form of housing is based on individual property of a cooperative share, which is linked with exclusive right to live in particular apartment under a lease contract conducted between the shareholder and the cooperative.

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

The area of social housing is not very developed in the Czech Republic and is based primarily on rent allowance. Larger municipalities usually run programmes aimed at providing housing opportunities to low-income citizens. The conclusion of a lease contract is in most cases conditional on permanent residency in the town or village.²

Social housing is also provided by non-governmental, non-profit organizations, charities, reception centres, night shelters, Salvation Army houses and halfway houses aimed at social re-integration of ex-convicts. The main flaws of the Czech approach to social housing are considered to be:

- 1) the absence of a definition of the target group for social housing;**
- 2) the failure of the government housing policy to sufficiently cover or provide alternative forms of housing other than dormitories.**

- 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)

In the Czech Republic there are real estate agencies, which will help foreigners find a flat to rent or to purchase. Foreigners can also consult or post advertisements on notice boards and the Internet.

To avoid problems choose an international brand name agency which you know even from your country. Ask the rental agent to prepare the agency contract as non – exclusive one, so if you find an apartment on your own, you will not be obliged to pay commission to the real estate broker. Ask the real estate broker to prepare the contract in your native language and if this is not possible, at least in English, so that you are sure, what are you signing. If this request cannot be met it would be prudent to look for another real estate agency.

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

² Private lessors are usually reluctant to allow the lessee to establish the apartment as their place of permanent residence used by the public law. This is mostly due to their fear that the lessee won't be willing to log out the registration after the rent agreement expires. The public law uses the place of permanent residence for court summons delivery. The court restrains execution upon the debtors property in his place of permanent residence, even if he doesn't actually live there.

- Ask the landlord to show you proof of his/her property (or obligational) right to the apartment (the cadastre record; valid contract with the cooperative etc.);
 - Ask the landlord about the exact amount of the rent and utility costs. Be aware that utility costs are just a deposit which must be balanced annually. Sometimes it will be necessary to pay additional money if the use of utilities exceeded the paid deposits.
 - Make all payments via bank accounts and do not pay in advance.
 - Ask the landlord to prepare the lease agreement in accordance with the new Civil Code (in force as of Jan 1st 2014) and in a written form.
 - Do not pay a reservation fee higher than one rent.
- 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)

Byt - apartment

Nájemní smlouva – lease agreement

Kauce/jistota – deposit (maximum 6 rents)

Nájem - lease

Podnájem – sublease

Nájemce – tenant

Pronajímatel – landlord

Společný nájem – mutual lease

Nájem/nájemné – rent

Jiné platby za služby – utility costs

Družstevní byt – apartment owned by cooperative

Byt v osobním vlastnictví – apartment owned by private individual

Služební byt – service apartment (owned by your employer)

Smlouva o ubytování – accommodation contract

Věcné břemeno – easement

Spotřebitel – consumer

Společenství vlastníků jednotek – owners association

3+1; 2+1 – it means an apartment with 3 or 2 rooms and kitchen (+1)

Ubytovna – hostel

Příspěvek na bydlení – housing allowance

Výpověď - notice

Výpovědní doba – notice period

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 is undoubtedly linked to the issue of minorities and their disadvantages in society. The oldest existing provision in the legal system of the Czech Republic, which covers discrimination, is article 14 of the European Convention on Human Rights and Fundamental Freedoms. A similar message is expressed in the Charter of Fundamental Rights and Freedoms, which creates a part of the constitutional order. The most common reasons for discrimination of interested persons in renting an apartment are ethnicity or nationality. Some flat owners ordinarily refuse smokers, families with children or with domestic animals.

For example: Home owners and flat owners do not want, for various reasons, to lease their property to foreigners. Real estate agents ask the interested person about this information already at the primary stage of the negotiation. Some owners lease apartments to foreigners but charge them higher prices.

There is a high standard of human rights protection, even in the field of discrimination. The landlord may choose the lessee upon his freedom of contract, but he can't refuse to sign the contract because of race, nationality, sexual orientation and other discriminatory reason. If the landlord doesn't want to enter into agreement because of the nationality of the other party, you can sue him for damages and demand an apology.

- 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?

On the other hand the landlord can ask about anything he is interested in. But the lessee is not required to answer and a possibly "undesired" answer from the lessor's point of view (e.g.: "Yes, I am gay.") couldn't be the reason for not entering the lease agreement. Questions concerning sexual preferences and other sensitive issues are a possible violation of the personal right to privacy and may justify an action against the landlord. Unfortunately this is hard to be proven, so there are no records on successful claims focused on discrimination. The facts must be proven beyond reasonable doubt even in the civil procedure.

- 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)?

A Reservation Fee is legal in the Czech Republic (also known as an option fee / deposit) and it is an amount of money (usually no more than one month's rent) received from the tenant to reserve the premises, while you process the application for tenancy.

- 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 are no special checks on the personal and financial status of the tenant in the Czech Republic. An important role in the selection of lessees is a recommendation of a person that the lessor knows and trusts. Additionally, the lessor may check the Central Register of Debtors. However, this register is only

a private information system. Data obtained from this register are not recognized by the financial institutions as an acknowledgment of indebtedness.

- 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?

Real estate agents do not have a good reputation in the Czech Republic due to the vague legal regulation of their activities. It falls under the so-called free (notifiable) trades which require no special licence. It is prudent to distinguish well-established real estate agencies adhering to their internal codes of ethics or the rules of the Czech Chamber of Real Estate Agencies. Real estate agents are usually paid with a fee for brokerage of a lease contract or sale. The brokerage fee is usually equivalent to one monthly rent of the leased property.

- 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 official black lists of bad tenants in the Czech Republic. If you want to obtain such information, you have to ask the neighbors.

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)?

The requirements for a valid conclusion of a rental contract are as follows: written contract, full legal capacity of contractors, the obligation to specify the structure of rent payment (rent + utility costs), specification of the apartment, specification of its usage.

- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?

The Civil Code provides that the agreement has to contain:

- 1) the identification of the apartment,**
- 2) the identification of the object of the agreement,**
- 3) the extent of use,**
- 4) the rate of rent (if not stated, there are provisions to define it (see article 2264 section 2 of the Civil Code))**
- 5) the rate of fees for services connected with use of the apartment,**
- 6) the way of their calculation (amount of payment),**
- 7) the description of appurtenances and fixtures in a flat (recommended),**
- 8) the description of the flat conditions (recommended).**

The lease agreement may contain also other contractually agreed requirements, e.g.:

- 1) deposit,
- 2) the extent of repairs carried out by the lessee
- 3) persons who will live with the lessee in the apartment,
- 4) approval for building alterations
- 5) approval for the transfer of flat lease,
- 6) a notice period to terminate exceeding three months,
- 7) the term of the lease,
- 8) consent to sublease.

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

Both types of duration are legal. If there is no time limit in contract we assume that the contract is open-ended. There are also special conditions if the lessee uses the apartment at least three months after the termination of the contract. It is automatically (after three months) prolonged for the same period as it was concluded.

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

The amount of the rent, the utility costs, the date of payment, the form of payment.

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

Rent must be paid usually monthly in advance to the fifth day of the month. There are special provisions which repairs are paid by the landlord and by the lessee (e.g. dripping faucet). The apartment can be furnished or completely empty equipped just with the usual amenities. The landlord is not allowed to shift the costs for certain kinds of repairs to the tenant. But if there are any major improvements of the apartment the rent can be risen up to 20% but with the approval of the lessee.

- 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)?

It is recommended to write a description of appurtenances and fixtures in a flat. It is also recommended to conclude a household insurance contract (not expensive circa 60 EUR a year).

- Any other usual contractual clauses of relevance to the tenant

Deposit is usually a part of the contract clauses as well as conditions on automatic rent rising according to the increasing inflation.

- 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.)?

The lessee has a right to invite and take into his household whomever he chooses. Should the lessee accept a new member to his household, he will declare an increase in the number of persons living in apartment to the lessor without undue delay. Should he fail to declare this within two months after the day the change occurred, it is considered a serious breach of his duties (Section 2272 of the Civil Code).

The above denotes, that members of the tenant's household are allowed to move into the apartment. The tenant is obligated to inform the landlord about this within two months. The tenant is entitled - without landlord's consent - to share an apartment with any person with whom he/she forms a common household (consumer community in which the persons jointly pay their expenses, alternatively, one person is dependent on the other, such as a child - parent).

The lessor may reserve the right for approval of accepting new members into the lessee's household in the contract. This does not apply in the case of close persons or in other cases warranting special consideration. Written form is required for the lessor's approval of accepting a person other than a close person as a member of the lessee's household.

According to Section 2272 par. 3 Civil Code, the lessor has the right to request that only such number of persons that is appropriate considering the size of the apartment live there, in order to make sure certain of them live in standard comfortable and sanitary conditions.

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

No, tenant is not obligated to occupy 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);

After a divorce of a marriage there are special conditions under the § 766 of the Civil Code. The court is able to cancel the lease right of that of spouse who may reasonably be expected to be the one to leave the household. There are no special conditions on non-married couples split-up.

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

No

- death of tenant;

No. If a tenant dies and there has not been a joint apartment lease, the rights and obligations of subletting are transferred to a person who was staying in

the apartment with the tenant in the household until the date of his/her death and who does not possess his/her own flat.

- bankruptcy of the landlord;

Change of parties is not allowed in this case. According to the bankruptcy act it is only the bankruptcy administrator authorized for dealing with the apartment.

- 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?

A sub-lease is temporary accommodation in a flat, which is rented by the lessee who does not require it at that time period. It is possible to sub-lease the whole flat. The lessee, who wishes to sublet the flat, must have written approval of the owner of the flat. If the owner of the flat does not give his approval, the sublease contract is invalid. A different situation occurs when the lessee is living in the flat and sub-lease concerns only part of the flat. In this situation, the owner's approval is not necessary.

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

According to § 2221 of the Civil Code if there is an apartment owner change the obligations of the landlord follows the new owner according to the lease contract even if it is open-ended.

- 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?

The fees for services connected with the use of the apartment must be included in the residential lease agreement. The list of services can be extensive and mainly depends on the will of the lessor. The services are provided together with housing and their basic list is included in the price assessment of the Ministry of Finance No.01/2013.

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

The services that are associated with the dwelling provided by the lessor are:

- heating,
- lighting and cleaning common areas in the house,
- supply of hot water,
- supply of drinking water,
- removing waste water by sewerage,
- inspection and cleaning of chimneys,
- use of lifts (elevators),
- equipping the flat with joint television and radio antennas,

- **disposal of sewage and cleaning septic (all services must be included in the lease agreement)**

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

The person who will be responsible for taxes levied by local municipality should be specified in the lease agreement.

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

Specification of services provided together with the use of an apartment depends on the technical facilities of the house and therefore sometimes it is possible to provide some extra services (e.g. sauna, guarding the house, pool, etc.). On average, the list of services incorporated in the lease agreement shall be modified without limitations (the extent depends only on the facilities of the house and the will of the lessor). The range of services provided in particular house is reflected in the rent amount. Extra subsequent payments can't be charged.

- Deposits and additional guarantees

According to § 2254 Civil Code, the parties can stipulate that the lessee gives the landlord a financial deposit which ensures that former will pay the rent and meet other obligations under the lease. The deposit shall not be more than six times the monthly rent. At the end of the lease, the landlord is obliged to refund the deposit to the lessee; possibly the lessor will counterbalance a sum of money which the lessee owed to him on rent. The lessee shall be entitled to the interests on the deposit at least at the statutory rate.

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

The usual and lawful amount of a deposit is maximum 6 rents.

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

Following a written notification, the lessee is obligated to supplement the deposit to its original extent within one month if the lessor rightfully used the deposit. Following the end of the lease, the lessor is obliged to return any undrawn deposit money with interest within one month since the date the lessee vacates the apartment and yields it up to the lessor, unless they agreed otherwise.

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

Additional guarantees are unlawful.

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

The lessor is authorized to use the deposit to settle claims on rent or payment of services, unless his or her agreement with the lessee stipulates otherwise.

3. During the tenancy

3.1. Tenant's rights

- Defects and disturbances

Should the lessee find the apartment damaged or a defected in such a way that the defects need to be rectified without undue delay, he will immediately notify the lessor. Other damages or defects which prevent the usual use of the apartment will be reported to the lessor without undue delay. The lessor is required to repair damage or rectify the defect within a reasonable period after notification by the lessee. Should the lessor fail to do so without undue delay and properly, the lessee may rectify the problem himself and request reimbursement for the incurred costs or else a reduction in rent, unless the damage or defect are not of substantial nature.

- 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)?
- 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)

The neighbourhood protection against (noise, smell, vibrations etc.) is provided by the article 1013 of the Civil Code. The owner (user) is obliged to avoid everything what can annoy other owners (users) of apartment. When somebody breaks this legal prohibition he can be sued. If the violation occurs again after the court ruling, there can be fines granted up to the amount of 2500 EUR repeatedly.

The right for an adequate rent reduction may result from:

- | | | |
|----|---|----------|
| 1. | he problem of worsening conditions of usage | T |
| 2. | o provision of utilities connected with a flat usage | N |
| 3. | uilding work in a house | B |

Therefore all defects which may influence the agreed use of the flat will be legally relevant.

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

The basic duty of the landlord is to hand an apartment over in a suitable condition for proper use. Generally, a tenant cannot carry out any construction work in the apartment without the landlord's consent. The landlord is not obliged to grant him any permission. In the opposite situation (the landlord wants / needs to perform repairs) the landlord must have the tenant's consent, but the latter may refuse only when a compelling reason (typically an illness) occurs .

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

The parties may, however, agree that the flat is handed over without the necessary improvements and that the tenant is permitted to execute the necessary repairs - for example, because of his/her skill. In return, the tenant will receive a discount on rent. Minor home repairs are required to be done - unless otherwise agreed - by the tenant. These repairs are defined by legislation, which ranks among them for instance replacement of handles, locks, blinds, circuit breakers, bells, lights, faucets, sinks, etc. On the other hand, radiator repairs, or the replacement of a gas cap for an apartment (not cooker) does not belong to minor repairs.

- Alterations of the dwelling

The existing Civil Code accepts the principle that small repairs and everyday maintenance of the apartment are performed by the lessee at his own expense. The extent of small repairs borne by the lessee at his expense and risk are specified by Government Decree No. 258/1995 Coll. Maintenance of apartment is understood in the decree as painting of the apartment including repairs of plastering, wallpapering, floor and floor-cloth cleaning, cleaning of sinks, regular inspections and cleaning of fixtures and fittings. Should the lessee not perform small repairs and everyday maintenance in a timely manner, the lessor has a right to carry them out at his expense upon prior notice and subsequently request reimbursement from the lessee.

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

Minor home repairs are required to be done by the tenant. These repairs are defined by legislation. The tenant is allowed to even make a reconstruction of the dwelling if the landlord agrees.

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

If the landlord doesn't agree he can be sued for an approval only in cases of some necessary reconstructions or changes according to the health of the tenant (e.g. enlargement of doors due to wheelchair access).

- Affixing antennas and dishes

The tenant is allowed to affix antennas and dishes.

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

The tenant is allowed to repainting and drilling the walls.

- Uses of the dwelling
 - Are the following uses allowed or prohibited?
 - keeping domestic animals

Keeping animals is allowed due to the provision of article 2259 of Civil Code. The animal breeding may not bother (smell, noise) other neighbours.

- producing smells

The neighbourhood protection against smells production is provided by the article 1013 of the Civil Code. It means: you can produce common smells (cooking) but the producing can't be inappropriate to local circumstances (which are different in city and villages).

- receiving guests over night

Allowed according to article 2272 of the civil code.

- fixing pamphlets outside

Same case as producing smells (see above). The neighbourhood protections is aimed against all sorts of violations breaking the appropriate local circumstances level.

- small-scale commercial activity

The tenant may run a business in the apartment, provided that no increased burden on apartment will occur (damages (broken doors) caused by excessive visits).

3.2. Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?
- Rent and the implementation of rent increases

The abolition of the government regulation No. 567/2002 Coll. *de facto* abolished rent control. The level of rent for a flat was defined in a contract and while setting the amount of the rent it was only good manners that needed to be considered (§ 39 Civil Code). The contractual parties were also negotiating the possibility of a unilateral rise of rent. It should be emphasized that a unilateral rent increase must not depend on the will of just one contractual side. The rules concerning the increase of rent and its manner must be included in the contract. Inflation clauses are very common. The same can be applied to agreements concerning changes of rent.

Currently the rent is based upon the agreement between the parties. But if the rent is not arranged, it is assumed (according to §2246 section 2 of the Civil Code) that the rent is on the level which is comparable (same size and location of apartment) in place and time with rents arranged in this location.

- When is a rent increase legal? In particular:

Regulation of § 2246 Civil Code states that the level of rent should be equal to similar ones on the day of the contract formation at the place usual for the rent defined by similar contractual conditions. If it is not stipulated by the parties, defining the rent level would not be an obligatory part of the lease contract. In case of a situation where the rent differs from the usual price, the Civil Code defines the procedure for its alteration. Rent would be negotiated for 1 month and its price would be fixed by the parties to contract (§ 2246).

- Are there restrictions on how many times the rent may be increased in a certain period?

The annual rent increase will also be the competence of the parties to contract. The rent increase proposal, according to the New Civil Code clearly specifies formal and contextual conditions. Any increase must be agreed by the parties (just few exceptions are allowed (major reconstructions) see article 2250 of the Civil Code).

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

In case the parties to contract do not stipulate the rent increase or do not directly exclude it, there may come a situation that a lessor suggests in written form a rent increase up to the level comparable to the usual rent in a certain location. This, however, is possible when a suggested increase applied in the last 3 years would not be higher than 20% according to article 2249 of the Civil Code.

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

Article 2249 section 2 of the Civil Code states details and procedure for finding similar rent usual for a certain location. If the lessee agrees with the rent increase proposal, they will pay the increased rent starting with the third calendar month after delivery of the notice. If the lessee does not agree with the proposal (and does not voice within 2 months after the delivery of the proposal) the lessor has a right during the next 3 months to ask a court for setting the rent height. The court will not take into consideration a proposal (if suggested by a lessee) made after the expiration of this period. The court, based on the lessor's proposal, set the level of the rent. Regulation § 2249 section 3 states that the rent level set by court would be usual for time and location, and in force from the day of the proposal. The procedure is similar in case of the rent decrease.

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

Without the consent of the tenant, the landlord is not entitled to enter the apartment. The Civil Code therefore contains provisions that allow the landlord entry into the apartment only for serious reasons and with the participation of

the tenant. This includes the following cases: the landlord is entitled to request access to the apartment in order to check whether the lessee uses the thing in a proper manner, the tenant must allow the landlord, after written notice, installation and maintenance of equipment for the measurement and control of heat, cold and hot water, and the deduction of the measured values.

The tenant is also required to provide access to additional technical equipment, if they are a part of the apartment belonging to the landlord tenant must allow the landlord make repairs.

The landlord is also entitled to enter the apartment during the last three months of the contract duration, while showing the apartment to new possible tenants. Also this right is connected to the participation of the actual tenant.

If the tenant knows that he will be absent for more than two months, he is obliged to ensure a person who will be able to open the apartment if necessary. If an emergency occurs (fire, flood etc.) the landlord can enter the dwelling even without a permission while acting with respect to the property and privacy of the tenant.

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

Yes, the landlord is allowed to keep a set of keys (e.g. in case of emergency).

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

No, he is not allowed to change locks or to lock the doors. Non-payment of rent is a breach of contract and it must be solved according to its provisions (e.g. termination, eviction etc.).

- 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, the landlord is entitled to retain tenant's personal property in case of rent arrears (see article 2234 of the Civil Code).

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?
- 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 has the right to terminate the tenancy contract unilaterally even without giving any reasons.

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

Since the tenant always has the right to terminate the tenancy contract, it is possible for him/her to leave after proper notice is given. Actually he has no duty to live in the apartment. His only duty is to pay the rent. Nevertheless the lease relation is terminated not immediately after the notice is given but after the period expires (at least three months). The period starts to run next month after the notice is properly delivered to the other party of the contract. The reason for having the period is to protect the tenant against the unlawful termination of the contract from day to day, without having a serious reason (rent arrears, violation of good manners etc.). This adoption is regulated because of the protective function of the law. Because there is also equality as a principle of civil law, the period has to be the same for the tenant and the landlord as well.

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)?

While the landlord may give notice of tenancy termination only due to the reasons enumerated by the law, the tenant does not have to specify the reasons for a notice in any way. Written notice shall specify the deadline of the tenancy. Notice period shall not be shorter than three months and shall terminate at the end of the calendar month. The notice period begins on the first day of the month following the month in which the notice is delivered to the second party.

- Must the landlord resort to court?

The landlord may cancel the agreement without court approval if the tenant or those who live with him, despite previous written warnings, violate good manners in the house; the tenants grossly violate their obligations stated in the tenancy agreement, in particular by not paying the rent and not paying for services bound with the use of an apartment in the amount of triple monthly rent; if the tenant has two or more dwellings, except cases when he/she can not be fairly required to use only one apartment.

- Are there any defences available for the tenant against an eviction?
- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?

The landlord may terminate the contract without the consent of the court when the landlord requires the apartment for himself/herself, his/her spouse, children, grandchildren, son-or daughter-in law or their parents or siblings; if the tenant ceased to work for the landlord and the landlord needs the staff flat for another tenant who will work for him; if it is necessary in public interest so that the apartment cannot be used or the apartment or house requires renewal, during implementation of which the flat or house cannot serve its purpose for longer time; if it is an apartment architecturally related to areas designated to

operate a business or other entrepreneurial activities and the tenant or owner of the non - residential premises wants to use the apartment.

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

The tenant is entitled to petition the court to assess whether the landlord has legally terminated a tenancy. There is a preclusion period of two months to instigate this special action. If the tenant does not leave the dwelling after the end of the contract, the landlord is obliged to ask the court for the execution of this duty. It's usually the executors who realize the eviction at the expense of the tenant.

4.3. Return of the deposit

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

At the end of the lease the landlord will have the obligation to refund the deposit to the tenant; possibly the lessor will counterbalance a sum of money which the lessee owed to him on rent. The lessee shall be entitled to the interests on the deposit at least at the statutory rate.

- 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 landlord is not entitled for deductions for damages due to ordinary use of furniture. He/she is entitled only for deductions on rent arrears or actual damages (broken chair, broken light etc.).

4.4. Adjudicating a dispute

The Czech Republic has a four-tier system of courts comprising district courts, regional courts, two high courts (seated in Prague and Olomouc) and the Supreme Court (seated in Brno).³ There is a two-instance proceedings system, meaning that one can appeal the decision of a lower-tier court in a higher-tier court. Regional courts deal with appeals against decisions of the district courts. First-instance decisions of the regional courts can be appealed against in one of the two high courts.

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

Special “lease” courts do not exist in the Czech Republic. Lease disputes are decided exclusively by a single judge. Lay judges are only used in the court of

³ The Constitutional Court is not a part of the system of general courts; it is considered a part of a special system of courts comprising only the Constitutional Court itself.

first instances in cases of labour disputes. The possibility of deciding lease-related disputes by an arbitrator or an arbitration court cannot be omitted.

Unless the law stipulates otherwise, all first-instance proceedings take place before district courts. The Czech system of courts does not include special courts for deciding in the matters of lease.

From the territorial jurisdiction point of view it is necessary to separate the matter into more than one category. If rent or any other performance resulting from the lease is the object of the lawsuit, it is a case of ordinary performance and the general territorial jurisdiction is applied – § 84, § 85 (corresponding paragraphs according to the nature of the defendant – judicial or natural person, etc.). If the legal relation of the lease itself is concerned, i.e. its existence and continuation or termination, exclusive territorial jurisdiction according to § 88 letter i) is applied, that is the court in whose district the real property lies.

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

For tenancy cases apply the same procedures as for classical civic legal proceedings. In accordance with § 6 of the Civil Procedure Code the court proceeds in the proceedings predictably and in coordination with the parties so as the protection of the rights of the parties is fast and efficient.

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

Parties may agree that property disputes arising from lease will be decided by one or more arbitrators or a permanent arbitration court.⁴ A valid arbitration clause is a prerequisite. It cannot be arranged as a part of the lease agreement, only as a special agreement.

The arbitration proceedings in relation to the consumers (including lessees) are endowed with certain peculiarities:

- a) **the arbitration agreement must be concluded on its own and not as part of conditions in the main contract; otherwise it is invalid.**
- b) **the entrepreneur is obliged to provide, with a sufficiently long period of time in advance, the consumer with an adequate explanation, in order for the consumer to be able to determine, what consequences the arbitration clause may bring about. An adequate explanation is understood as an explanation of all the consequences of the arbitration clause.**
- c) **a concluded arbitration clause must include truthful, accurate, and complete information about:**

⁴ Arbitrable denotes those legal relations in which the state power did not reserve the right to decide exclusively by state courts (or by its other organs) and thus conceded that some disputes can be judged also by arbitrators if the participants stipulate so. It is an area where the state committed to recognize and enforce arbitration awards in dispute resolution that were achieved in a special procedure, which takes place at the initiative of the parties and with their participation in a way that the state allows–arbitration proceeding.

- the arbitrator or the fact that a permanent arbitration court decides,
- the way of initiation of the arbitration proceedings and its form,
- the reward for the arbitrator and the expected kinds of expenses, which the consumer may incur as result of the proceedings, as well as about the rules for their declaration,
- the place where the arbitration proceedings takes place,
- the manner of delivering the arbitration findings to the consumer,
- the fact, that a legitimate ruling is executable.

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?

The social housing system in the Czech Republic is based on housing allowances. The Ministry of Labor and Social Affairs administers two types of subsidies in the area of housing (both of them are intended for people in material need). The first one is the „Housing allowance”⁵. Property owners or tenants registered as permanently resident in that property are entitled to a housing allowance if 30% (in Prague 35%) of the family income is insufficient to cover the housing costs and at the same time this 30% (in Prague 35%) of household income is lower than the relevant prescriptive costs set by law.

The prescriptive housing costs are set as average housing costs based on the size of the municipality and the number of members in the household. In the case of rentals, the rent is calculated in accordance with the Rent Act, and similar costs are recognized for residents of cooperative flats and flat owners. Prescriptive costs include additionally the bills for services and energy. They are calculated for reasonable flat sizes for the number of permanent occupiers. The amount of housing allowance is set as the difference between prescriptive housing costs and the actual family income multiplied by the coefficient of 0.30 (in Prague 0.35). The period for which the benefit is granted is limited to 84 months during the last ten calendar years. An exception applies to households exclusively consisting of people over 70 years of age and the disabled living in flats specially adjusted for them.

“Supplement for housing”⁶, the second benefit tackles cases where the income of the person or family, including the entitlement to a housing allowance from the system of state social support, is insufficient to cover the justified housing costs. The benefit is provided to flat owners or tenants entitled to a social benefit and a housing allowance. In exceptional cases, a supplement for housing can be provided to a person not eligible for the housing allowance or

⁵ The state social support is regulated by Act no. 117/1995 Coll., on State Social Support, as amended.

⁶ Regulated by Act no. 111/2006 Coll., on Assistance in Material Need.

to a person using a form of housing other than rental, e.g. an easement. The amount of the supplement for housing is determined with the sum of payment on justified housing costs (i.e. rent, services related to housing and energy costs). An exception applies to households exclusively consisting of people over 70 years and disabled living in flats adjusted for them.⁷

- Is any kind of insurance recommendable to a tenant?

The tenant may enter voluntarily into household insurance. This insurance covers almost all the things that make up household equipment - from furniture and electrical appliances to valuables and money (to a limited extent). The insured persons buy financial compensation for the damage, destruction or theft of the things that they have in their apartment.

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

Free legal aid services are provided by non-profit and non-governmental (mostly regional) organizations which obtain funds for their activities from grants and donations. Free legal aid services are also provided by some Faculties of Law (e.g. Palacký University) which establish the Student Legal Clinics.

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

- 1) M
Ministry of Labour and Social Affairs
Address: Na Poříčním právu 1/376, 128 01 Praha 2
Telephone: +420 221 921 111
Email: posta@mpsv.cz, <http://www.mpsv.cz/cs>
- 2) C
Czech social security administration
Address: Křížová 25, 225 08 Praha 5
Telephone: +420 257 061 111, Fax: +420 257 063 360
Email: posta@cssz.cz, www.cssz.cz
- 3) T
The association of tenants CZ
Address: Dům odborových svazů, Náměstí W. Churchilla 2, 113 59 Praha 3
Telephone: +420 234 463 343, Fax: +420 234 463 344
Email: son@cmkos.cz, www.son.cz
- 4) A
Association of Citizens Advice
Address: Sabinova 3, 130 00 Praha 3

⁷ Ministerstvo pro místní rozvoj ČR, *Státní fond rozvoje bydlení: Koncepce bydlení ČR do roku 2020* (Praha, KPMG Česká republika s.r.o., 2011), p.21

Telephone: +420 284 019 220

Email: aop@obcanskeporadny.cz, www.obcanskeporadny.cz

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Student Legal Clinic (Faculty of Law – Palacký University)

Address: Tř. 17 listopadu 8, Olomouc, budova A

Telephone: +420 585 637 616

Email: lucia.valentova@upol.cz, <http://www.pf.upol.cz/menu/struktura-pf/centra/centrum-pro-klinicke-pravni-vzdelavani/informace-pro-klienty-studentske-pravni-poradny/>