



This project has received funding from the European Union's Seventh Framework Programme for research, technological development and demonstration under grant agreement no. 290694.

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

Tenant's Rights Brochure for France

Author: Dr. Fanny Cornette

Team Leader: Prof. Dr. Hendrik Ploeger

National Supervisor: Prof. Dr. Hendrik Ploeger

Other contributor: Dr. Joris Hoekstra

Tenant's Rights Brochure Questionnaire

France

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1. Introductory information

- **Give a very brief introduction on the national rental market**
 - **Current supply and demand situation**

Compared to many other countries, the effects of the Global Financial Crisis (GFC) on the French have been relatively limited. Although house prices have decreased somewhat between the end of 2008 and the beginning of 2010, they have been increasing again since then. In nominal terms, current house prices are already higher than the pre-GFC peak level. However, since 2012 house prices are slowly decreasing again, due to deteriorating economic and credit conditions. The housing production did not suffer much from the GFC, which is also due to the fact that the French government conducted active policies to keep this production at a high level. The housing market situation in France strongly differs between areas. The pressure on this market is high in the Paris region and most the major cities, whereas it is much lower in much of the countryside. Housing affordability is a serious issue in the areas with much pressure on the housing market.

In 2006, tenants in the French social rental sector paid on average 55 Euros annual rent per square meter. This corresponds with a monthly rent of a little more than 300 Euros. Tenants in the private rental sector on average pay much more: 90 Euros per square meter per year. This corresponds with a monthly rent of a little more than 500 Euros. Table below shows the difference in rent levels in different geographical regions. The table shows that the differences in rent level between the social rental and the private rental sector are the biggest in regions with a large pressure on the housing market such as Ile de France.

Table Monthly rent in Ile de France and the rest of France, social rental and private rental sector, 2006

Region	Social rental sector	Private rental sector	% difference
Ile de France	344	676	49%
Rest of France	293	463	37%
Total	306	517	41%

Source: Commissariat Général au Développement Durable, Compte du logement 2011, 140

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

One of the main current problems of the national rental market concerns the access of the poorest to a dwelling. Some landlords let indecent dwellings for a very high price to people who cannot access the rental market. Sometimes hotel owners let rooms to families for the price of a full apartment in the regular rental market. These landlords are called "*marchand de sommeil*" (which literally means "people who sell sleeps"). This expression is a negative way to say these people are only renting a place to sleep and not to live in. Landlords take advantage of the precarious situation of tenants to demand higher than regular market rents.

- **Significance of different forms of rental tenure**
 - **Private renting**
 - **“Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc)**

The share of the various tenure sectors

In France, owner-occupation is the largest tenure category (58%), followed by private renting (23%) and social renting (19%).

**Table 1.1 Tenure distribution in France (* 1000 dwellings), 2011
(Summary table 1)**

Tenure Sector	Number of dwellings	% of total dwelling stock
HLM (public or private)	4143	15
Other social rental landlords (among which SEMs and cooperative housing companies)	1062	4
Individual private landlords	6374	22
Institutional private landlords	269	1
Total rental sector	11848	42
Owner-occupation	16395	58
Total dwelling stock	28243	100

Source: Commissariat Général au Développement Durable, Compte du logement 2011

- **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)**

To find a rental home, a foreigner should contact a professional: a rental agency, a notary or a bailiff. The cost may be higher than to contact landlords directly but the intervention of a professional offers a protection and more choice to potential tenants. One other main issue is the language. The information is only available in French.

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

Problems/traps	How to solve/avoid it
Discrimination	Check the list of documents the landlord is not allowed to ask
Need for a guarantor	Subscribe to a insurance (see new act “ <i>Garantie universelle des loyers</i> ”)
Fees asked to the tenant	The ALUR act regulates the fees
Restitution of the deposit	Ask for an inventory made by a professional, ideally a notary or a judicial officer, when entering and leaving the dwelling
Price of the rent	Check the rents of similar dwellings in the area

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

In French	In English/explanation
Agence immobilière (see also question concerning the role of the real estate agency, p.8)	Real estate agency
Bail d’habitation	Lease contract
Bailleur/loueur/propriétaire	Lessor/renter/owner or landlord
Caisse d’allocation familiale CAF	Organism in charge of social allowance including housing benefit
Collocation	Flat-sharing
Commission régionale de conciliation	Regional board for arbitration (only competent concerning lease contracts) Competent organism for mediation
Depot de garantie/caution	Deposit
Donner congé	To give notice for the termination of the contract
Etat des lieux	Inventory
Frais d’agence	Agency fees
Garant	Garantor

HLM (Habitation à loyer modéré)	Type of social housing (Literally: dwelling with a moderate rent)
Huissier de justice	Judicial officer/Bailiff
Location/locataire	Lease/tenant
Loyer (quittance)	Rent (receipts)
Notaire	Notary
Tribunal d'Instance	Competent court for disputes concerning dwelling lease

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?**

The applicable law is the Act n° 89-462 of the 6th of July 1989 (here after 1989 Act). This act was modified several times. The last one, the ALUR act (here after the ALUR Act) was promulgated on the 24th of March 2014 and entered into force the 27th of March. Some of its provisions will only be applicable after the adoption of decrees to supplement the law.

There is no specific rule in the French law concerning the choice of a tenant. The only rule is the prohibition of discrimination. Article 1 of the 1989 Act prohibits discrimination based on: name, origin, physical appearance, health reasons, handicap, family situation, gender, moral thinking, sexual choice, political thoughts, trade union activities, affiliation or non affiliation (true or unproven) to a race, an religion, a nation or an ethnic group.

In practice, the choice is most of the time linked to financial considerations: guarantees and securities but also income of the potential tenant.

- **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?

The landlord has to respect the privacy of the tenant and is not allowed to ask the tenant about his sexual orientation or intention to have children. The tenant does not need to lie as he is supposed to refuse the answer. In practice it could be hard for the potential tenant to refuse to answer or to prove that the landlord discriminated him by asking prohibited questions.

To protect the tenant, there is a list of documents (see question concerning the checks the landlord is allowed to make, p. **Fehler! Textmarke nicht definiert.**) the landlord is not allowed to ask the tenant. The idea is to protect the personal life of the tenant.

The ALUR Act modifies the rules and the decrees to implement the act will be adopted this year.

- **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)?**

The landlord is not allowed to demand a reservation fee (see the list of documents the landlord is not allowed to ask, p. **Fehler! Textmarke nicht definiert.**). The only fees that can be paid are the agency fees and the price of the drawing up the contract by a notary or a judicial officer.

There is no fee stamp concerning the conclusion of the contract. The law protects the tenant concerning the payment of fees. Only the costs related to the preparation should be shared equally between the landlord and the tenant, e.g. if the contract is written by a notary. The costs of research and negotiation obligations are to be paid by the owner.

- **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)?**

The 1989 Act contains a list of very precise documents the landlord is not allowed to ask for. This provisions aims to prevent the landlord from discriminating the potential tenants and also to protect the private life of the tenants.

Article 22-2 of the 1989 Act states that the landlord is not allowed to ask for:

- identity picture;
- health care insurance card;
- bank statement;
- attestation from the bank;
- certificate that he/she has no credit;
- debit authorization*;
- divorce judgment except the paragraph starting with “*par ce motif*” (this paragraph just says that the spouses are divorced but do not give details concerning the reason of divorce, the repartition of the belongings or the children);
- certificate from the previous landlord if the tenant can give other proof;
- certificate from the employer if the employee can give his/her working contract and his/her wage slip;
- marriage contract;
- certificate to prove cohabitation;
- voucher (cash) to make a reservation for the place;

- medical information, not even for specific dwellings;
- extract of criminal record (“*extrait de casier judiciaire*”),
- cash or values, or goods to guarantee the payment of more than one month on a locked bank account;
- more than two balance sheets (“*bilan*”) in the case of independent workers;
- copy of information contained in the “*fichier national des incidents de remboursements des crédits aux particuliers*” (national register that contains the name of people who had previous difficulties paying their loans).

The check the landlord is not allowed to make on the tenant will be extended by the decrees to be adopted this year to implement the ALUR Act.

- **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?**

In the real estate sector various types of professionals can be distinguished: “*agent immobilier*”, “*administrateur de biens*”, “*marchand de biens*”, “*vendeurs de listes*”, “*promoteur immobilier*”. The “*promoteur immobilier*” and the “*marchand de biens*” are only in charge of selling real estate.

-An “*agent immobilier*” is someone who is, on a regular basis, in charge of interventions and transactions concerning real estate: renting or selling.

-An “*administrateur de biens*” is a manager who exceptionally acts as an intermediary for his customers. One of his missions is to be in charge of the rental management for his clients which means: looking for tenants, organizing the signature of the lease contract, collecting the rent and the service charges, organizing the termination of the contract (inventory, return of the deposit etc.).

-A “*vendeur de listes*” is someone who sells lists of dwellings to rent to potential tenants. The fees of the “*vendeurs de listes*” is cheaper than the ones of estate agencies, but providing a list is their only task. They give contact details of potential landlords but do not help people finding a dwelling. They do not visit dwellings with their clients and they do not negotiate with the landlords. Much criticism has arisen as frequently some of the dwellings of the list are already rented. Some of them were sentenced for misleading advertising or for fraud (in French law: “*escroquerie*”).

The real estate agency can also be in charge of the administration of the dwelling and can represent the landlord for the relationship with the tenant: receipt of payment, ask for repairs, giving notice and renewal of the contract. The landlord gives his approval for the repairs or for any important decision, the agency only informs the tenant about the decision of the landlord.

The contract signed between the agency and the tenant must specify:

- the type of dwellings the clients are looking for,
- the nature of the service provided to the client,
- the price of the service,
- the condition of reimbursement of the client if the service is not provided within a certain period.

If the parties do not sign such a contract, no compensation shall be paid to the agency.

The real estate agent has a duty to check that all the conditions are fulfilled to sign the contract. It is also liable for the specifications contained in the lease contract and for all the obligations of the law, e.g. the technical diagnosis that must be given to the tenant or the respect of the rules concerning decent housing. In case of hidden defects, the agent is liable only if he knew the defaults before the conclusion of the contract.

When the real estate agency prepares the lease agreement signed by the tenant and the landlord, it is a private contract “*acte sous seing privé*”. If one of the parties does not fulfil his obligations, the only option of the other party is to go to court.

A public officer can witness the signature of a lease agreement: a notary or a judicial officer (i.e. bailiff). In such a case, the deed is more secure and there is no need to go to court to obtain the execution of the contract. When a public officer draws up the contract, he delivers to the parties a copy called “*copie exécutoire*”, and this act is directly enforceable. For example, if the tenant does not pay the rent, the landlord can directly contact the relevant judicial officer for the enforcement of the agreement.

- **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 provisions in the French law concerning blacklisting of bad tenants. The independent administrative body in charge of data protection issues, the *Commission nationale informatique et liberté* (i.e. CNIL, see <http://www.cnil.fr/>) rendered a decision on that point. The CNIL stated that such a list creates a risk of exclusion (See <http://www.cnil.fr/les-themes/conso-pub-spam/fiche-pratique/article/position-de-la-cnil-sur-les-listes-noires-de-locataires/>). Thus, information must be given to the “bad” tenant prior to his inscription in the list. Only professionals in the rental sector are allowed to create a list of bad tenants and its content must be accessible only to professionals. The CNIL recalled that the law prohibits the listing of people, e.g. it is not allowed to put on the list information concerning injunctions to pay the rent.

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)?**

Article 3 of the 1989 Act states that the contract must be in writing. It could be an authenticated deed “*acte authentique*” (written by a public officer, a notary or a bailiff) or a private deed (in French: “*acte sous seing privé*”). Each party has a right to ask for a written contract that fulfils conditions of Article 3 of the 1989 Act. If one party refuses to sign a written contract, the lease can be cancelled (in French: “*résiliation*”) and the party who refuses to sign can be condemned to damages. To protect the tenant, the judge can also render a decision that will be considered as the valid contract. The judgment will then contain all the requirement of the 1989 Act.

If a notary or a bailiff writes the contract, the fees of writing are divided between the landlord and the tenant.

There is no registration of the contract in the French law.

The fees the tenant and landlord may have to pay are:

- fees of the rental agency (depending on the contract between each party and the agency)
- fees concerning the intervention of a bailiff or a notary (equally divided between the tenant and the landlord)
- fees of the intervention of a bailiff for the inventory (equally divided between the tenant and the landlord).

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

According to Article 3 of the 1989 Act, in the contract, some provisions are mandatory:

- the identification of the landlord (the name or the denomination, the address of his residence or of his headquarters and if there is one, the name and address of his representative),
- the effective date of the beginning of the contract. Most of the time, this date corresponds with the day of the signature of the contract,
- the duration of the contract. As Article 10 of the 1989 Act specifies what is the legal duration of the contract, it is easy to know the duration even if it not written in the lease (3 years if the landlord is a natural person, in French "*personne physique*"; 6 years if he is a corporate body, in French a "*personne morale*"). The mention is in fact important when the parties choose to sign a contract for a longer period, or if the landlord can benefit from Article 13 of the contract, which allows a shorter contract in specific cases (i.e. when a specific event, known in advance and specified in the contract, justifies that the landlord, natural person, rents his dwelling for less than three years),
- the description of the dwelling and annexes (number of rooms, accessories and equipment that belong to the landlord), precision concerning the use of the place (e.g. if the contract is a mixed contract - residence/commercial -),
- the rent level; the payment terms
- and, finally, the living area has to be mentioned. The 1989 Act does not give precisions concerning the calculation of the rent, but once should refer to Article R.111-2 of the Building and Housing Code.

According to Article 3 of the 1989 Act, some provisions are optional. It means that there is no need to mention them in the contract, but once they are included they are mandatory for the parties.

Where applicable, the method to review the rent annually should be mentioned. If the contract does not include any provision concerning the increase of the rent, the landlord cannot ask for such an increase. When such a provision is included, the rent can only be increased once a year and the law limits the rate (based on a bench mark index).

If the landlord asks for a security deposit, the amount must be written in the contract (maximum one month rent).

The ALUR act creates standard contracts but the content of such contract shall be determined in decrees. But for contract signed after the 27th March 2014, the contract shall contain an indication of the last rent, the date when it was paid if he leaves less than 18 months before, and the amount paid to perform works of some works had been made in the premise.

Article 4 specifies which provisions are not allowed in a rent agreement (“*clauses abusives*”) and are considered as null if ever they were included.

The provisions are (the following contains a translation plus explanation where required):

- a) which requires the tenant to accept visit of the dwelling during public holidays or more than two hours a day during working days, in order to sale or rent the leased premises,
- b) which requires the tenant to insure the dwelling to an insurance company chosen by the landlord,
- c) which requires, for the payment of rent, the automatic debiting on the current bank account of the tenant or which requires the tenant to sign in advance a banker’s draft (in French: “*lettre de change*”) or a promissory note (in French: “*billet à ordre*”),
- d) which requires the tenant to allow the landlord to collect directly the rent or to have it collected directly from his/her salary in the assignable limit,
- e) which organises the collective liability of tenants in case of damage to a common element of the rented premise,
- f) which obliges the tenant to agree in advance to reimburse the leasehold repairs based on an estimate made only by the landlord,
- g) which organises automatic termination of the contract if the tenant does not respect his/her duties for another reason than non-payment of the rent, the charges, the deposit, or for non-compliance with a ruling of a tribunal which has the force of *res judicata* and which records neighbourhood disturbance,
- h) which authorizes the landlord to reduce or remove service stipulated in the contract without any compensation,
- i) which authorizes the landlord to collect fines if the tenant does not respect the terms of the contract or condominium rules,
- j) which prohibits the tenant to practise political, religious, associative or trade union activities,
- k) which requires the tenant to pay for the establishment of the mandatory inventory, except the case the tenant asked a bailiff to make the inventory,
- l) which states that the contract is tacitly renewed for a duration smaller than the legal duration (i.e. three years if the tenant is a natural person, in French “*personne physique*”, six years if the landlord is a corporate body, in French “*personne morale*”);
- m) which prohibits the tenant to seek the liability of the landlord or which exempts the landlord from any kind of liability,
- n) which prohibits the tenant to accommodate people who do not usually live with him,
- o) which requires the tenant to pay, when entering the premises, more money than the money for the payment of agency fees (see Article 5 of the 1989 Act) or the deposit (Article 22 of the 1989 Act),
- p) which requires the tenant to pay the cost to send him the rent receipt, or to pay more litigation costs than the ones stated in the procedural law,
- q) which states that the tenant is automatically liable for any damage observed in the dwelling,

r) which prohibits the tenant to claim compensation to the lessor when he/she performs work in the dwelling for more than forty days,

s) which allows the landlord to terminate automatically the lease agreement by a referee which is a judicial process that cannot be challenged.

The ALUR Act adds new provisions to the list of the article 4. First, article 4 i) is modified to prevent the landlord to collect penalties if the tenant does not respect the contract or condominium rules. Second, article 4 k) is now limited to provision obliging the payment by the tenant of the establishment of the inventory when he lives the dwelling. The duration of the article 4 r) is reduced from 40 days to 21. Finally, an article 4 t) is created. It states that is null the provision “which requires that the tenant, in addition to the rent concerning the occupation of the dwelling, has to sign a contract for the rental of equipment.” The new provisions are applicable for the contract signed after its entry into force the 27 March 2014.

An inventory (in French: “*état des lieux*”) must also be joined to the contract (Article 3 of the 1989 Act). Such a document is realised both when the tenant enters the dwelling and when he leaves. It is realised jointly by the landlord and the tenant or by their representatives (e.g. real estate agency or a specific agency). If a third party is in charge of the realisation of the document, the cost is not directly or indirectly paid by the tenant. If for any reason (e.g. refusal of the tenant or of the landlord to sign the document), the document cannot be written jointly one of the parties can ask for the intervention of a bailiff. The costs, which are fixed by a State Decree, are divided between the tenant and the landlord. Parties are given notice of this procedure at least seven days in advance.

The document describes precisely each room of the dwelling and all the equipment, both fixed and moveable items. For the heating system, the tenant has a right to ask for a change of the inventory during the first month when he starts warming the place. If the heating system does not work properly, the tenant can ask for a change of the inventory to mention its malfunction. Comparing the inventories drawn up when entering the dwelling and when leaving will have an impact on the deposit the tenant is entitled to: the amount of the repairs is deducted from the amount of the deposit. If no inventory is established, the tenant is considered to have received the dwelling in good conditions (See Article 1731 of the Civil Code). The party that refuses to be present during the inventory is not allowed to ask for the application of Article 1731 of the Civil Code.

The ALUR act also modifies the inventory. Decrees shall be adopted to give details about the distribution of the costs. Some provisions are applicable since the 27th March 2014: the inventory shall mention the meter-reading of the various energies (gas/electricity).

A technical diagnosis (in French: “*diagnostic technique immobilier*”) must also be joined to the rent contract and is composed of three documents. The first one is called “*diagnostic de performance énergétique*”, which means that an analysis of the energy performance of the dwelling is made. The second one is called “*constat de risque d'exposition au plomb*” and concerns the existence of lead in the pipework. The third diagnosis is the “*état des risques naturels miniers et technologiques*”, which aims to inform the tenant about risks concerning the area where the dwelling is located. These risks can be natural (floods, landslides), mining or technological (industrial, chemical) hazards.

Finally, a last diagnosis concerning asbestos has to be made. It does not have to be handed out to the tenant but it has to be kept at his disposal. The ALUR Act specifies that this last diagnosis shall be included with the other documents in the technical diagnosis for the contracts concluded after the 27th March 2014.

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

French law prohibits open-ended contracts (Article 1709 of the Civil Code). Concerning the lease of a dwelling, the 1989 Act specifies two different durations depending on the situation of the landlord. The durations specified by the law are mandatory.

If the landlord is a corporate body (In French: "*personne morale*") Article 6 states that the duration of the contract is six years. If the landlord is natural person (in French "*personne physique*") the duration of the contract is three years.

Article 10 of the 1989 Act organizes an automatic right to renewal. The contract is renewed for the same duration as the first time, and it can be indefinitely renewed when it arrives to its term, i.e. it can be renewed an indefinite number of times. There are only a few reasons that allow the landlord to terminate the contract at the end of the lease (see termination of the contract).

If the flat is furnished, the duration is one year or nine months if the tenant is a student (Art. L632-1 of the Building and Housing Code). There is also an automatic right to renewal for the same duration, except when the tenant is a student. The ALUR Act creates a specific and entire regime for the furnished flat signed after the 27th March 2014. The rules concerning this regime are included in the 1989 Act (articles 25-3 to 25-11). The duration remains the same with the new law (9 or 12 months).

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

Article 3 of the 1989 Act, specifies that the amount of rent and the moment of payment must be indicated in the contract. If the landlord wants to increase the rent annually, he has to add a provision in the contract giving details about the calculation (based on a benchmark index).

- **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?**

The Decree 87-712 of 26 August 1987 provides a very precise list of the costs that must be supported by the tenant (see table).

According to Article 1756 of the Civil Code one repair should be added to the list provided by the 1987 Decree: the cleaning of the wells and cesspools, except if there is a provision in the contract saying the contrary. If the tenant does not carry out the repairs or reimburse the landlord who performed them, he can be condemned to pay them and also to pay damages.

The ALUR Act indicates that a decree will be adopted to define dilapidation. The new act also give details about the condition of realisation of work at the cost of the landlord (no works during the week-end without the authorisation of the tenant, access of the dwelling to prepare the work).

	Rental repairs (to be performed by the tenant)
External areas exclusively for the use of the tenant has exclusive use.	<ul style="list-style-type: none"> • a) Private gardens: routine maintenance, including driveways, lawns, ponds and swimming pools, pruning, weeding trees and shrubs; replacement of shrubs, repair and replacement of mobile watering system • b) Awnings, canopies and terraces: removal of foam and other plants. • c) Downspouts and gutters: disgorging ducts.
Openings	<ul style="list-style-type: none"> • a) Sections such as open windows and doors: lubrication of hinges; minor repairs of buttons, door handles and hinges, including replacement of bolts and pins • b) Glazing: rehabilitation of mastics; replacement of deteriorated windows • c) Devices occulting light such as blinds and shutters: lubrication; Replacement including ropes, pulleys or a few blades • d) Locks and security locks: lubrication; replacement of small parts as well as lost or damaged keys • e) Grilles: cleaning and lubrication, including replacement of bolts and pins
Interior parts	<ul style="list-style-type: none"> • a) Ceilings, walls and interior partitions: -cleaning; minor corrections of paint work and tapestries; replacing coating materials such as ceramic, mosaic, plastic, filling holes, or similar made similar repairs; • b) Parquet floors, carpets and other floor coverings: -Polishing and vitrification;

	<p>-Replacement of parquet floor boards and repairs of carpets and other floor coverings, especially in case of stains and holes</p> <ul style="list-style-type: none"> • c) Fitted wardrobes and joinery such as skirting boards and beadings and mouldings: Replacing closet shelves and cleats and repairing their closure; attachment fittings and replacement of woodwork.
Plumbing	<ul style="list-style-type: none"> • a) Water mains: disgorging, including replacement of gaskets and clamps • b) gas pipelines: current valves, traps and vents maintenance; periodic replacement hoses connection • c) Septic tanks, cesspools and latrines: draining • d) Heating, hot water and plumbing production: replacement of bimetallic, pistons, membranes, water boxes, piezo ignition, valves and seals of gas appliances; washing and cleaning of radiators and piping; replacement of seals, valves and glands taps; replacement of seals, gaskets, pipes and shower hose, • e) Sinks and fixtures: Cleaning lime deposits, replacement hoses showers
Equipment installations for electricity	Replacement of switches, sockets, circuit breakers and fuses, bulbs, fluorescent tubes; repair or replacement of rods or protective sheets
Other equipment mentioned in the lease.	<ul style="list-style-type: none"> • a) Current and minor repairs of appliances such as refrigerators, washing machine and dishwasher, tumble dryer, cooker hoods , softeners , solar collectors, heat pumps, air conditioning units, individual antennas, taped furniture, fireplaces, windows and mirrors: • b) Petty repairs necessitated by removal of draught-excluder; • c) Lubrication and replacement of seals

	hoppers; •d) Sweeping ducts and flue gas ducts.
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- **Is the landlord or the tenant expected to provide furnishings and/or major appliances?**

If the dwelling is rented unfurnished, the landlord is not expected to provide furniture. Sometimes the kitchen is equipped with an oven, a fridge, hot plates, but this is not mandatory.

If the dwelling is rented furnished, the landlord is supposed to have it equip it with the necessary equipment for a normal daily life. Worthless furniture is not considered as sufficient. The ALUR Act creates a definition of furnished dwelling that is included at article 25-4 of the 1989 Act: "A furnished accommodation is a decent housing with furniture, sufficient in number and in quality, to allow the tenant to sleep, eat and live properly according to the needs of everyday life".

- **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)?**

An inventory must be joined to the contract (Article 3 of the 1989 Act). The tenant has a right to demand this inventory if the landlord has not provided one. He is more than advised to do so. If no inventory is made, the tenant is assumed to have received the dwelling in good condition. The tenant can appoint a bailiff to make the inventory; both parties will share the cost. At the end of the contract, a new inventory must be made for the restitution of the deposit. The ALUR Act specifies that the inventory shall mention the meter-reading of the various energies (gas/electricity). Decrees shall be adopted for other changes in the realization of the inventory.

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

The clauses that must or must not be included are explained in the question concerning the content of the contract.

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

There is no provision in the 1989 Act or in the Civil Code concerning people that are allowed to move in with the tenant. The situation is slightly different if the person is not a member of the family of the tenant.

If the person who moved in with the tenant is a member of his family, the right to respect for private and family life as protected by the Article 8 of the European Convention on Human rights can be used. Therefore, the landlord has no right to prevent family

members of the tenant to move in with the tenant.

If the tenant is married, Article 1751 of the Civil Code states that the spouses are co-holder of the lease agreement. It means that both spouses have to respect the duties of the tenant and the landlord has to fulfil his obligations toward both of them. In such a case it is obvious that the spouses have a right to live in the rented dwelling even if only one of them signed the rent agreement. The co-ownership of the lease agreement is maintained until the divorce of the couple. Even after one of them moves out, the landlord is entitled to ask him to pay the rent.

The solution is different when the tenant is linked to someone by a partnership (in French: *PACS*, i.e. *Pacte civil de solidarité*). They are not co-owner of the lease agreement. According to Article 515-4 of the Civil Code, the partner of the tenant is only jointly liable for the payment of the daily life needs, except for costs that are obviously too high. It means that the partner may have to pay the rent, if it is not obviously too high considering their income.

For contract signed after the 27th March 2014, the ALUR Act changes the situation of the partner. If they ask so, they can be co-owner of the contract. In case they split, as for a divorce, the judges can decide who keeps the dwelling.

The situation of partners and spouses is similar if the tenant did not inform the landlord that he is married or in a partnership. According to Article 9-1 of 1989 Act, in such a case, the document served to the tenant is also valid for the partner or spouse. This one is liable for the non-execution of the obligations of the tenant without being personally served. This provision intends to protect the landlord as in that case the tenant did not give the information needed. E.g. if the landlord wants to give notice to the parties, he needs to serve the notice to all of them, but if the landlord is not aware of the fact that the tenant is married, he will not give him notice. Thus, it is fair to consider that if information is hidden from him, the service on the sole tenant is valid.

In case a couple is not married or linked by a partnership, they can both live in the same dwelling but the person who did not sign the contract is not linked to the landlord, i.e. he is not protected by the content of the 1989 Act and has no obligation to pay the rent if the tenant does not.

If the person who moved in with the tenant is one of his friends, this situation can fall under the scope of Article 8 of the European Convention on Human rights as the tenant has a right to family life. The moving in of a friend can be considered as belonging to the family life of the tenant, and thus protected for the same reason as the moving in of a family member (spouse or child).

The only provision in the 1989 Act concerning the right to invite people can be found with the article concerning unfair provisions. Article 4,n) of the 1989 Act states that a provision preventing the tenant from accommodating people that are not living usually living with him is null. This article is not applicable when someone wants to move in with the tenant but it reveals the wish of the legislator to protect the privacy of the tenant. However, there are two limits to the possibility of the tenant to have someone moving in with him. First, the tenant has to respect his obligations, especially his obligation of a peaceful enjoyment of the dwelling (Article 7b of the 1989 Act). Second, the tenant is not allowed to sublet a part of the dwelling, except if he obtains the authorization of the landlord, (Article 8 of the 1989 Act) (see the specific question).

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

primary home)?

The tenant is not obliged to live in the dwelling but he has to furnish the dwelling. The law offers a kind of guarantee to the landlord. Article 2332 of the Civil Code states that the tenant has to furnish the flat so that the landlord can seize the contents if the tenant does not pay the rent or other charges. The lien of the landlord concerns all the movables in the house, including movables that do not belong to the tenant, except if it is possible to prove that the landlord was aware of the origin of these movables when they were put in the dwelling

Article 14-1 of the 1989 Act states that the landlord can ask the tenant to prove he occupies the dwelling if some reasons make the landlord think that the tenant abandoned the dwelling. If the tenant does not answer to the letter of the landlord, this one can ask a bailiff to certify that the dwelling is abandoned and if necessary to make a list of its content and to establish its value. If the dwelling is abandoned, the landlord is allowed to bring the dispute before the judges who can declare the termination of the contract and if necessary organise a sell of its content (for example to pay the charges and rent due to the landlord).

- **Is a change of parties legal in the following cases?**
 - **divorce (and equivalents such as separation of non-married and same sex couples);**
 - **apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);**
 - **death of tenant;**
 - **bankruptcy of the landlord;**

To answer this question, the term tenant refers only to the person who signed the lease agreement. Several situations have to be distinguished: the divorce of the tenant, the separation from his partner or from the person he lives with, the situation of students sharing a flat and the death of the tenant.

Article 14 of the 1989 Act	If the tenant abandons the dwelling (in French: " <i>abandon de domicile</i> ")	If the tenant dies
Without any condition, the contract continues in the benefit of	-his/her spouse -his/her partner	-his/her spouse -his/her partner
The contract continues if the person was living with the tenant for at least a year at the date of the desertion in the benefit of	-his/her descendant -the person he/she lives with -his/her forbears -people dependant on him	-his/her descendant -the person he/she lives with -his/her forbears -people dependant on him

- **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?

According to Article 8 of the 1989 act, subletting is in principle not allowed. However, the landlord can give his approval to the tenant. In such a case he must agree on the fact that the tenant sublets his dwelling but also on the price of the rent. The law also specifies that the price of the rent per square meter of living space subleased shall not exceed the price paid by the main tenant. If the main contract terminates, the sub-tenant has no rights toward the landlord. E.g. the sub-tenant cannot obtain an extension of the contract.

Article 8 also states that in case of flat sharing, the 1989 Act is not applicable to the subletting contract. Thus the provisions of the Code Civil apply (Articles 1709 to 1778 of the Civil Code). The parties, tenant and subtenant, can decide that some provisions of the 1989 Act are applicable, but the tenant can never offer the same protection to the subtenant as a real landlord as he is not the owner of the dwelling.

The only solution for the landlord if his dwelling is subleased without his agreement is to go to court to seek the termination of the contract. He has to prove that the tenant, by subletting, does not respect his own contract.

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

In case of sale of the premise, the contract binds the new owner who is not able to terminate the contract before its term. The new owner has to send his details to the tenant so that the tenant can pay him the rent (Article 3 of the 1989 Act).

- **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?**
- **Which utilities may be charged from the tenant by the landlord? What is the standard practice?**
- **Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?**
- **Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?**

For provision of utilities, the tenant is supposed to conclude himself the contracts with the suppliers. Sometimes, for water supply, there is only one contract for the complete building. In such a case, the water is included in the charges the tenant has to reimburse to the landlord.

A statement of charges is sent to the tenant one month prior to the annual adjustment. The statement shall indicate the different categories of expenditure, which the charges are related to and, where relevant, the amount consumed, for example, water and energy. If the dwelling is located in a co-owned building, the statement shall specify how

the charges are distributed between tenants. The tenant has a right to ask the landlord some clarification to.

The means to pay the expenses vary.

The landlord can ask the tenant to pay advances of the charge regularly, e.g. monthly or quarterly and regularization shall be done every year to adjust the payment to the real expenditure. The landlord can also ask the tenant to reimburse him the expenses he made and which are included in the list of charge the tenant has to pay. The landlord has to prove to the tenant the expenses he made. The landlord or the manager of the building must keep the bills at the disposal of the tenant during one month after sending him the statement. If the tenant has trouble paying the expenses, he can ask the landlord for a delay.

Every year, the landlord shall make what is called a regularization of the expenses. It means that the landlord has to compare the money he received from the tenant for the payment of the service costs to the real expenses. If the tenant paid too much, the landlord has to pay back the difference. If he/she did not pay enough, the landlord can claim for the difference.

The division of the costs between the tenant and the landlord is organized by Decree n°87-713 adopted 26 August 1987. The list of charges is limited and fixed by this decree. Expenses, which are not mentioned in this text, shall be paid by the owner and cannot be charged to the tenant.

	Costs that shall be paid by the tenant
Lifts and hoists	<ul style="list-style-type: none"> • electricity expenses; • operating expenses (periodic inspection, cleaning, biannual review of the cables, technical maintenance visits, administrative cost by the enterprise in charge of the maintenance, technical repairs); • expenses for providing products or small maintenance equipment (rags, grease and necessary oils, cabin lighting lamps) • expenses relating to minor repairs of the cubicle (change buttons sending door hinges), of the bearings (closes doors mechanical, electric or pneumatic), and fuses
Cold water, hot water and central heating	<ul style="list-style-type: none"> • expenditure related to cold and hot water of all the occupants of the dwelling; • expenditure related to water for routine maintenance of common areas, including purification plants; • expenditure related to water for routine maintenance of outdoor spaces; • expenditure related to goods required for the operation, the maintenance and the water treatment; • expenditure related to energy supply whatever its nature;

	<ul style="list-style-type: none"> • expenses related to the operation of general and individual meters and to the maintenance of fume; expenditures for repairing leaks on joints
Individual installations	<ul style="list-style-type: none"> • heating; • hot water production distribution of water in the units (control of the connections, flow rate and temperature, repairs service , replacement joints, flushes)
Common areas for one building or several buildings.	<ul style="list-style-type: none"> • expenditure for electricity; • expenditure for the provision of cleaning products (brooms and bags needed for waste), fumigation and disinfection products; • expenses for the maintenance of the timer (light or door), carpets, rubbish chutes; • expenditure of repairs or maintenance of cleanliness devices such as the vacuum cleaner expenses related to the cost of maintenance personnel
Outdoor spaces	<ul style="list-style-type: none"> • operating and maintenance expenses of the access routes; • operating and maintenance of the parking areas operating and maintenance of the green areas and playground equipment for children
Taxes	<ul style="list-style-type: none"> • tax or fee for garbage collection; • sweeping tax; • sanitation tax

- **Deposits and additional guarantees**

- **What is the usual and lawful amount of a deposit?**
- **How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?**

There is no mandatory deposit, which means that if there is no provision organizing a deposit in the contract, the landlord does not have any rights to ask for a deposit. There is no provision in the French law concerning what the landlord is supposed to do with the deposit. The landlord can therefore do whatever he wants with it, his only obligation is to reimburse the tenant at the end of the contract. Article 22 of the 1989 Act states that the landlord is not allowed to ask for a deposit if the payment of the rent is supposed to be made in advance for a period of two months or more. E.g. if the rent is paid in advance every quarter, the landlord cannot ask for a deposit.

If there is a provision in the contract concerning the deposit, the amount cannot exceed one month of rent. The amount is transferred to the landlord when the lease agreement is signed. It can be transferred either by the tenant himself/herself or by a specific organisation. It could be *Avance loca-pass*. This mechanism was created to lend money (without interest) to tenants to finance their deposit. The other option is to obtain help

from a special fund created in each department and dedicated to financial issues linked to housing (in French: “*Fond de solidarité pour le logement*”).

The ALUR act specifies that the deposit shall be return to the tenant within a month if the inventories made when the tenant leaves is consistent with the one made when he entered the premise. In the other cases, the landlord has to reimburse the deposit within two months. The landlord has the right to keep a provision of maximum 20% of the deposit for the service cost of he can justify it. These rules are applicable for the contracts signed after the 27th of March 2014.

- **Are additional guarantees or a personal guarantor usual and lawful?**
- **What kinds of expenses are covered by the guarantee/ the guarantor?**

The landlord can ask the tenant to find someone to act as a guarantor for the payment of the rent, but only in specific cases. The landlord is not allowed to ask for a guarantor if he subscribes a special insurance that can be private or be the “*garantie des risques locatifs*”, guarantee against rental risks, except if the tenant is a student or an apprentice. A system of *garantie loca-pass* exists, but it only benefits to people whose landlord is a corporate body.

If the tenant does not pay the rent or if there are any damages in the dwelling, the insurance will reimburse the landlord. The association (APAGL, which means in French “*association pour l'accès aux garanties locatives*”) will organise the reimbursement of the rent by the tenant to the insurance company that paid the landlord.

The guarantor is supposed to pay for the tenant when he one does not pay the rent, the services cost or charges the tenant is supposed to reimburse to the landlord or repairs in the dwelling.

The ALUR Act creates a mechanism called “*Garantie universelle des loyers*” to insure the payment of the rent when the tenant does not do it. Additional decrees are required before this mechanism enters into force.

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 neighbours; 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 first obligation of the landlord is to hand over the dwelling. If there is a delay in the completion of the dwelling, or in case of refusal of clearing and handover by the previous

tenant, the landlord is not able to deliver the dwelling. Thus, the landlord is not able to comply with the main obligation of the lease agreement (Article 6 of the 1989 Act). There is no general definition of what a defect of the dwelling is in the French law. The notion varies from the various obligations of the landlord. Obligations of the landlord are specified at Article 6 of the 1989 Act.

The first kind of defect can be linked to the building. One of the first obligations of the landlord is to deliver decent housing. When a judge considers that a dwelling is indecent, he may oblige the landlord to improve the dwelling, impose a rent reduction and fix damages to be paid to the tenant. If a dwelling is indecent, the tenant has a right to leave without notice.

The landlord is also supposed to deliver the dwelling without any repairs to be made. In the contract, the parties can decide that the tenant will make the repairs and that he takes the dwelling, as it is, "*en l'état*".

However, when urgent repairs must be done, the tenant cannot oppose to them, according to Article 1724 of the Civil Code. If the repairs take too much time, the rent can be reduced during that time. The ALUR Act reduces the duration from 40 days to 21 days. If the tenant cannot stay to live in the dwelling, the tenant has a right to terminate the contract.

The landlord also has an obligation to offer a peaceful enjoyment of the lease object. The landlord must not disturb the private life of the tenant. This obligation stops in case of "force majeure". If the landlord cannot offer to the tenant a peaceful enjoyment of the dwelling, the contract can be cancelled (full eviction) or the rent is reduced (partial eviction). Parties can also include in the contract a provision stating that the landlord is not responsible for the peaceful enjoyment of the dwelling, It means that the landlord is also not allowed to change the shape of the rental object. Article 1723 of the Civil code states: "A lessor may not, during the term of the lease, change the form of the thing leased."

The peaceful enjoyment depends on the possibility of the landlord to prevent the event. The landlord cannot be liable for any exposition to noise or any disturbance.

The landlord also has to provide guarantees. He has to guarantee the tenant from the defect of the rental flat (Article 1721 of the Civil Code). He has to ensure that the tenant will be able to use the rental object, even if the defects were not known before the conclusion of the lease agreement. This guarantee is not applicable if the defect is visible for everybody, including the tenant when he visited the dwelling. In that case, we assume he agrees to take the flat with this defect. The parties can exclude the liability of the landlord in the contract, except if the tenant is considered as a consumer and protected as such.

If the landlord is considered responsible, the contract can be cancelled, or the rent reduced and damages given to the tenant. The only thing the tenant has to prove is the dysfunction of the rental object.

- **Repairs of the dwelling**
 - **Which kinds of repairs is the landlord obliged to carry out?**
 - **Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?**

The obligation of maintenance of the dwelling is divided between the tenant and the landlord. All other repairs than the ones mentioned in the 1987 Decree (see table above) have to be dealt with by the landlord. Even some of the rental repairs must be performed by the landlord, those due to damages “caused by decay, defect, construction defect, unforeseen event or force majeure” (Article 7d of the 1989 Act).

Article 606 of the Civil Code also mentions works the landlord has to deal with. It states that: “Major repairs are those to main walls and vaults, the restoring of beams and of entire coverings; that of dams, breast walls and enclosing walls also in entirety. All other repairs are of maintenance.”

The French *Cour de cassation* (Civ. 3rd 13 July 2005, n°04-137) gives clarifications stating that: “in application of Article 606 of the Civil Code is concerned, maintenance repairs are those that are useful for permanent maintain of the building while major repairs are those concerning the structure and overall strength of the building.”

The landlord has to organise major repairs even if they cost more than the price of the rent. He will not have to repair if he has to rebuild and if it is not linked to a lack of previous repairs but linked to “*force majeure*” or fortuitous event. According to Article 6 of the 1989 Act and Articles 1719 and 1720 of the Civil Code, the landlord must do more than the repairs the tenant is not obliged to make. The landlord has to deliver a decent housing. The landlord is thus responsible for all the damages that occur and that affect the habitability or the suitability of the house. Then, the landlord must also deliver a dwelling “*in good repair of whatever character. He must, during the term of the lease, make all the repairs which may become necessary, other than those incumbent upon lessees.*” The landlord has an obligation of maintenance of the renting object according to the use written in the contract. When repairs need to be made and the landlord refuses, the tenant has to send him a registered letter to ask him to comply with his obligation. If the landlord does not reply within two months, the tenant is entitled to bring the dispute before the *Commission départementale de conciliation* or the *Tribunal d’Instance*. The judge can force the landlord to make the repair, or to authorize the tenant to make the repairs and to be reimbursed by the landlord, or to award damages to the tenant for disturbance. The tenant can have to pay a part of the repairs that the landlord should pay, if the tenant made a fault.

According to Article 6 d) of the 1989 Act, the parties can decide that the tenant will deal with some of the repairs the landlord is normally supposed to make. The parties may agree on compensation for the tenant and on duration (e.g. the rent will be lower for a limited period of time depending on the amount of work realised by the tenant). In case of early departure of the tenant, a provision concerning the compensation of the tenant shall also be included. Judges are very strict with such provisions and often refuse the tenant to pay too expensive works, such as the one concerning the structure of the house or to rebuild the roof.

- **Alterations of the dwelling**
 - **Is the tenant allowed to make other changes to the dwelling?**
 - **In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

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

The tenant is supposed to take good care of the dwelling and to use it as a “good family man”, “*en bon père de famille*”. It means that he has to be quiet and to enjoy peacefully the use of the rented home. According to Article 7 f) of the 1989 Act, the tenant shall not “transform the premise or equipment rented without the written agreement of the landlord”. One of the issues is the interpretation of this notion of “transformation”. Judges stated that the fact to modify the structure of the building requires the agreement of the landlord, e.g. to break a wall to have a bigger room, to change the destination of a room from a bedroom to a kitchen and from a kitchen to a laundry or to build a swimming pool. On the contrary, the fact to change the colour of the paintings cannot be considered as a transformation, even if it is colourful, except if it is too eccentric and if the landlord cannot rent the dwelling because of this paintwork.

There is no specific provision in the law concerning the changes needed to accommodate a handicap. Fixing antennas, including parabolic, can be seen a transformation the tenant cannot make without the agreement of the landlord.

If the tenant does not respect this rule, the landlord can first terminate the contract. At the end of the contract, he can also ask the tenant to demolish the transformation and to rebuild the dwelling as it was previously. The landlord can also decide to keep the dwelling as it was and the tenant who did not ask for his agreement before the works cannot ask for any financial compensation even if the works is an improvement of the dwelling. Article 7 f of the 1989 Act also allows the landlord to ask the tenant to restore immediately the dwelling if the transformation jeopardizes the proper functioning of equipment or the safety of the premise. It could be the case if the works prevent people from accessing the roof of the building.

- **Uses of the dwelling**
 - **Are the following uses allowed or prohibited?**
 - **keeping domestic animals**
 - **producing smells**
 - **receiving guests over night**
 - **fixing pamphlets outside**
 - **small-scale commercial activity**

Article 7 b) of the 1989 Act states the tenant has to respect the intended use of the dwelling (in French: “*destination*”) as it is stipulated in the contract. For example, the tenant has to respect the division residence/professional use when it is a mixed contract.

The tenant is not allowed to do what he wants with the dwelling. He is supposed to take good care of the dwelling and for example the alterations he is allowed to make are limited. He also has to respect the neighbourhood, as he can be responsible in case of disturbance. The rules applicable to neighbourhood disturbance are applicable to everybody, no matter if the people living in the dwellings are the owners or the tenants. But the landlord can use the inappropriate use of the dwelling as a reason not to renew the contract when it arrives to its end.

A law adopted in 1970 (Act 70-598 of the 9th July 1970 modified by Loi n° 2012-387, 22 March 2012) states that the landlord is not allowed to prevent the tenant from

having pets in his dwellings. However, the pets shall not damage the building or cause trouble. Since 1999, the landlord can prevent the tenant from having dogs classified as “attack” dogs considered by the French authorities as very dangerous.

The tenant is allowed to have visitors over nights as the landlord is not allowed to prevent him from inviting people who are not living with him. Such a provision in the contract would be considered as unfair and as so null (See Article 4 n) of the 1989 Act). Such ban can also be considered as an infringement of Article 8 of the European Convention on Human Rights.

The landlord can be responsible if his tenant does not respect the neighbours. The landlord has to give notice to the tenant that he will use all the means he has to prevent the tenant from disturbing the neighbours (Article 6-1 of the 1989 Act).

Considering Article 1728, 1 of the Civil Code, the tenant has to respect the “*destination*” of the dwelling, which means he has to respect what the dwelling is made for. If nothing is written in the contract, it is necessary to check the intentions of parties at the moment they signed and the specific circumstances. For example, judges decided that the tenant did not respect the intended use (in French: “*destination*”) of the dwelling if he lives in a four rooms flat with three wives and twelve children.

To change the destination of the dwelling, the tenant needs an authorization of the landlord. For example, the tenant cannot open a fish shop in his dwelling without the authorization of the landlord. The passivity of the landlord cannot be considered as an approval of the change of destination of the dwelling.

The law allows what is called “*clause d’habitation bourgeoise exclusive*”. Such provision prevents the tenant from practising any professional activity, even as self-employed. This kind of provisions can also be included in the condominium rules.

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**
 - **When is a rent increase legal? In particular:**
 - **Are there restrictions on how many times the rent may be increased in a certain period?**
 - **Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?**
 - **What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?**

In principle, the rent is freely determined by the parties to the contract (Article 17 of the 1989 Act). When the dwelling is a HLM the determination of the price is different. The price is determined based on a price per square meter (decided by the organisation) multiplied by the size of the dwelling.

In some cases, the law regulates the determination of the rent. Article 18 of the 1989 Act organizes a special regime for some areas where the price of the rent is regulated. In practice, it concerns the cities of the 38 conurbations with more than

50,000 inhabitants located in France (for 27 of them) and overseas (11 of them). It means that approximately 40% of the French population is affected by the rent regulation.

Conurbations in France	Conurbations overseas
Amiens, Annecy, Annemasse, Arles, Beauvais, Bordeaux, Caen, Creil, Douai / Lens, Forbach, Fréjus, Grenoble, La Rochelle, Le Havre, Lille, Lyon, Marseille / Aix-en-Provence, Meaux, Menton, Montpellier, Nantes, Nice, Paris, Rennes, Strasbourg, Toulon and Toulouse	Basse-Terre, Cayenne, Fort-de-France, Le Robert, Mamoudzou, Pointe-à-Pitre/Les Abymes, Saint-André, Saint-Denis, Saint-Louis, Saint-Paul and Saint-Pierre.

In these areas, when a new lease agreement is signed, if the landlord did not make any improvements in the dwelling, the last rent, paid by the previous tenant can only be increased based on a fixed rate benchmark index for rent (In French: “*IRL*” for “*Indice de reference des loyers*”).

Otherwise, according to Article 17 d) of the 1989 Act, to calculate the increase of the rent the landlord needs:

- the current rent,
- the last value of the benchmark index for rents for the reference quarter mentioned in the contract, and
- the value of the benchmark for rents for the same quarter of the previous year.

If the lease does not mention what the quarter of reference is, the last benchmark index for rents known when the lease started serves as a reference.

The calculation of the new rent is as follows:

$$\frac{\text{(current rent x benchmark rents for the reference quarter)}}{\text{value of benchmark for rents for the same quarter of the previous year}} = \text{New rent.}$$

The mission of this organism will be to collect information concerning rent. The information will be available for people and will be used to determine reference.

Moreover, each Prefect will have to determine a reference rent and a reference for a maximum and a minimum rent.

In the areas where the demand is high and the offer is low, the tenant can ask for a lower rent if the rent is higher than the reference. In these areas, a decree will determine every year the maximum rent for empty dwellings and in case of renewal of the contract. These areas will be determined by a decree.

Decrees need to be adopted for the details.

For the increase of the rent, the landlord will have to ask for the application of the provision. The application of the provision is no more automatic. The new contracts can include a provision stipulating that the rent will be increase when works will be realised in the dwelling. These rules are automatically applicable.

- **Entering the premises and related issues**
 - **Under what conditions may the landlord enter the premises?**
 - **Is the landlord allowed to keep a set of keys to the rented apartment?**
 - **Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?**
 - **Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?**

There is no provision concerning the question if the landlord is allowed or not to keep a set of keys of the rented apartment. If the law does not prohibit this, it is not illegal. But regarding all the obligations the landlord has, he cannot enter the dwelling without the agreement of the tenant. If he does so, he does not respect his contract and can be sentenced to the cancellation of the contract or to pay damages to the tenant.

Moreover, he can be sentenced on criminal basis. People who enter the dwelling of someone else, without being allowed to do so or with violence, can be sentenced to 15,000 euros and one year imprisonment (Art. 226-4 of the Criminal code).

The landlord is allowed to enter the dwelling once or twice a year to check the maintenance of the premise. He needs to make an appointment with the tenant and he/she cannot enter without the agreement of the tenant. In case of termination of the contract, the tenant has to allow the landlord to come in to make visit with people who are interested in renting the premise.

The landlord is never allowed to enter the dwelling and change the keys by himself. He has to follow the procedure organised by the law (see question 4.2).

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

Termination of the contract by the tenant is organized by Articles 12 and 15 paragraph I of the 1989 Act. The tenant can leave at any time, subject to respect certain formal requirements. The tenant has to inform the landlord three months in advance. In specific cases, the notice is only one month: if the tenant finds his first job, if his/her job is transferred, if he/she loses his job, if he finds a new job after losing the previous one, if the tenant is more than sixty years old and his health justifies his move, if the tenant benefits from social allowance (in French: *Revenu minimum d'Insertion* or *Revenu de solidarité active*). There is no condition in the 1989 Act concerning the localization of the new job.

The term starts when the landlord receives the letter. The tenant has to pay the rent during the full term, one or three months, except if he reached an agreement with the landlord or if another tenant enters the dwelling before the end of the term.

To inform the landlord that he wants to leave, the tenant has to send him a registered letter with acknowledgement of receipt or to have the notice served by a bailiff. There is no provision in the law concerning the content of the letter but if the tenant benefits from a shorter notice, he should inform the landlord. Once the tenant sends his notice, he has to leave the dwelling at the end of the term, except if he reached an agreement with the landlord to stay or to extend the notice.

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

According to Article 15 of the 1989 Act, the owner is only allowed to give notice to the tenant at the end of the lease agreement and he can only give notice for three reasons. The first one is the decision of the landlord to use the dwelling as his main residence or to have one of his relatives to live in the dwelling. The relatives concerned can be : the spouse, the person with whom he cohabits for over a year, the person he lived in partnership with (i.e. PACS, *Pacte civil de solidarité*), if the pact was signed at least one year before the date of termination, and their respective ancestors and descendants.

The leave must be served to the tenant either by registered letter with acknowledgment of receipt or by a judicial officer or hand-delivered against signature. This notice should be sent to the tenant at least six months before the end of the lease. It must specify the reasons why the landlord does not continue the lease and include the names and addresses of the beneficiaries. If this information is not written in the notice, the leave is not valid, and the lease is renewed for the same period (3 or 6 years).

After leaving the dwelling, the tenant may contest the reasons given by the landlord but he has to prove that the house is not occupied by the person or persons mentioned in the letter, or that the dwelling is empty, or that the property is used as a second home. He can then ask the district court to award him damages for the prejudice suffered.

The second reason for a landlord to terminate the lease is the sale of the dwelling. The premise can be sold during the contract or at the end of the contract. The owner can sell the property occupied during or at the end of the lease without informing the tenant. As the conditions of the contract are not changed for the tenant, the lease terms stay the same and the new landlord cannot evict the tenant. There is no duty information from

the seller to inform the tenant. The new owner must only give his details to the tenant, and he will also refund the deposit when the lease terminates.

The owner may also decide to sell the property to the tenant or to a third party. In this case, the notice must be sent to the tenant at least 6 months before the end of the lease by registered letter with acknowledgment of receipt or issued by a judicial officer, or hand-delivered against signature. The letter of termination shall indicate the selling price and the method of payment. It must describe precisely what is sold. If the landlord does not comply with these obligations, the notice is not valid. After receiving the letter, the tenant has two months to respond. If he is not interested, he must leave the place at the end of the lease.

Third, the landlord is also allowed to give notice for legitimate and serious reasons. There is no definition of that concept in the law. In general, the fact that the tenant does not respect his obligation is sufficient. For example, if the tenant does not pay the rent or if he does not respect his obligation of peaceful enjoyment of the dwelling. In this case, the landlord shall inform the tenant 6 months before the end of the contract by registered letter or through the service by a bailiff. The letter must explain the reason of giving notice.

The landlord can terminate the contract following very severe procedures of eviction when the tenant does not pay the rent and service costs.

Article 15 paragraph III of the 1989 Act organises a special protection for tenants that are over seventy years and whose income are less than a certain limit (1,5 less than what is called in French: "*salaire minimum de croissance*"). The landlord cannot refuse to renew the contract, or if so he has to provide the tenant with another dwelling, which complies with the needs of the people and is located not far from the location they live. This rule is not applicable if the landlord himself is over sixty or if his own income is less than a certain limit (1,5 less than the minimum wage, i.e. in French: "*salaire minimum de croissance*"). The ages of the tenant and landlord are checked at the term of the contract and their income at the time of the service of the notice.

If the dwelling is a social housing, there is no termination at the term of the contract. The only option for the HLM is to ask the tenant to leave if the tenant does not fulfil his obligation. The HLM organisation can bring the case before the judge if the tenant refuses to leave. If the contract contains a provision saying that the tenant must leave if he does not respect his obligations (payment of the rent and service costs, peaceful enjoyment of the dwelling), judges only check if the tenant respects these obligations. If there is no such a provision, judges also check if the attitude of the tenant who does not respect his obligations and the punishment are commensurate.

If the tenant does not respect his obligation to pay the rent and the annex charges, the landlord can terminate the contract. If there is provision in that sense in the contract, the landlord does not need to bring the case before a judge.

As soon as the tenant stops paying his rent, the landlord shall contact the insurance company if there is one or the guarantor before asking for the termination of the contract. If the tenant receives allowance for the dwelling (in French: "*allocation logement*"), the landlord can contact the administrative organisation (in French: "*Caisse d'allocation familiale*") to receive the payment directly.

If the rent is not paid, the landlord can start a procedure to obtain the termination of the contract in application of the clause contained in the contract (Articles L412-1 to L412-6 of the Code of civil procedure of execution). He has to serve through a bailiff a demand of payment (in French: "*Commandement de payer*") giving the tenant a delay of two months to pay. The tenant has a delay of two months to take the dispute to court to ask for more delay or to apply to the special fund (in French: "*Fond de solidarité pour le logement*"). If there is a guarantor, the bailiff has to notify him the demand of payment. If after two months, or after the delay awarded by the judge if the tenant already take the case to court the landlord takes it to court for a summary judgement stating that the lease is terminated and ordering the expulsion.

If there is no provision in the contract, the landlord can directly bring the dispute before the judge to ask for the termination of the contract and the expulsion of the tenant. The landlord can ask the tenant before taking him to court but he is not obliged to do it. The court checks if the fault of the tenant is serious enough to justify the termination of the lease and his expulsion. If the judge considers that the tenant is able to pay, he can set a payment deadline. Otherwise, the judge has to terminate the contract. After the judgement, the landlord has to appoint a bailiff to send to the tenant an order to leave the dwelling within two months. The tenant can go to court (in French: "*Tribunal de grande instance*") to ask for a delay. The Tribunal can grant a delay from one month to a year depending on the situation of the tenant (age, health, family situation). If a notary wrote the lease agreement, there is no need for the landlord to go to court, as the contract is directly enforceable. If the tenant does not pay the rent, the landlord can directly appoint a bailiff for the execution of the contract.

The expulsion of the tenant requires the intervention of a bailiff. The bailiff can announce his visit but this is not mandatory. He can come to the house every day between 6 AM and 9 PM. If there is no protest of the tenant the bailiff writes minutes in which he lists the furniture of the tenant, indicates the place where they are and demands the key of the dwelling. If the tenant refuses to open the door, the bailiff writes minutes in which he explains the failure and asks for the intervention of the police. If the tenant is absent, the bailiff can only enter the dwelling if a police authority and a locksmith accompany him. He informs the tenant by a poster on the door he can no longer enter the dwelling. According to the law, during the winter, from the 1 November to 15 March (extended to 30 March by the new law adopted in 2014), no expulsion is allowed. This period is called "*trêve hivernale*" in French. Due to a very hard winter, in 2013 the term was extended until 31 of March. The landlord is allowed to start a procedure but he will have to wait until the end of the term for the execution. The exception does not apply if the procedure is against a squatter, if an administrative act states that the building is dangerous (in French: "*arrêté de péril*") or if the expulsion of the tenant is accompanied by a rehousing corresponding to the need of the tenant.

The ALUR Act modifies the rules. The landlord has to indicate the link he has with the beneficiary if he wants to have his dwelling back. He has to justify the fact that it has serious reason to ask to have the dwelling back. In case he wants to sell the dwelling, the pre-emption right of the tenant is extended. Judges can always check if the reasons and justifications given by the owner are real. The new law also specifies that an

information document shall be given to the tenant concerning his rights and the duties of the landlord. These rules are applicable for the contract signed after the 27th of March 2014. The content of the information document shall be determined in a decree. The landlord is no more obliged to send the notice by post but can also delivered it directly by hand to 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?**
- **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 must return the deposit within two months after the establishment of an inventory. This inventory will list the difference in the dwelling between the time of the start and the end of the contract.

When the contract terminates, the deposit is given back to the tenant within a maximum of two months after the return of the key by the tenant. The amount corresponds to the amount given by the tenant when entering the flat minus the amount due to the landlord. The tenant does not receive any interest. The reimbursement by the landlord at the end of the lease is calculated using the inventory but also taxes or charges the landlord has to pay in the name of the tenant. The landlord has to give a justification for the amount deducted from the initial amount.

The landlord is only supposed to take into account the damages and not the ordinary uses. There is no precise provision considering the inventory of furnished flats.

The ALUR act changes the rules, see question concerning the deposit (under question 2.2)

4.4. Adjudicating a dispute

- **In what forum are tenancy cases typically adjudicated?**
 - **Are there specialized courts for adjudication of tenancy disputes?**
 - **Is an accelerated form of procedure used for the adjudication of tenancy cases?**
 - **Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?**

The first option in case of dispute between landlord and tenant is to bring the dispute before a "*Commission départementale de conciliation*" (Article 20 of the 1989 Act) composed of representatives of landlords' associations and of tenants' associations. The Commission is competent for disputes concerning rent, service charges, repairs, deposit, and inventory of fixtures. The goal of the Commission is to reach an agreement between the landlord and the tenant. The Commission gives a recommendation within two months. If no agreement is reached and one of the parties decides to go to court, the recommendation of the Commission can be transmitted to the judge ("*Tribunal*

d'instance"). To start the procedure in front of the Commission, the landlord or the tenant just has to send a registered letter. Parties can be assisted by the person of their choice, e.g. a professional association or a lawyer. It is not mandatory to be represented by a lawyer. The proceeding in front of the Commission is free of charge. The ALUR act specifies that this Commission is now also in charge of disputes concerning the notice.

The parties can always decide to go to court, as it is not mandatory to resort to such Commission.

The competent tribunal for matters related to lease agreements concerning dwellings is the *Tribunal d'instance* (Article R221-38 of the *Code de l'organisation judiciaire*, i.e. Code of the Judicial Organisation) where the rental property is located (Article R221-48 of the *Code de l'organisation judiciaire*).

This tribunal is competent in first and final instance to handle disputes of a maximum of € 4,000 (Article L321-2-1 of the *Code de l'organisation judiciaire*). In such a case no appeal is possible, but parties can go to the *Cour de cassation*. If the demands exceeds more than € 4,000, parties have the right to challenge the decision of the *Tribunal d'Instance* in front of the *Cour d'appel*. Eventually, they can also challenge the decision of the *Cour d'appel* in front of the *Cour de cassation*.

In case of discrimination issues, the tenant may turn to the *Défenseur des droits* since 1 May 2011 to have his rights protected. This institution can give recommendations that help to bring the dispute to court. It has investigative power and members of the team can go to check on site if there is, or is not, a discrimination. This institution also has the power to set up a "mediation", threatening the "guilty" party to publish its recommendation. The power of the "*Défenseur des droits*" has a symbolic aspect and is more efficient towards companies or corporate bodies than towards natural people. Corporate bodies may fear the impact of such negative recommendation on their image and may accept a compromise in order to avoid publicity.

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 first condition concerns the financial means. The incomes of the candidate to such a dwelling shall be situated in a range fixed by the government. Currently a person living alone should earn per year between € 12.662 and € 29.924 in Paris and its suburbs and between € 11.006 and € 26.016 in other regions. For a family of four or for one person with two people dependant on him, the income per year should be between € 29.618 and € 69.998 in Paris and municipalities adjacent, between € 27.245 and € 64.396 in Paris' suburbs and between € 21.457 and € 50.440 in other regions. The incomes that are taken into account are the ones declared to the tax authorities two years before the candidacy or the incomes declared the previous year if they decreased more than 10% between these two years. The reduction must be proved. As an exception, only the resources of the candidate are taken into account if he is currently divorcing. A statement from the judge certifying no-conciliation between the spouses

was reached or by a statement explaining urgent measures. An likewise exception applies for the partner in a civil partnership (in French: *PACS*, i.e. *Pacte civil de solidarité*) whose separation was declared in court proceedings. Finally, an exception is also made for the victim of violence within the couple, proven a registered complaint by the police or by the judges.

Secondly, the HLM are only available for French people or for foreigners in possession of a valid residence permit on French territory. The HLM are in priority allocated to people with disabilities or to families with a dependent person with disabilities, to people whose application is urgent.

The first step of the process to obtain a HLM is a pre-registration. The applicant sends the documents required (an official form of demand, a copy of an identity card or equivalent, a document certifying the legality of his stay in France, a copy of his tax document with mention of his income). Then the candidate is given a registration number and a certificate of registration and a list of the documents he must produce later on in the process.

The second step is the inscription itself. The candidate has to produce the official form of demand plus the document mentioned in the previous stage of the process with his registration number. A special committee makes the decision. The waiting period can vary considerably from one department to another depending on the dwelling stock and the number of requests. Once the candidate is allocated a dwelling, he has a minimum of ten days to accept or to refuse. If he refuses, he has very little chance of receiving a better offer, as there are numerous candidates on the waiting list. If the offer is totally inappropriate, the candidate can challenge the decision in front of the “*Commission de médiation*” or use the mechanism created by the DALO Act. If the candidacy is rejected, the candidate receives a letter with the decision. He cannot challenge this decision. If after a certain time, fixed in each department by the Prefect, the candidate does not have any answer he can apply to the “*Commission de médiation*” to claim his right to a social dwelling.

The application for a social housing that is not satisfied must be renewed every year, eventually through a dedicated website, otherwise the request is automatically cancelled. Once the candidate is allocated a dwelling, his request is removed. This is also the case if the candidate sends a letter to explain he does not apply for an HLM any longer.

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

The tenant has an obligation to insure the rented premises (Article 7, g of the 1989 Act). This insurance covers at least all the risks the tenant is liable for, such as fire or water damages. The tenant can buy an insurance that covers more potential damages. The landlord has a right to include in the contract a provision stating that the contract terminates if the tenant does not prove he has an insurance for the dwelling. The landlord cannot choose the insurance company instead for the tenant. The ALUR act specifies that the landlord is entitled to take an insurance in the name of the tenant if this one did not do it.

- **Are legal aid services available in the area of tenancy law?**
- **To which organizations, institutions etc. may a tenant turn to have his/her**

rights protected?

There are no specific legal aid services available in the area of tenancy law. The tenant is advised to contact associations.

The French umbrella organization for tenants, both in the social and the private rental sector, the '*Confédération Nationale du Logement*' (CNL). This organization is a member of the International Union of Tenants (IUT). Apart from the CNL, there are four other organizations that represent tenants in negotiations.

All the information about the CNL can be found on their website :

<http://www.lacnl.com/>

See also in this list, associations that provide useful information concerning lease contracts:

Agence nationale pour l'information sur le logement:

<http://www.anil.org/>

Association jurislogement:

<http://www.jurislogement.org/>

Fondation Emmaus:

<http://www.emmaus-france.org/>

For students: centre national des oeuvres universitaires et étudiantes

<http://www.cnous.fr/>