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

Tenant's Rights Brochure for

ITALY

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Tenant's Rights Brochure

ITALY

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Summary of Contents

1. Introductory information

- Give a very brief introduction on the national rental market

  o Current supply and demand situation

Since 1990s the Italian housing market has seen for many years a progressive increase in homeownership and a corresponding reduction in tenancies. The onset of the economic crisis, with the drastic reduction of new bank loans, stopped this trend, and in 2012 for the first time there was a slight increase in the percentage of households living in rented dwellings, which is nowadays about 21,8% of the total, and a reduction in the percentage of households living in ownership (67,2%). The remaining part of dwellings is occupied through free loans (commodatum) or usufructor tenancies.
The crisis has negatively affected rent affordability for many households, as so far rents have not decreased as much as the average household income. Public dwellings, where about 5,5% Italian households live, are a limited help, especially in bigger cities where thousands households are waiting to receive a dwelling.
A significant demand of houses to rent comes from immigrants from Second or Third World countries, whose number has drastically increased since 2000s. The vast majority of them lives in rented dwellings, often of low quality, in the most dilapidated parts of the towns.

In next years the number of new immigrants is expected to increase with much lower rates than in the past, while the Italian population is expected to decrease. Therefore, globally, population in next decades will slightly and gradually increase.
For these reasons in next years the main challenge for housing policies seems to be providing low-income households (among which a significant role is played by young people and immigrants) with suitable dwellings at affordable prices, counteracting phenomena such as difficulty to leave parents' house and housing segregation. At the same time particular attention shall be given to the fact that population tends to concentrate in certain metropolitan areas of the country, especially in the North, abandoning the poorest areas of the country; a situation which requires careful measures, regarding also urban and housing planning.

o Main current problems of the national rental market from the perspective of tenants

- Rent affordability: rents have not decreased as much as the average income during the years of the crisis. The problem is particularly evident in the biggest Italian cities, while it tends to disappear in the smaller towns and in the country.
- Shortage of social dwellings: the demand of social dwellings largely exceed its supply, especially in the biggest cities, as especially in the past decades many public dwellings have been sold to the occupants and only a limited number of new dwellings has been realized.
- Black market: tenants shall be careful towards landlords who do not want to make a written contract or to register the contract or to indicate in the contract the full rent, in order not to pay the corresponding taxes.

o Significance of different forms of rental tenure

- Private renting

Private renting concerns about 16% of the Italian households, which means about 75% of the tenancy market. Two principal kinds of tenancies are possible:

- 'free market tenancies', where parties are free to establish most of the contractual conditions, such as the amount of rent and the rent increase, but not, for example, the minimum duration; they represent the vast majority of tenancy contracts (about 4/5);
- 'assisted tenancies', where some clauses, among which, in particular, the amount of rent shall be fixed in accordance with legal limits which consider position and kind of dwelling; despite some normative and fiscal incentives introduced by the legislator, they represent only about 1/5 of the tenancy market.

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

This form of tenure concerns about 5,5% of the households living on rent. It is possible to distinguish two different kinds of tenancies with public task:

- 'public housing' deals with dwellings owned by public entities; the available dwellings are offered on rent through an announcement of selection in every

Municipality generally once in a year. Households shall lack of a suitable accommodation and have the other requirements indicated in the announcement; rents are very low in comparison to market prices.

- 'social housing' includes different rental schemes, which all share the purpose to offer on rent dwellings at lower prices than on the market to households in need. They are generally realized through various forms of partnership between public and private entities and also the conditions to assigns them varies accordingly. This sector is not particularly developed yet but in these years it has been growing.

o 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)

A foreigner looking for a house on rent in Italy should first of all consider that people often do not speak English well and tenancy contracts are practically always written only in Italian. The assistance of an estate agent might be useful, but consider that in Italy there is a wide number of them, so it is advisable to look for an agent who is regarded as expert and reliable. It is always important to check the dwelling personally before executing the contract and to pay attention to landlords who do not want to execute a regular contract for fiscal reasons (for example, the tenancy contract regarding a residential dwelling shall always be done in writing).

o Main problems and "traps" (circa 5) in tenancy law from the perspective of tenants

- Be careful that the contract clearly indicates all the expenses bearing on the tenant, such as the amount of condominium expenses, other 'additional burdens', taxes.
- In case of assistance by an estate agent clear since the beginning the amount of the fee and who (tenant, landlord or both) shall pay for it.
- Before executing the contract, check carefully if the dwelling has evident defects: the tenant is generally not guaranteed for defects he could easily recognize.
- Consider that rules for energy saving have recently introduced some necessary elements to indicate in the contract.
- Consider that payment of rents exceeding 999,99 euro cannot be done cash.

- Important legal terms related to tenancy law

Italian	**Translation into English**
Addizione	Addition
Aggiornamento del canone	Rent increase
Assegnatario (di alloggio pubblico)	Grantee (of public dwelling)
Canone	Rent
Cauzione	Deposit
Certificato di agibilità	Certificate of conformity to standards
Commissione	Brokerage fee
Contratto a canone concordato	Tenancy with rent ceiling
Contratto a canone libero	Tenancy with free rent
Disdetta	Notice to quit

Guasto	Failure
Imposta di bollo	Stamp fee
Imposta di registro	Registration fee
Miglioramento	Improvement
Molestia	Nuisance
Morosità	Delayed payment
Oneri accessori	Utilities
Piccola manutenzione	Minor maintenance work
Prelazione (diritto di)	Preemption (right)
Riscatto (diritto di)	Redemption (right)
Sfratto	Eviction
Sublocazione	Sublease
Successione	Right of succession
Vizio	Vice

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 Italian law expressly regulates the principle of 'equal treatment', specifically with regard to 'access to goods and services, including dwelling' (Art. 3 Leg. Decree 9 July 2003, n. 215). A further provision in the Immigration Act prohibits discriminations '*based on race, color, ancestry, national or ethnic origin, religion*', mentioning again, among the relevant fields, access to dwellings (Art. 43 Leg. Decree 25 July 1998, n. 286). This provision is expressly extended to Italian and EU-citizens and to stateless people.
Save the respect of these rules, the private landlord is absolutely free to choose the tenant he prefers. In public tenancies, on the contrary, the choice shall normally be made following the list of households having the necessary requirements to receive public dwellings.

- 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?

In the absence of specific provisions and case law under this matter, it is possible to say that personal questions should be allowed only when they are effectively relevant in order to protect the landlord's legitimate interests. In this case the prospective tenant shall answer saying the truth.
In case of illegitimate questions, it is doubtful whether there is a right to lie because a similar behavior could be regarded as unfair.

- 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 estate agent can demand a fee for his activity only when the contract is validly executed as a consequence of his intervention. Anyway this rule can be freely derogated by the parties, indicating, for example, an anticipated payment.
A “reservation fee” for the landlord seems to be extremely unusual in Italy and no case law under this matter can be found.

- 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)?

Asking for a salary statement or requiring a credit report seem to be quite unusual in Italy, especially for small private owners, which compose the wide majority of Italian landlords. Information is more frequently gathered through informal interviews to prospective tenants, estate agents, previous landlords, employers.
Similar checks regarding tenant’s personal and financial data require the latter’s consent. In case of refusal, the landlord may decide not to execute the contract, provided that this is not a discriminatory behavior.

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

The traditional role of estate agents is make potential landlords and tenants meet each other. In addition, estate agents often provide further services such as organizing viewings of the dwelling, assisting parties during negotiations and execution of the contract, searching for relevant documents regarding the dwelling. In general they shall provide their clients with all the relevant information they know or they could have known using the required diligence. Estate agents are also responsible, together with the parties, for the registration at ‘Agenzia delle entrate’ of the contracts executed because of their intervention and for the payment of the related taxes, when these contracts are not drafted or authenticated by a public notary.
Similar services of brokerage are in some cases offered also by local public institutions, tenants’ associations or other private organizations.

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

During last years, the economic crisis and subsequently the drastic increase in non-regular payment of rents led to a debate regarding the possibility to develop blacklists of non-performer tenants.
At the end of 2012 a group of private people created a web-site called *Registro Nazionale degli Sfratti* (i.e. National Register of Evictions: www.registronazionalesfratti.com) with the aim to publish on-line all the Italian decisions regarding notices to quit in default of regular payment.
A different approach is followed by the web-site www.referenzepubbliche.it, where anyone can give a good or bad reference regarding a tenant. The web-site does not show the

whole reference but simply says if a certain person has a positive or negative reference and then suggests to contact the author of the reference for further information.

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)?

Tenancies of residential dwellings shall be always executed in writing. The prevailing opinion is that this rule applies also to 'dwellings of public interest' and houses with cadastral rent A/1, A/8 and A/9. In case the contract lacks the written form, it is invalid, but the legislator grants the tenant the right to obtain from the Court that the contract is validated and the rent is fixed in an amount that cannot exceed the amount established for 'assisted tenancies', which is on average half than the market price. In case the tenant previously paid a higher rent, he has also the right to have the difference refunded.
Registration at 'Agenzia delle Entrate' is compulsory for all the contracts regarding properties which last more than 30 days in a year. The registration shall be done by 30 days from the execution of contract or from the running of its effects, if earlier. Lack of registration makes the contract null and void, but according to a widespread opinion the contract is simply unenforceable until the registration is not done.
Registration in most cases implies also the payment of a 'registration fee' (2% of the annual rent for every year of duration). These expenses normally bear equally on the landlord and on the tenant, but parties, save in case of 'assisted tenancies', for which the rule is compulsory, are free to make a different agreement. But also in similar cases for the law they are always jointly and severally responsible for the payment.
A further tax, called 'stamp fee' is due in case of execution of any juridical act: it shall be paid in proportion with the number of pages of the contract (one stamp of 16 Euro for 4 faces) before the day 30 of the month in which the contract is executed.

- What is the mandatory content of a contract?

  o Which data and information must be contained in a contract?

A tenancy contract must individuate the parties and the rented dwelling and the amount of rent, specifying the residential (or non-residential or mixed) purpose of the tenancy. In addition to these mandatory minimum requirements, it is advisable that the contract includes also further elements in order to avoid legal uncertainty, even though in most cases, in the absence of an agreement between the parties, legal provisions find automatic application. Among these elements, it is possible to mention the duration of the contract, the moment of beginning, the rooms and the other out-buildings composing the dwelling, the allocation of costs for utilities, maintenance and repairs, allowed changes to the dwelling, possibility of subletting, prescriptions on when and how the rent is to be paid.

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

Tenancies for residential dwellings must respect a minimum term of duration. The legislator regulates two different possibilities:

- ‘free market tenancies’: the duration is four + four years, which means that after four years the contract is automatically renewed for further four years, save that the landlord gives notice six months in advance for one of the reasons expressly indicated by the law (see Art. 3 Law n. 431/1998);
- ‘assisted tenancies’: the duration is three + two years, which means that after three years, in case the parties do not agree to renew the contract, the latter is automatically prorogued for further two years, save that the landlord gives notice six months in advance for one of the reasons expressly indicated by the law (see Art. 3 Law n. 431/1998).

The tenant can terminate the contract at any time with six months notice, for ‘serious reasons’.
The legislator provides the possibility to execute contracts with shorter duration for proven landlord’s or tenant’s necessities; in this case the duration shall be between one and 18 months and they are not renewable. In case of contracts executed by students in order to attend University courses in a town where they do not have residence, the duration shall be between six and 36 months and they are renewable just for once.
The limits of minimum duration do not apply to ‘holiday tenancies’, i.e. the renting of a dwelling only for holiday purposes.

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

Parties must indicate the amount of rent for the use of the dwelling.
It is advisable that parties indicate also the payment of further sums, such as expenses for the condominium, for the utilities, for maintenance and repairs, otherwise these will be regulated in accordance with Civil Code or special statutes rules. Clauses requiring a forfeited sum for these ‘additional expenses’ are considered valid.
Moreover, parties should indicate when and how the rent is to be paid.
As for the former aspect, in case parties do not specify anything in the contract, the whole sum can be demanded the first day of every period of time agreed for the payment. In case the parties do not indicate periods of time, the whole payment could be demanded at the beginning of the contract, according to general Civil Code rules, but it is suggested that for tenancy contracts the applicable rule is the monthly payment (the first day), as this temporal division has substantially become a widespread custom all over Italy. In any case, anticipated payments exceeding three months’ rent are prohibited.
As for the modalities of payment, it is worth considering that sums from 1,000 Euro on cannot be paid cash but only through bank transfer or bank check.

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

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

According to the Italian law, landlords shall take care of both ordinary and extraordinary maintenance of the dwelling, provided that damages are not determined by the tenant; the latter is responsible only for minor maintenance works (‘small repairs’), provided that they are a consequence of wear and tear and not of the age of the dwelling or of fortuitous events.
These rules are generally considered non mandatory, so it is possible that parties decide that the tenant pays ordinary and/or extraordinary expenses.

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

As for appliances, the landlord is expected to provide a dwelling which has all the requirements to receive the 'certificate of conformity to standards' (in Italian: *certificato di agibilità*), which means, among the other things, minimum height of the rooms, minimum floor area for every occupant and for certain kind of rooms, sufficient natural light, heating system, minimum facilities for the bathroom and the kitchen and so on.
A dwelling without this certificate cannot be used, even though the occupant cannot be punished. In case the dwelling lacks these requirements the tenant can discharge the contract for breach.
As for furniture, Italian law grants to the parties the right to execute tenancies for residential dwellings both with and without furniture.

- 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)?

Parties generally describe in the contract characteristics and existing defects of the dwelling, in order to avoid future claims and responsibility both for the landlord and the tenant. In case of tenancies regarding dwellings with furniture, a more detailed inventory of furnishings is usually provided and it is advisable to enclose it to the contract.

- Any other usual contractual clauses of relevance to the tenant

The other most common clauses regard:
- security deposit;
- delivery of the dwelling;
- accessibility to the dwelling for the landlord;
- responsibility for damages;
- subletting or assignment of the contract;
- termination 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.)?

Tenants, in the absence of an agreement to the contrary with the landlord, are entitled to reside in the dwelling with other people, as this is coherent with the exclusive right to use and enjoy the dwelling for residential purposes.
The Court of Cassazione (18 June 2012, n. 9931) said that a clause forbidding to 'host not temporarily people not included among the family members' shall be considered null and void because in contrast with Art. 2 of the Italian Constitution, which protects the fundamental human rights both of individuals and collective groups and the duty of solidarity. The specific case regarded a friend of the tenant, but it is evident that the

arguments used want to extend this freedom in the widest sense, notwithstanding the effective relationship between the tenant and his/her guests.

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

As for private tenancies, living in the dwelling is normally considered as a mere possibility for the tenant, though some limits to the tenant's freedom exist.
First of all, in case the tenant does not regularly occupy the dwelling without a legitimate reason, the landlord has the right not to renovate the contract after the first expiration term of four or three years (Art. 3, subs. 1, lett. f) Law n. 431/1998).
Secondly, the regular use of the property may sometimes be necessary in order to properly take care of the dwelling with diligence, as required by the law.
Finally, parties are free to agree a similar duty for the tenant.
The situation is different for public dwellings: in the regional rules, non-use of the dwelling is almost always included among the reasons for which the contract with the grantee can be discharged. The relevant term which can bring to this consequence is generally six continuing months of non-occupation, provided that the grantee has not received an authorization by the landlord to do so for particular reasons.

- Is a change of parties legal in the following cases?

  - divorce (and equivalents such as separation of non-married and same sex couples);

In case of judicial separation and divorce, the spouse to whom the judge recognizes the right to live in the family house succeeds in the contract becoming tenant. A similar right is normally granted to the parent who receive the children in custody or with whom the over-18 children live. This principle is extended to interruptions of *more uxorio* cohabitations (a continuous and permanent relationship between two people 'as if they were spouses'); it is necessary an agreement between the partners to leave the family house to one of them, who will live there with the children of the couple.
In case of consensual separation or nullity of the marriage the same change of the tenant is possible provided that the spouses reach an agreement in this sense. This principle is extended to *de facto* separations (*i.e.* a long-lasting interruption of life together between husband and wife, even though not formalized).
The presence of children of the couple has been considered a necessary element in order to apply the above mentioned rules to non-married couples. This implies that people of the same sex cannot invoke this rule. A similar interpretation, though in some occasions criticized, has been always confirmed by the Constitutional Court so far.

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

In case of apartments shared among students no special provisions can be found under this aspect. Therefore, when the contract is executed by the landlord and a plurality of students, if one of the latter withdraws from the contract, the other students cannot choose a new tenant without the landlord's consent. Instead, in case the contract is executed by

one student who has the right to sublet (totally or partially) the rooms of the dwelling, there is no a change of the original parties of the contract, but simply one or more new contracts of subletting are executed.

- death of tenant;

According to the general provisions on succession law, tenancy contracts continue with the heirs of tenants. Law n. 392/1978 extends this right to the spouse and the relatives who lived together with the tenant.
This rule is confirmed also for public housing (Art. 12 D.P.R. 30 December 1972, n. 1035 states that the dwelling is given to the spouse and the children of the dead grantee).
The same principle has been extended to *more uxorio* cohabitants. In this case the presence of children of the couple is not required, so it is more likely that this rule can be applied also to homosexual partners, even though non case law in this sense can be found yet.
The succession in the contract equally regards all the mentioned people and for them, as for the landlord's heirs, it is automatic and binding.

- bankruptcy of the landlord;

The Bankruptcy Act (Art. 80 Royal Decree n. 267/1942) expressly provides that in case of landlord's bankruptcy the trustee in bankruptcy succeeds in the contract.

o 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?

As for private tenancies, the tenant has the right to sublet the property in its entirety only with the landlord's consent. On the contrary, the tenant is normally entitled to partially sublet his dwelling, provided that he informs his landlord about both the identity of the new tenant, the duration of the contract and the rooms given for subletting. 'Partial' subletting means limited only to some rooms of the dwelling.
These rules can be derogated and parties may agree to limit or extend the right to sublet the dwelling.
In case a landlord executes a sublease agreement even though there is no a principal tenancy contract, in order to avoid a direct obligation towards the landlord, this contract shall be interpreted as a normal tenancy contract, notwithstanding the formal definition given by the parties.

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

The tenancy contract has effect towards the new owner of the dwelling provided that it was executed at a certain previous date before the sale of the dwelling. In case of tenancies lasting more than nine years, it is necessary a further requirement: the transcription in the Register of Properties; in defect, the contract has effect towards the new owner only for nine years, also in this case provided that it was executed at a certain date before the sale.

A further possibility, in the absence of a suitable document attesting the beginning of the tenancy, gives relevance to the fact is that the tenant already has the possession of the dwelling before its sale: in this case the contract has effect towards the new owner for the minimum legal duration.
Finally, the new owner is in any case bound to the tenancy contract in case of a specific agreement in this sense with the previous owner.
When the tenancy contract has effect towards the new owner, the latter integrally replace the original owner both 'in rights and in obligations'. This means that also the tenant is bound to the contract and cannot decide to freely withdraw from it.

- Costs and Utility Charges

  o 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?

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

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

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

The Italian law does not regulate in a uniform way the concept of 'utilities'.
Among these it is possible to include water, gas, electricity, lift, autoclave, alarm, driveway, caretaker, waste collection, road repair and so on.
A part of these services (which are in common among a plurality of tenants or in a condominium) is defined as 'additional burdens' and is regulated by Arts 9 and 10 Law n. 392/1978, in the absence of a different agreement between the parties. The general principle is that these expenses bear on the tenant, even though towards the condominium the landlord is always the only subject responsible for the payment.
A detailed regulation of utilities expenses is provided for 'assisted tenancies' in the Intermin. Decree 30 December 2002 (Enclosure G) and in this case it is mandatory.
The so called 'indivisible services' offered by Municipalities, such as road repair, lighting, security services and so on since 2014 are paid through a single tax, called *TASI*, which bears, for a percentage between 10 and 30% decided by each Municipality, on the occupant of the dwelling and for the remaining part on the owner. Waste collection is paid through another tax, called *TARI*, which completely bears on the occupant of the dwelling.
'Utilities' in Italian law are generally distinguished from the activities for the maintenance of the dwelling or of the building in general, as these are not properly considered as services for the tenant.
As for utilities such as electricity, water, heating regarding the single dwelling, the landlord has the duty to provide all the necessary systems and the other facilities in order to receive them. After that, the supply of the services and their payment are not considered as a duty included in the tenancy contract. For this reason, when rules can be derogated, parties normally specify that the tenant has the duty to manage the supply of these utilities and to pay the corresponding expenses.

In case the landlord remains party of the contracts regarding the supply of these utilities, he will be formally responsible for their management and payment. In the absence of a specific agreement with the tenant it is also doubtful that he can demand to be refunded for these expenses. For this reason in practice such a solution is generally avoided, even though this implies that every tenant shall substitute the previous one in the contracts regarding the utilities, generally paying a fee.

- Deposits and additional guarantees

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

The law establishes that the deposit cannot exceed three months' rent. Nevertheless the prevailing opinion is that, in case of 'free market tenancies', this rule can be freely derogated. In case of 'assisted tenancies' the limit is instead mandatory in the tenant's favour, which means that it can be derogated only introducing better conditions for the latter.

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

The deposit produces legal interests which shall be given to the tenant at the end of every year. Also this rule can be derogated in case of 'free market tenancies'. The only limit is that parties shall indicate since the beginning of the contract these sums within the amount of rent due to the landlord.
In case of 'assisted tenancies', the payment of interests cannot be derogated save in case the minimum duration of the contract is within four years (without considering the two years' legal prorogation).
The tenant is entitled to receive the interest every year, even in defect of an express request. Anyway, the landlord can withhold the interest in case of breach of the contract by the tenant, if the interest can be compensated with the amount due by the tenant.
Interests on the interests (so called 'anatociscmo') may be demanded through civil proceedings only for interests which are due for more than six months.

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

Deposit is surely the most common guarantee in tenancy law, practically always provided in the contracts.
In addition, the law provides a particular kind of lien – classified as 'movable special privilege' – concerning the tenant's things which furnish the rented dwelling. The privilege regards also sub-tenants' and third people's things which can be found in the dwelling. For the latter there is an exception in case the landlord is aware that these things do not belong to the tenant. Its field of application is limited to furniture and does not concern, for example, sums of money, jewels, clothes and other similar things that can be found in the dwelling.
Also personal guarantees are quite often required, especially for students or young tenants.

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

The deposit is a form of guarantee for any kind of breach of the contract by the tenant, such as non payment of rent or utilities, damages to the dwelling and so on.
At the end of the contract, the landlord can refuse to give the sum back but he cannot automatically retain it: he shall file a civil proceeding in order to ascertain the amount and be authorized to retain it.

3. During the tenancy

3.1. Tenant's rights

- Defects and disturbances

  o 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)?

The Italian Civil Code provides for different remedies according to the type of problems affecting the dwelling. These may be a) 'vices', b) 'failures', c) 'nuisances'.
a) 'Vices' affect the original structure of the dwelling and its quality, and not simply its state of maintenance. They include, for example, damp, when this is due to original defects in the construction of the building; malfunctioning of housing systems, when they were wrongly projected or installed; lack of the certificate of conformity to standards, or of other necessary licenses for the agreed use.
All these vices are relevant in case they significantly affect the possibility to use and enjoy the property. But the tenant cannot invoke remedies in case vices were known or easily recognizable when the contract was executed.
Parties may agree to exclude the guarantee for vices, save in case the landlord fraudulently concealed the vices or when these are so relevant that make the use of the dwelling impossible. Finally, in case vices are seriously dangerous for the tenant's or his family's or his employee's health, the tenant can discharge the contract, even though he knew the vices or he had agreed to limit or exclude the landlord's responsibility.
b) 'Failures' indicate damages occurred to the dwelling because of age, fortuitousness, 'wear-and-tear'. The landlord's duty concerns both ordinary and extra-ordinary repairs, provided that they affect the agreed use of the dwelling, but not 'small repairs'.
c) 'Nuisances' include problems such as the exposition to noise, coming from a building site, or from neighbours and so on, as well as damages or occupation by third parties.
It is important the distinction between factual and legal nuisances. Legal nuisances regard a third party who claims a right over the rented thing, which affects the tenant's full enjoyment: the most usual case is that a subject claims a 'real' right over the thing, contrasting with the rights granted to the tenant. Factual nuisances, on the contrary, regard third parties' behaviors, not claiming any right over the thing but simply disturbing the tenant's detention: this can be, for example, a water damage from a neighboring property.

- 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)

In case of 'vices', the tenant may alternatively demand to discharge the contract or to reduce the rent, but he cannot demand that the landlord carries out works to eliminate the vices of the dwelling. Authors suggest that once the tenant filed a brief in order to discharge the contract, then it is not possible to ask for the reduction of the rent (i.e. the continuation of the contract) anymore.
In addition, the tenant may ask for the compensation of damages, in case the landlord does not give evidence that he was not aware, without any fault, of the vices when the dwelling was handed over.
In case of 'failures', the landlord must restore the dwelling. In case of non-performance of such obligation, the contract can be discharged, if the breach is of 'significant importance', and compensation of damages can be demanded.
In case of 'legal nuisances', the landlord shall take the necessary actions in order to guarantee his tenant's position, otherwise the latter can discharge the contract by breach and ask compensation for damages.
Finally, in case of 'factual nuisances' there is no a guarantee by the landlord, because the tenant is entitled to directly adopt the necessary actions: the tenant can invoke the injunction for the recovery, in case he is violently or covertly deprived of the possession over the thing, and he can also claim the compensation for damages.

- Repairs of the dwelling

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

The landlord's duty concerns both ordinary and extra-ordinary repairs, provided that they affect the agreed use of the dwelling. In these cases the landlord shall restore the property to its original state. We can mention among them damages to heating and other systems, pipes, external walls, windows, doors, and so on. Obviously damages due to the tenant or his family or his guests shall not be repaired by the landlord.
The landlord's duty does not include either 'small repairs': these concern damages caused by wear-and-tear, which can be repaired with a limited cost. For example, damages to water taps, handles, glasses and so on. These repairs must be done directly by the tenant, who cannot ask to be refunded.
In any case these rules can be freely derogated by the parties.

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

The replacement of the original performance with another one is possible only in case the creditor agrees, even though the offered performance has a higher value.
The tenant can carry out urgent repairs giving prompt notice to the landlord, but even in this case the former has not the right to reduce the rent but he can only ask for a refund.

- Alterations of the dwelling

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

According to the Civil code rules, ‘improvements’ and ‘additions’ to the dwelling by the tenant are allowed, even without an express consent by the owner, in derogation to its exclusive right. On the contrary, any other change of the dwelling which cannot be classified as an improvement or as an addition shall be considered illicit: in particular Court cleared that the limit is represented by works changing ‘the nature and the use’ of the rented thing.
Anyway, the rules regarding improvements and additions can be derogated and in practice contracts often limit or exclude the tenants’ right to carry out similar changes of the dwelling, at least without the owner’s consent.

- 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.)

Under these aspects no derogatory provisions can be found, so the general rules described above apply.
As for adaptations to disability, it is necessary to consider whether works are so relevant that they cannot be included among improvements or additions. On the contrary, in case of minimal alterations, such as repainting and drilling the walls, unjustified refusal by the landlord could be considered abusive.

- Uses of the dwelling

  o Are the following uses allowed or prohibited?

Preliminarily, it is worth remembering that the tenant has the duty to take care of the dwelling and use it in accordance with the terms expressly agreed in the contract or in a way which is implicit given the circumstances.

- keeping domestic animals

Parties are normally free to agree in a tenancy contract that the tenant cannot occupy the dwelling with animals. Doubts arise in case similar limitations do not correspond to an objective interest of the landlord (or of the owner), but it does not seem that Italian Courts have had the occasion to consider similar clauses as abusive.

- producing smells

In the Italian law there are no specific provisions regarding limits to smells in tenancy contracts. Therefore, limits may descend from the rule regarding ‘discharges’ (in Italian ‘immissioni’). This provision finds application to every property and regards not only smells but also noises, pollution, heat and so on. The principle is that the owner cannot avoid these discharges coming from another property, save that they exceed the normal

tolerability, having regard to the conditions of the places. This is an elastic parameter that shall be evaluated by judges in accordance with the specific circumstances of the case.

- receiving guests over night

Limits regarding the possibility for the tenant to receive guests could in theory be stipulated in the contract, but they would be probably considered as abusive if not grounded on an objective and legitimate interest of the landlord (or of the owner). This is the impression if we consider some recent decisions of the Italian Cassazione, which considered null and void a clause excluding the right for the tenant to host not temporarily a person outside the family. This clause has been considered in contrast with the duty of solidarity and with the protection of relationships among members of a family, among partners and also among simple friends. The generic prohibition to host even temporarily guests in the dwelling should be even more easily considered illegitimate in the absence of objective reasons of the party.

- fixing pamphlets outside

In case the tenancy contract does not provide anything regarding the faculty to fix pamphlets outside the dwelling, the landlord could probably not force the tenant to remove them, as this could be included among the possible uses of a residential dwelling Prohibition could anyway derive from a specific clause in the contract. As this could be interpreted as a form of limitation of the tenant's freedom of expression, it would be probably considered legitimate only if grounded on serious and objective reasons. Similar arguments are valid also in case limitations are inserted in the regulation of the condominium. Anyway Courts do not seem to have dealt with this specific problem yet. Case law regards instead the only partially similar matter of signs (e.g. regarding commercial activities) on the front of a condominium. In these cases it is stressed the importance that the signs do not alter the esthetic of the front, in accordance with the rules regarding common parts of the building.

- small-scale commercial activity

The distinction between rents for residential uses and rents for commercial (*rectius*: non-residential) uses is one of the most important in the Italian tenancy law. Therefore, it is absolutely licit and usual that the landlord limits the use of the rented dwelling to one of these, even though mixed uses are possible according to the Italian law.

3.2. Landlord's rights

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

In private tenancies rent control is nowadays limited to a special regime that parties may freely decided to adopt: the so called 'assisted tenancies'. The choice of fixed rents is compulsory only in case of 'temporary contracts' (*i.e.* contracts with a duration below the minimum legal term), allowed in order to 'satisfy particular necessities of the parties'.
The amount of rents is fixed through local agreements among the most representative landlords' and tenants' associations. These agreements generally use as parameters the location and the characteristics of the dwelling: every Municipality is divided in 'uniform areas' which have similar characteristics and similar housing market values; dwellings are

divided in classes according to parameters such as kind of dwelling, age, conditions, services, parking areas and so on. In consideration of these elements the table provides a maximum and a minimum parameter for every squared meter of the dwelling. The result of this multiplication gives the range of the applicable rent. Actually the only binding limit is the maximum because parties may freely decide to agree an even lower rent.
In case parties agree for a higher rent, the clause is null and void. Nevertheless, within six months from the moment when the dwelling is effectively returned, the tenant can claim to have the excessive rent refunded; in case the contract is still effective between the parties, the tenant may demand that the judge modify the contract in accordance with the legal limits.

- Rent and the implementation of rent increases

  o 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?

In case of 'free market tenancies', parties are normally considered free to agree about rent increase clauses in the amount and with the frequency they prefer. Nevertheless, in case the landlord opts for a particular regime of taxation of the income from rents (called 'cedolare secca') any form of rent increase is prohibited.
In case of 'assisted tenancies', on the contrary, the content of rent increase clauses shall respect the limits indicated by the Intermin. Decree 30 December 2002. According to these provisions, the contract may provide rent increase only if this is allowed by local agreements between associations of landlords and tenants and in any case it cannot exceed 75% of the ISTAT rate: this is the percentage of annual inflation calculated by the National Institute of Statistics.
With regard to 'temporary contracts', such as the contracts for University students, rent increase clauses are not allowed: as the duration of these contracts is below the ordinary legal term, the legislator excluded the necessity to update the rent during the contract.

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

According to the prevailing opinion rent increase is valid only in case it is decided by the parties since the beginning of the contract and this agreement is registered at the 'Agenzia delle Entrate'. The rationale of these rules is that the legislator's wants to avoid that, when the tenant is already occupying the dwelling, the landlord may exploit this situation in order to obtain more favorable contractual conditions. Besides, this rule wants to prevent that parties indicate a fictitious rent in the registered contract and establish the real rent in another non- registered agreement.

- Entering the premises and related issues

  o Under what conditions may the landlord enter the premises?

In general terms, the landlord is not allowed to enter the tenant's dwelling without his prior permission, and would commit a criminal offence if he would do so.
In partial derogation to this principle, there might be exceptional circumstances in which the landlord is entitled to enter the tenant's apartment, even without the tenant's permission. For example, if the landlord must repair the building and the tenant prevents him, without any legitimate reason, from entering the dwelling.

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

No case law can be found with regard to this issue, however, the landlord does probably have a right to possess one set of keys. In any case, the fact that the landlord has the keys cannot be considered as an implicit authorization to enter the premises without respecting the conditions described above.

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

In case the tenant does not regularly pay the rent or breaches the contract in other ways, the landlord has not the right to lock him out of the dwelling without a judicial order. In the absence of this, the landlord would be responsible.

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

The law provides a particular kind of lien on the tenant's things which furnish the rented dwelling. This privilege does not limit the right of the tenant to dispose of the things, but it simply gives the landlord the right to be paid first, respect to other creditors of the tenant, in case the thing is attached and sold. In addition, in case the tenant removes things from the dwelling without the landlord's consent, the latter maintains the lien over them, provided that he seizures the things within fifteen days from their removal. In partial derogation to this principle, the privilege has not effect against the third party who bought the things without being aware of the privilege.

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?

The Italian law requires that tenancy contracts for residential dwellings have a minimum duration. From the tenant's point of view, this is eight years in case of 'free market tenancies' and five years in case of 'assisted tenancies'. Shorter minimum durations are

provided in case of particular necessities of one of the parties ('temporary contracts') or for contracts executed by student in order to attend University courses in a town where they do not have residence ('student contracts'). Tenancies executed exclusively for holiday purposes do not have a minimum legal duration.

- 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)?

At the expiration of the above mentioned terms, the tenant is always free to terminate the contract with six months' notice.
In addition, the tenant has the right to terminate the contract at any time with six months' notice in case of 'serious reasons'. These events shall have the following characteristics: unpredictable, supervening to the execution of the contract, not depending on the tenant's responsibility and making the continuation of the contract particularly burdensome. They can regard both personal situations of the tenant and objective conditions of the dwelling: among them we can mention diseases, particular economic difficulties, working, studying, familiar circumstances which make the dwelling not suitable anymore, annoying behaviours by the landlord. Courts tend to require that the tenant expressly indicates the reason for the termination in the notice, so that its legitimacy can be checked.
All these rules are meant to protect the tenant, therefore they can be derogated only in his favour, for example allowing the termination at any time without specific reasons or with shorter terms of notice.
In addition, the tenant may terminate the contract in case of an important breach by the landlord. This means that the landlord did not perform correctly one of his duties.

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

The tenant has not the right to replace himself with another tenant without the landlord's consent. Nevertheless a similar offer may help to find an agreement with the landlord for an early termination.

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)?

As already said for the tenant, the Italian law requires that tenancy contracts for residential dwellings have a minimum duration. From the landlord's point of view, this is four + four years in case of 'free market tenancies' and three + two years in case of 'assisted tenancies'. After respectively eight or five years from the beginning of the contract, the landlord is free to terminate the contract giving six months' notice to the other side.

- Must the landlord resort to court?

In case the tenant spontaneously leaves the dwelling there is no need that the landlord resorts to Court. Nevertheless the law grants to possibilities: the landlord may send notice to quit at least six months before the expiration date of the contract, together with the summons to appear, so that he can immediately start a judicial procedure and obtain an order to quit the dwelling: he can then use this decision against the tenant in case the latter does not leave the dwelling when the contract expires; otherwise, the landlord can send notice to quit and summons to appear only after he has already given simple notice, just in case the tenant does not spontaneously leave the dwelling. Surely the latter option is the most usual, apart in cases the landlord is already sure that the tenant will not leave the dwelling after the expiration.

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

The tenant may contest before a Court the landlord's right to carry out the eviction giving evidence that the minimum legal term of duration was not respected.

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

'Free market tenancies' and 'assisted tenancies' can be terminated by the landlord at the first expiration date (respectively of four and three years) only for one of the reasons expressly indicated by the law: a) when the landlord wants to use the dwelling for himself or for his spouse, parents, children, relatives within the second level for a residential, commercial, craft or professional activity; b) when the landlord is a public, cultural or religious legal entity which wants to use the dwelling for its own purposes, provided that it provides the tenant with another adequate and fully available dwelling; c) when the tenant has at disposal a free and adequate dwelling in the same Municipality; d) when the building is seriously damaged and needs repairs which are prevented by the presence of the tenant; e) when the building shall be integrally repaired, or destroyed or elevated (in the latter case, the tenant shall live at the top floor and the building needs to be evacuated); f) when the tenant does not occupy continuously the dwelling without a legitimate reason, save cases of succession in the contract; g) when the landlord wants to sell the dwelling, provided that he does not own other residential dwellings, in addition to his own house; a pre-emption right is granted to the tenant in similar cases. These rules are considered unilaterally imperative, which means that they cannot be derogated in favor of the landlord.
In addition, also the landlord can discharge the contract in case of an important breach by the tenant. The most common case is delay in rent payment for more than 20 days or non-payment of 'additional burdens' corresponding to over two months' rent. In this case the landlord shall resort to Court: a summary proceeding may rapidly grant the landlord an order of eviction towards the tenant; only in case of opposition by the latter, ordinary proceedings begin.

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

In case of early termination for landlord's necessities, the tenant is entitled to contest their grounds before a Court in order to prevent eviction.
In case of termination for non-payment of rents or other sums, the tenant can avoid eviction in this way: at the first hearing the tenant can offer the payment of the sums due, plus interests and legal expenses. If these conditions are met, the proceedings cannot bring to the eviction. In case of proved difficulties of the tenant, the judge can fix a term within 90 days for the required payment. This measure can be invoked by the tenant for not more than three times in four years. But in case the breach is the consequence of economic difficulties of the tenant, which arouse after the execution of the contract and were caused by unemployment, disease or other serious difficulties, the procedure can be used until four times and the judge can fix the above indicated term to pay within 120 days.

- 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?

In case the tenant does not spontaneously leave the dwelling, not even after the judicial procedure of eviction, a further judicial procedure for the forced execution of the decision is necessary.
This procedure grants the landlord the right to demand that police intervene in order to put into effect the order to leave the dwelling.

4.3. Return of the deposit

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

When the contract expires, the landlord is obliged to give back the same amount of money (or other fungible things) received. More exactly, it has been cleared that the duty to give the deposit back arises only when the tenant effectively leaves the dwelling.

- What deductions can the landlord make from the security deposit?

The landlord, at the end of the contract, can refuse to give all or part of the sum back in case of compensation with an unpaid credit towards the tenant. Nevertheless the landlord cannot automatically retain the sum: he shall resort to Court in order to ascertain the amount due and be authorized to retain it.

- In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

In case of tenancies regarding dwellings with furniture the landlord cannot make a deduction from the deposit in case of wear and tear due to the use of the things, because this is included in the rent payment. Vice-versa, in case of damages exceeding the normal depreciation of the goods, the tenant is held responsible and the landlord can demand a corresponding amount of the deposit.

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?

  o Are there specialized courts for adjudication of tenancy disputes?

Italian law does not provide special Courts to deal with tenancy disputes, but only some particular procedures.

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

The choice about the procedure is voluntarily made by the subject who files the proceedings.
In particular, law provides some special and facultative rules to use in case of evictions, both in case of expiration of the contract and in default of regular payment. As these summary procedures can be rather rapid and effective, they are generally preferred to the ordinary procedure for tenancy law disputes.
The eviction procedures may be grounded on a) expiration of the contract or termination by the landlord, b) non regular payment of the rent.

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

Since June 2013, after the procedure of mediation has become compulsory for disputes concerning tenancy law. The duty will be in force for next four years and at mid-term a survey about its results will be carried out in order to verify the opportunity to save or change this system.
Mediation consists of an attempt to solve the controversy before a mediator; this procedure shall be necessarily attempted before resorting to Court. This does not imply that parties shall reach an agreement and not even that mediator can take a binding decision without both parties' consent.

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?

In order to get 'public' or 'social' dwellings people interested shall send an application and participate in the selection procedures regularly held by Municipalities in order to assign available dwellings. Rules are indicated by every Region and further specifications are indicated by each Municipality, but in general terms, it is necessary that the grantee has not another suitable dwelling and that the personal income or the global household income is below a certain amount. Applications can be generally made in the municipality where the person has residence or works. People entitled are Italian citizens, EU-citizens and other foreigners with a regular residence-permit; in some occasions a minimum period of

residence in the Region is required. In case of exceptional situations of housing need, dwellings can be assigned also without selection procedures.
Among the most important housing allowances there is the Social Fund for Rents. This instrument is financed by the State, the Regions and the Municipalities and is managed locally by the latter. Its aim is helping people to pay rents, taking account of two elements: the amount of the income and the incidence of the rent on it. The fund is given by each Municipality to all the people who have the said requirements and who ask for it, dividing among them the funds at disposal every year.

- Is any kind of insurance recommendable to a tenant?

Insurances for the tenant are not usual in Italy. On the contrary, they are extremely common in case of a bank loan to purchase a house.
An insurance for damages caused to the building or to third parties can be compulsory when expressly required by the rules of the condominium.

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

The Italian law provides a general service of free legal aid in case the person gives evidence that he is not able to afford legal expenses (so called 'gratuito patrocinio').
In addition to this, tenants' associations make agreements with lawyers in order to obtain more favorable prices for their associates. Legal assistance, for example regarding negotiations and execution of the contract, is often provided directly by these associations.

- To which organizations, institutions etc. may a tenant turn to have his/her rights protected?

The following trade unions of tenants offer services and are widespread through local offices in many cities all over the country:

SUNIA – Sindacato Nazionale Unitario Inquilini e Assegnatari
Via Gioberti, 54 – Roma
info@sunia.it
http://www.sunia.it/

SICET – Sindacato Inquilini Casa e Territorio
Via Crescimbeni, 25 – Roma
Tel. 064958701 / 064958736
Fax 064958646
sicet@sicet.it
http://www.sicet.it/

UNIAT – Unione Nazionale Inquilini Ambiente Territorio
Via Po, 162 – Roma
Tel. 06/97606677
Fax 06/97606868
uniatnazionale@gmail.com
http://www.uniat.it/

Unione Inquilini
Via Cavour, 101 – Roma
Tel. 06/4745711
Fax 06/4882374
segr.naz@unioneinquilini.it
http://www.unioneinquilini.it/