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

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Tenant's Rights Brochure for

JAPAN

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Tenant's Rights Brochure

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Summary of Contents

1. Introductory information

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

Generally speaking, the supply of rental housing is greater than the demand in the national rental market. In addition, the consumer tax rate will be raised in April, 2014, and therefore, construction rash of private rental housing is seen recently.

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

Although the general supply of rental housing is greater than the demand, there are difficult problems of national rental market for foreigners. Firstly, foreigners are often rejected just because they are not Japanese.[1] This is a serious discrimination issue, but currently there is no statute to combat this problem directly, since a rental contract is basically based on the principle of freedom of contract. Problems are stemming partly from cultural differences of foreign tenants. Those problems are, for example, about garbage collection (garbage should be put in the determined place, time and day in the week in a certain way according to the municipality) and noise, etc. Those actual differences and the image of troubles based on the differences as well as miscommunication refrain landlords from having foreign tenants. Secondly, a tenant has to have a guarantor or a joint surety who must be a financially reliable Japanese person. Thirdly, a tenant has to pay a huge amount of money to start renting an apartment, which is generally up to 6 months' rent. This initial cost includes Shikikin (security deposit), Reikin (thanks money), commission fee for the estate agent. In particular, frequently there is a contractual clause on 'Shikibiki,' partly non-refundable money of Shikikin. Fourthly, there is a custom of paying a renewal fee to the landlord, whenever the contract is renewed (frequently every 2 years). As to the third and the fourth problems of particular Japanese monetary custom in the private rental market, a tenant has to check the content of the contract in detail, otherwise it will become a dispute either at the termination or at the time of renewal of the contract. Fifthly, there are currently many disputes over the tenant's duty to restore the dwelling at the end of the contract. This kind of dispute involves the refund of Shikikin (deposit).

- Significance of different forms of rental tenure
  - Private renting

[1] See a newspaper article, Jenny Uech, 'Prejudice among obstacles facing non-Japanese tenants,' *Japan Time*, Nov. 18, 2008, <http://www.japantimes.co.jp/community/2008/11/18/issues/prejudice-among-obstacles-facing-non-japanese-tenants/#.UpYPluJcWAc>.

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

As mentioned above, there are several obstacles for foreigners to obtain private rental housing. Compared to those difficulties related to private rental housing, public housing has advantages for foreign tenants. First of all, there is little discrimination or prejudice in the selection procedure of public housing, although there are basic criteria which candidates have to meet, such as, residential status, age, income, family status, etc. There are several types of public housing, that is, (1) public housing owned by prefectures and municipalities, (2) the one by the Housing Supply Corporation (HSC), and (3) the one by the Urban Renaissance Agency (UR).

(1) The rent of public housing owned by prefectures and municipalities is lower than that of other public housing and it is determined depending on the yearly income. Moreover, no Reikin (thanks money), no commission fee and no renewal fee are required. However, it requires normally 3 months’ Shikikin (deposit) as well as one or two guarantors of preferably a Japanese, and if not, of a foreign resident with a permanent residence visa. The selection is done by a lottery. In addition, there is a mandatory residents’ association for each public housing which requires a fee, and cooperative attitudes for managing their community, such as, cleaning up the common area, joining activities, etc. Each prefecture or municipality has different policies on requirements, you should ask the responsible public office about the object which you are interested in.

(2) Public housing owned by HSC is for middleclass households. That is why it requires minimum income or minimum amount of saving, though the amount of rent depends on the income. In addition, there are requirements, such as, a certain visa status, a guarantor /a joint surety (but in a HSC case, using a surety company is often possible), and other requirements which are similar to the case of (1). However, there is no requirements of commission fee for the estate agent, Reikin and renewal fee. Selection is done by the first come, first serve system.

(3) UR rental housing is offered to the middle class households and it has an income requirement with minimum income. Requirements of certain kinds of visa and others are similar to the HSC housing. However, there are no requirements of Reikin, commission fee for the estate agent, renewal fee, and no guarantor. Selection is done by the first come, first serve system.

In addition to the three types of public housing, company housing can be added to an option for a foreigner. Company housing is housing owned and administered by companies, governmental and municipal offices, organizations, etc. which is rented to meet the work needs or issued as a part of salary and wages. The rent of an average company housing is low, since companies provide housing for employees as a part of their company welfare systems. The initial cost of Shikikin and Reikin is often paid by the company, if the company rents the dwelling and subleases it to an employee. However, the most serious problem is that if you lose your job, you lose your home. Moreover, the company often has power to evict employees in certain circumstances, such as transfer order to employees, although the Act on Land and Building Leases (hereinafter ALBL) applies to company housing cases in general.

- 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)

As already explained above, it is difficult for a foreigner to find a private rental dwelling, because a foreigner may not be able to speak Japanese well; there are not so many estate agents as well as landlords who can communicate with a foreigner in English; landlords have often prejudice against foreigners; there are peculiar customs in the private rental market which a foreigner does not know or cannot understand (Shikikin and Shikibiki, Reikin, a guarantor, etc.). The Japanese government recognizes such problems and tries to deal with this issue. The Ministry of Land, Infrastructure, Transport, and Tourism (hereinafter MLIT) published a guideline for landlords, estate agents, and real estate management companies to make it easy for foreigners to rent private rental housing, as well as a guidebook for the apartment search for foreigners in five different languages, English, Chinese, Korean, Spanish, and Portuguese.[2] More useful information and support are given by several prefectures, of which project is called ‘Reliable Lease Support.’ Each prefecture has information on vacant dwellings in the prefecture, estate agents who support foreigners registered in the prefecture, a guide to rental housing and rules for living in Japan, as well as other important information, such as, medical institutions which give services in

[2] <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000017.html>.

foreign languages, life in general, or issues related to disasters.[3] There are also estate agents and surety companies who support foreigners exclusively.

If you are a student, your institution (e.g. university) may help to find a dwelling. There is also an insurance for foreign students, 'Comprehensive Renters Insurance for Foreign Students Studying in Japan.'[4] A foreign student who goes to one of the universities affiliated with this insurance system pays a premium to be insured. This insurance covers the rent arrears or other damages arising from a rental contract, which were paid by either the institution or a person as a guarantor in that institution, as well as other general damages caused by a foreign student (liability insurance). The affiliated institution undertakes the application procedure and copes with accidents.[5]

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

Main problems in tenancy law are overlapping with the problems of the national rental market. Firstly, the Japanese peculiar monetary customs, such as, Shikikin, Reikin, and renewal fee are a serious problem from a perspective of a foreign tenant as well as a national tenant. The amount of each fee depends on a region and an individual landlord. Shikikin and Shikibiki are the combination seen in the western area of Japan (Kansai and the west) and Shikikin and Reikin are the combination in Kanto area. The latter of the both combinations is not refundable at the termination of the contract. Renewal fee is not refundable. Those fees are not written in tenancy law, but those customs exist and the Supreme Court found them valid.

Secondly, a number of restoration disputes have been occurring. The MLIT made a Guideline for Troubles about Restoration.[6] Although this guideline is not legally binding, many judicial decisions regarding refund of Shikikin based on this guideline. In addition, the MLIT published the standard contract which

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[3] For example, see Saitama prefecture, <http://www.pref.saitama.lg.jp/site/tabunkakyousei/sumaisupport.html>; Osaka prefecture, <http://www.pref.osaka.jp/jumachi/ansin/>.

[4] <http://www.jees.or.jp/crifs/index.htm>.

[5] English explanation of the service, see <http://www.jees.or.jp/crifs/pdf/crifs_en.pdf>.

[6] <http://www.mlit.go.jp/common/000991390.pdf>.

stipulates the range of the tenant's restoration duty. A tenant has to check the content of the contract before concluding it, whether the tenant's restoration duty follows the guideline and the standard contract.

Thirdly, there is no effective measure against discrimination in tenancy law. This issue is treated as administratively, but not legally. The MLIT launched ' the Housing Safety Net by using Private Rental Housing Business' and local governments have support systems with foreigner-friendly affiliated estate agents and landlords. However, those measures can work only with those affiliated/registered estate agents and landlords, and thus, most of them are outside of such supporting system.

Fourthly, tenancy law lacks in provisions on the minimum requirements for dwellings for a residential purpose, but the Building Standards Act stipulates them. Recently illegal renting rooms with inappropriate structure and equipment in light of safety and health, have become a serious issue. Tenants of such illegal rooms are often specific groups of people who have difficulties to find a normal rental dwelling, including foreigners, because of the high initial cost and a requirement of a guarantor. Those rooms are often registered at the public office as 'rental offices' which are less strictly regulated than the ones for a residential purpose by the Building Standards Act. Since they are actually used as housing, those illegal rental rooms violate the Building Standards Act and the Fire Service Act. Therefore, when such a room is found by the MLIT, that room may be demolished and tenants will be evacuated. In that sense, the tenants' right will not be protected. This problem is not only a problem of violation of the Building Standards Act, but also a problem of residential right of tenants in tenancy law. It may be necessary that tenancy law has standards for habitability of rental dwellings in order to deal with this issue consistently within the scope of tenancy law.

Fifthly, new types of private rental housing, such as, share house, dormitory, weekly/monthly apartment, cause problems. They often have furniture and electric appliances and do not require Shikikin, Reikin, the commission fee for the estate agent and a guarantor, though some weekly/monthly apartments may require a guarantor. That is why they attract people who are in the difficult positions in the rental market, such as young people without a stable job as well as foreigners. The contract is often fixed term rental contract without renewal protection and thus the stability of living is not guaranteed. Moreover, such a contract is not concluded through an estate agent, but through a real estate

management company (often a sublease company), and therefore, an explanation on the important things as to the object and the condition of the contract does not have to be given by an estate transaction specialist (Art. 35 of the Building Lots and Buildings Transaction Business Act). This means, termination procedure, penalty for breach of contract, responsibility of the tenant in case of a trouble, etc. are not explained in detail. In addition, the contract of weekly/monthly apartments is either a fixed-term contract of tenancy law or a hotel contract of the Hotel and Ryokan Management Act.[7] In the latter case, the protection of tenants is weaker than the former, for example, the owner can enter the room and evacuate the guest easily, if he/she does not pay the fee.

Important legal terms related to tenancy law

Japanese word in Latin character	Japanese word in Kanji	Japanese word in Hiragana	Meaning
Chintaishaku-keiyaku	賃貸借契約	ちんたいしゃくけいやく	A rental contract
Yachin	家賃	やちん	Monthly house rent.
Oya	大家	おおや	Landlord
Chintainin	賃貸人	ちんたいにん	Landlord
Nyukyosha	入居者	にゅうきょしゃ	Tenant
Chinshakunin	賃借人	ちんしゃくにん	Tenant
Fudosan	不動産	ふどうさん	Estate agent
Shikikin	敷金	しききん	Deposit to be paid to the landlord at the conclusion of contract
Reikin	礼金	れいきん	Thanks money/key money to be paid to the landlord at the conclusion of contract
Hoshonin/ Rentaihoshonin	保証人／連帯保証人	ほしょうにん／れんたいほしょ	A personal guarantor /a joint surety for

[7] Ryokan means Japanese styled hotels.

		うにん	the conclusion of a contract
Songaihokenryo	損害保険料	そんがいほけんりょう	Obligatory property insurance premiums to be paid at the conclusion of a contract, if required
Moshikomikin	申込金	もうしこみきん	Application fee to be paid to the estate agent when reserving a rental agreement
Chukaitesuryo	仲介手数料	ちゅうかいてすうりょう	Commission fee to be paid to the estate agent
Kyoekikin/Kyoekihi	共益金／共益費	きょうえききん／きょうえきひ	Maintenance and management fees for common services (such as, lighting in corridors) separate from the rent
Shuzen	修繕	しゅうぜん	Repair as the landlord’s duty (not a small one)
Koshinryo	更新料	こうしんりょう	Renewal fee
Kaiyaku-tsuchi	解約通知	かいやくつうち	Termination notice
Seitojiyu	正当事由	せいとうじゆう	Just cause which the landlord has to have in order to terminate a contract or to refuse a renewal
Keiyaku kaijo	契約解除	けいやくかいじょ	Cancellation of the contract (due to a breach of contract)
Akewatashi	明渡し	あけわたし	Handover of the dwelling
Genjokaifuku	原状回復	けんじょうかい	Restoration of the

		ふく	rental housing to its original condition at handing over the dwelling to the landlord
Tachinokiryo	立退料	たちのきりょう	Eviction fee paid by the landlord to the tenant
Shinraikankeihakai no Hori	信頼関係破壊の法理	しんらいかんけいはかいのほうり	Doctrine to determine the validity of a cancellation due to a breach of contract, by judging whether the mutual trusting relationship between the landlord and the tenant has been destroyed
Sosho	訴訟	そしょう	Lawsuit
Wakai	和解	わかい	Conciliation
Bengoshi	弁護士	べんごし	Lawyer

Official English translations of the Act on Land and Building Leases and the Civil Code (Arts. 601-622) are available.

- Act on Land and Building Leases (tentative version): <http://www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=01&dn=1&yo=%E5%80%9F%E5%9C%B0%E5%80%9F%E5%AE%B6%E6%B3%95&x=0&y=0&ia=03&ky=&page=1>
- The Civil Code: <http://www.japaneselawtranslation.go.jp/law/detail/?re=01&yo=%E6%B0%91%E6%B3%95&ft=2&ky=&page=3>

2. Looking for a place to live

2.1. Rights of Prospective Tenants

- 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?

Generally speaking, the landlord's freedom to select tenants is widely permitted under the name of freedom of contract. Rejections because of old age, children, disability, foreign nationality are still normal practices in the rental housing market. Unconventional cohabitation, such as, an unmarried couple, or especially a same-sex couple may be avoided by landlords, particularly of the older generation. Single mothers or persons with a short-term work contract may also be avoided due to their financial unstableness. However, if a person in one of such categories has a good guarantor, he/she may be selected as a tenant. In this sense, a student does not have serious problems, since he/she has normally his/her parent as a guarantor.

- 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?

There is no legally prohibited questions by landlords and estate agents. Therefore, the prospective tenant's right to lie is not recognized in the private rental market. Generally, however, a same-sex couple conceals their relationship by telling a lie, for example, as friends looking for a room sharing, since they may be rejected and avoided by estate agents at the beginning of an apartment search.

- 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)?

There is an application fee as a deposit which a prospective tenant pays in order to apply for a dwelling as well as to be treated favourably. It is often within one month's rent. If the tenant is rejected or if the tenant cancels it before concluding a rental contract, that fee should be returned. The conclusion of a rental contract means that the an estate transaction specialist explains the important things as to the object and the condition of the contract and in practice, both parties sign the contract. Therefore, it is forbidden that the estate agent

refuses to return the application fee in case of cancellation before concluding a contract (Art. 47-2 (3) of the Building Lots and Buildings Transaction Business Act; Art. 16-12 of the Building Lots and Buildings Transaction Business Act Enforcement Regulation, Ordinance of Ministry of Construction). In order to avoid a dispute in case that the estate agent does not return the application fee, a tenant should ask the estate agent for a receipt of such an application fee as a deposit (Azukarisho, 預かり証).

- 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 necessary information and points to be checked are: annual income (it should be normally more than 3 times as much as the yearly rent), workplace and the length of service, a guarantor and the relation to the guarantor (within the second degree of the blood relation is preferable), and personality of the applicant. An independent credit report is not required by the landlord.

- 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 role of the estate agent is as follows. A prospective tenant in search for a dwelling comes to the office and the estate agent offers suitable objects according to the conditions and preferences of the prospective tenant. The estate agent shows rental housing to him/her. If he/her likes the object, he/she applies for that object with an application fee which is refundable in case of cancellation or not being selected. In case of the successful conclusion of the rental contract, this application fee will be a part of the fees which should be paid for a conclusion of the contract, such as, Shikikin or Reikin. The estate agent sends this application to the landlord and obtains the result, and then tells the prospective tenant the result. If it is successful, the estate agent has an estate transaction specialist explain the important things as to the object and the condition of the contract, and the both parties concludes the contract. The estate agent receives the money of Shikikin, Reikin, insurance fee, and first one or two months' rent in order to give to the landlord. At the conclusion of a rental contract,

the estate agent can receive the fee from the landlord and the tenant, but it must be up to 1 month rent in total. It is often paid by the tenant, although there are estate agents who take only half or no fee from the tenant in the age of excessive supply of rental housing. For foreign students there are private apartments which are rented by municipalities or managed by international organizations.[8] In that case, the institution assists students and undertakes the procedure for renting an apartment.

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

As to blacklists of bad tenants, no comprehensive lists are available. Yet, in order to gather the information on potential tenants, the estate agent might use some company to collect credit information, but the blacklists made by financial/credit companies are not available for the estate agents. If the estate agent manages also rental buildings, they may have their own list of bad tenants, such as trouble-makers, claimers, and tenants with the past rent arrears. But each management agent may have its own list and those lists are normally not shared by other estate agents.

However, the systematic data collection has been realized by the association of surety companies, the Leasing Information Communicate Center since 2009. The surety companies share the information of the tenants with rent arrears and make blacklists. A member surety company of this association has a duty to obtain an agreement of an applicant on: (1) that the data on the name, the payment situation and so on will be registered in the association, (2) that the registered data will be used by member surety companies, and (3) the range of the information and the duration of the registration (for 5 years after the evacuation/the complete payment). The problem is, however, that an applicant has actually no choice but to agree with the data registration, since he/she needs a surety to apply for a rental dwelling. And once a tenant is on the black list, it is difficult for that person to rent an apartment.

[8] For example, Osaka International House Foundation, <http://www.ih-osaka.or.jp/international/post_5.html>. Osaka city, <http://www.city.osaka.lg.jp/contents/wdu020/enjoy/jp/foreign/03.html>.

On the contrary, there is no information available regarding blacklists of bad landlords. As additional information the MLIT publishes the information on estate agents, management companies and etc., to which the MLIT has given negative administrative measures in the past.[9]

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)?

For a valid conclusion of a rental contract, theoretically neither a written form nor a registration is necessary, since rental contract is a consensual contract which can be concluded without transferring an object. However, in practice, a written agreement is exchanged between the landlord and the tenant at most of the cases. In addition, it is necessary that an estate transaction specialist explains the important things as to the object and the condition of the contract before signing the contract.

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

Although no mandatory content is required for a valid contract, the MLIT published a sample of the standard contract in the internet site.[10] For foreigners there are also samples of standard contract and fixed-term rental contract in English, Chinese, Korean, Spanish and Portuguese.[11] Information in a contract is normally, address, building type, size, facilities, contract period, rent, other fees, Shikikin (deposit), the name of the landlord, the management company, the tenant and co-occupants, purpose of use, repairs, guarantor, prohibited behaviors, renewal, cancellation, restoration, and others. Due to the increasing disputes over restoration and return of Shikikin, there are detailed information on

[9] This is called 'MLIT negative information search site' <http://www.mlit.go.jp/nega-inf/>.

[10] <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000019.html>.

[11] For example, in English, <http://www.mlit.go.jp/common/000990496.pdf>.

restoration items in such contract examples.[12]

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

There are three types of rental contract in Japan: (1) rental contract unlimited in time (Kikan no sadame no nai chintaishaku; 期間の定めのない賃貸借), (2) rental contract limited in time (Kikan no sadame no aru chintaishaku; 期間の定めのある賃貸借), and (3) fixed term rental contract (Teiki tatemono chintaishaku; 定期建物賃貸借). (1) In case of rental contract unlimited in time, either party may request to terminate it at any time, if the parties do not specify the term of a rental contract, although the landlord needs a just cause to terminate the contract. (2) Rental contract limited in time is the most common type of contract and it has a renewal protection in a sense that the landlord cannot refuse to renew the contract so easily, unless the landlord has a just cause. A just cause can be judged through a comparison of needs and necessities between the landlord and the tenant. The contractual period should be longer than 1 year. If the term is shorter than 1 year, it will become automatically “unlimited in time.” Neither of the parties can terminate the contract before the expiration date, but in practice there is a contractual clause on the tenant’s reservation of the right to terminate (see below 4. Ending the tenancy). (3) Fixed term rental contract is a relatively new type of contract which was introduced in 1999. This type of contract expires definitely at the end of the term of the contract, that is, it does not have renewal protection for the tenant. Its underlying principle is freedom of contract, and therefore, it is a freedom for the parties to determine the contractual period, that is, it can be less than 1 year. While both the contract types (1) and (2) do not need to fulfil requirements to become valid, (3) fixed term rental contract needs to meet the requirements for its valid conclusion: the written contract should be notarized and there should be an additional document to explain that there is no renewal of the contract at the end of the contractual period.

- Which indications regarding the rent payment must be contained in

[12] Guideline for landlords, estate agents and management companies who deal with foreign tenants in Japanese, <http://www.mlit.go.jp/common/000990494.pdf>.

the contract?

As mentioned above, there is no requirements regarding the clauses in a rental contract. However, according to the standard rental contract published by the MLIT, indications regarding the rent are: amount of rent and common service fee, and the term of those payments, the bank account of the landlord and who takes the transaction fee for transferring money, or the address to bring the rent to, Shikikin (deposit) and its special clause on Shikibiki (how much will not be refund at the end of the contractual period), other temporal fees, utility fees, and the payment arrangement (e.g. the landlord collect the utility fees and pays to the utility companies, etc.), and if applicable, fees for some other attached facilities.

- 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?

Regarding repairs, small repairs are tenant's responsibilities based on contractual clauses and repairs with the medium and significant degree are the landlord's responsibilities. Examples of small repairs are Tatami facing, Fusuma sliding screen, exchange of paper of Shoji sliding screen, electric bulbs, fluorescent lamps. On the other hand, big repairs of the main part of the building, such as, roof, column, wall, and foundation, and repairs with a moderate degree, such as, sink, bathtub, washing basin, toilet, carpet, and change of Tatami mattress are the landlord's responsibility, regardless of a special agreement between the parties. In other words, such an agreement on the tenant's responsibility for big repairs is invalid.

    - Is the landlord or the tenant expected to provide furnishings and/or major appliances?
    - Is the tenant advised to have an inventory made so as to avoid future liability for losses and deteriorations (especially in the case of a furnished dwelling)?
    - Any other usual contractual clauses of relevance to the tenant

Furniture and major electric appliances are usually not equipped in an

apartment. Thus the tenant has to buy those things. Yet, a kitchen is mostly provided by the landlord. However, there are new types of dwellings, such as, weekly/monthly apartments, or 'share house' where furniture and appliances are equipped from the beginning. Those new types of dwellings are often based on fixed term rental contract. It is not a custom that the tenant has an inventory of furniture and appliances. It is important to check the tenant's responsibility for restoration at the conclusion of a contract in order to avoid future dispute at the end of the contract. Especially, those disputes occur in relation to Shikibiki special clause, that is, how much of the deposit will be spent for restoration. The tenant can generally check the contract clauses in accordance with the guideline made by The MLIT, 'Troubles and Guideline for Restoration' in 1998, which was revised in 2004 and 2011.[13]

- 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.)?

With regard to persons who are allowed to move into the dwelling together with the tenant, it is a common practice that the spouse, the children of the tenant and other family members who are registered in the family registration are allowed to live in the dwelling of the contract. If the dwelling is for one person, it is anyway not allowed, but if the dwelling is for two or more persons, some landlords require only notification of the additional cohabitants, and other landlords require that the two dwellers should be joint and several obligors, and each dweller has to have a guarantor. In practice, however, if the tenant write the cohabitant as his/her fiancé, this fiancé is allowed to live as a cohabitant in the dwelling.

Some other relationships like friends, students, same sex couples can live in the dwelling which is leased for 'room share.' Traditionally the landlord rarely allowed this type of cohabitation (other than family members and fiancé), but it has recently become popular. It depends on the landlord whether the all dwellers should be joint and several obligors or one person can be the tenant and the others are cohabitants, and whether one guarantor is enough or a guarantor for

[13] <http://www.mlit.go.jp/common/000991390.pdf>.

each dweller is required.

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

There is no obligation of the tenant to live in the dwelling. However, a special clause, such as, 'The landlord may cancel the contract, if the tenant is absent for a long time without giving notice on it to the landlord' is valid, although its validity will be judged by the court, whether the mutual trusting relationship between the landlord and the tenant has been destroyed. That means, if the mutual trusting relationship has been destroyed, a cancellation by the landlord is valid.

- 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;

The consequence of a change of parties is different according to what kind of relationship the dwellers have had. To make a change of parties legal, there are following categories. (1) In case of a divorce, the dweller who will continue to stay in that dwelling should change the name of the party in the contract, if the rental contractual party has been the other dweller. This change of the name cannot be done with the existing contract, but the new contract with the new party should be concluded. That is, the new financial check regarding the staying dweller should be done, a new guarantor is required, the fee for changing the party/concluding a new contract (often one month rent, but is different from case to case) can be required by the managing estate agent, and a new Shiki-kin (deposit) or additionally, Reikin (thanks money) might have to be paid, according to the landlord. There are no legal rules stipulating the amount of fees and other cost in case of change of the party at a divorce. On the other hand, if the dweller who is not the tenant moves out, the tenant may omit the

name of co-dweller, possibly with the fee for the managing company to change the name of the co-dweller, depending on how it is ruled in the contract.

There is another way to deal with this case, that is, to consider it as a sublease to the ex-wife. If this transfer of the tenancy right is not recognized as a breach of faith, the landlord cannot cancel the contract. In case of a divorce the consent of the landlord to sublease the dwelling is not necessary, since the ex-wife was supposed to be allowed to live before the tenant got a divorce.

As to the cases of non-married couples, the first mentioned procedures of making a new contract in case of the change of the tenant or change of co-dweller apply.

(2) Co-dwellers, such as students and same sex couples, often fall into the category of 'room-share,'[14] which is a recent development in the rental market. A change of parties depends on how the contract was concluded. One way is that the all the members are the parties to make a contract with the landlord. That is, to conclude a contract with a multiplicity of tenants is possible. Each of the members has a joint liability and each of them has an obligation to pay the whole rent. Guarantors can be also several to be joint guarantors, each of whom has an obligation for the whole rental contract. In this case, if one member moves out, a new contract should be concluded due to the change of the tenants.

The other way is that the tenant concludes a contract with the landlord, and the other members become co-dwellers or subtenants with a permission of the landlord. In this case, if one member who is a co-dweller moves out, there is no need to change the existing contract. And if the tenant moves out, a new contract with another person (=the new tenant) should be concluded. How to do with the rent, deposit money, at the time of moving out, etc. are determined by the internal room share rules. Replacement of the member should be reported to the landlord in both cases. Normally it is necessary to report the change of parties to the landlord.

(3) In case of death of the tenant, the left person, for example, the wife, can stay in the dwelling according to her succession, if they were married. However, the rental right is not inherited only by the heirs who lived together with

[14] 'Room Share' is a different concept from 'Share House' or 'Gest House.' The latter is owned and managed by an estate management company and each person concludes a contract with that company.

the decedent, but also by the other heirs who lived somewhere else. The rental right is once succeeded to all the heirs first, and then it will be determined who will have the status of the tenant according to the agreement (if not with an agreement, the family court's ruling) for division of inherited property. Since the change of the party due to the succession occurs legally and automatically, there is no need for the heir to obtain a permission from the landlord nor to pay the fee for the change of the party in the contract.

If the left person is not a married partner, the succession will not occur. Namely, the left co-dweller does not succeed to the right of the decedent as the tenant. If the decedent does not have heirs, however, the left co-dweller without marriage or not legally adopted children have succeed to the rights and duties of the late tenant. Although the courts protected the status of the co-dweller by referring to the law of succession in spite of the existence of heirs, the left co-dweller does not obtain the right to rent the dwelling, while the heirs succeed to that right. Therefore, the protection of the left co-dweller is not so strong and her/his status is not stable.

(4) If the landlord has gone bankruptcy, neither the landlord nor the tenant can cancel the contract. Only the landlord's trustee can either cancel the contract or claim for the tenant's payment of rent. If the landlord's trustee in bankruptcy has canceled the contract, the tenant returns the object and can claim for damages as a bankruptcy creditor. However, if the tenant has registered that rental contract, the landlord's trustee cannot cancel the contract.

- 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?

With regard to subletting, it is allowed, if the landlord approves it. If the tenant subleases the dwelling to the third party without an approval of the landlord, the landlord can cancel the contract. However, this provision has been mitigated by the legal precedent. Such a cancellation is only possible, if the mutual trusting relationship between the tenant and the landlord has been destroyed, in other words, if there is a breach of faith. There is no information on abuse of subletting.

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

premises?

If the owner of the building has changed through a sale, the judicial precedent rules that the contractual relationship between the original landlord and the tenant will be automatically transferred to the new owner and the tenant, in case (1) if the original landlord and the new owner agreed that the contractual relationship with the tenant would be transferred, irrespective of the tenant's countervailing power through the registration of the rental contract, and (2) if there is no agreement upon the transfer but the tenant has a countervailing power. According to the Supreme Court, the new owner obtained the right to lease at the time of acquisition of the property without giving a notice to the tenant that the new owner became the landlord. Regarding the issue of whether the new owner can claim for the performance of duties by the tenant (e.g. rent payment), the courts rule that the new owner should have finished the registration of the property right on the said building. However, the status of the tenant is protected by ALBL, even in the case of non-registration of the rental contract (Art. 31 of ALBL), if the handover of the dwelling to the tenant occurred before the new owner resisters his/her property right on that building.

- 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)?

The usual kinds of utilities which are equipped in the dwelling are the supplies of water, gas and electricity, although starting those utilities is up to the parties. Municipalities give a service of garbage collection without any additional

fee. There is no legal regulation for the arrangement, and therefore, how to conclude contracts with utility suppliers depends on the parties. It is rare that the landlord offers a dwelling for rent including all the utilities, while there are some cases that an additional fixed rate of water should be paid to the landlord. If utilities are not paid to the landlord, the tenant has to conclude an individual contract with each utility company. Gas is often provided by a town gas company of which price is a public utility charge, but some landlords have their independent contract with propane gas companies of which price is not determined by public bodies. In that case, the tenant cannot change the propane gas company even though he/she has a contract, since the contract is concluded for the whole building, namely, all the households in the building. The tenant needs a consent of the landlord to change the contract over the whole building. Recently, all inclusive rental dwellings emerged, such as, monthly apartments or share houses. The rent of those types of housing includes all the monthly utility costs. The tenant is not responsible for taxed levied by local municipalities for the provision of public services, such as waste collection or road repair. Condominium costs, which are called as Kyoeki kin/Kyoeki hi (共益金／共益費) in Japan, are normally charged to the tenant.

- Deposits and additional guarantees
    - What is the usual and lawful amount of a deposit?

Deposits in the Japanese rental market are very particular, which the tenant has to understand before entering a contract in order to avoid future disputes. As security deposits there are several types of them according to the region, but there is no regulation on how much deposit is lawful.

Shikikin or a security deposit is a deposit money paid by the tenant which is based on the Shikikin contract accompanying with the main rental contract. The purpose of this money is a security money for possible damages arising from the tenant's destruction of the object or rent arrear. However, there is a custom, Shikibiki (a partial non-refund), a special contractual agreement by which the landlord keeps some amount of money of the deposit or some percentage of it. The purposes of Shikibiki are various, such as, for restoration after the termination of the contract, for compensation for the vacancy until the next tenant comes.

Kenrikin (money for right) / Reikin (thanks money, key money) is a payment paid by the tenant at the conclusion of a tenancy contract. This money will not be refund at the termination of the contract. The purposes of this money are said to be: a compensation for the use-value of the object; and a compensation for the added value of right to use.

Customs of Shikikin/security deposit and Kenrikin/Reikin are vasious from one region to another. In Kanto area (the east of Japan, around Tokyo), Shikikin and Reikin are the common combination, while in the west (the areas of Kansai and the western areas after Kansai) Shikikin/security deposit and Shikibiki (partial non-refund of Shikikin) are the normal combination. While in Kanto there is no Shikibiki (partial non-refund of the security deposit) but Reikin (thanks money) will not be refund, in Kansai or in the western area of Japan there is no Reikin, but Shikibiki plays a role of Reikin, because part of Shikikin will not be returned. Although there are differences according to the area, Shikikin is often 3-4 months' rent and Reikin is 1-2 months' rent. There are examples of high Shikikin and Shikibiki, such as 6-8 months' Shikikin and the half or 60 % of it as Shikibiki, which will not be returned. The tendency is that the initial cost to rent a dwelling is higher in Kansai and the western areas of Japan, than in Kanto areas.

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

The landlord has to keep Shikikin or security deposit until the handover of the dwelling. The deposit can be used to cover the damages from destruction of the object caused by intention or negligence of the tenant or rent arrear. Although the tenant has an obligation to restore the dwelling at the handover of the dwelling, not all the repairs are the tenant's responsibilities. According to the governmental Guideline for Troubles about Restoration normal wear and tear is not included in the tenant's restoration duties and is not paid from the deposit.[15] A special contractual agreement on the tenant's responsibility to restore normal wear and tear is invalid according to the judicial precedent.

In practice, the landlord does not pay the interest arising from the deposit. It is understood that there is no duty for the landlord to pay the interest, since the

[15] <http://www.mlit.go.jp/common/000991390.pdf>.

deposit is a security to cover future claims of the landlord and there is no legal regulations on it. There is no information on whether the landlord has a special account for the deposit.

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

In addition to the peculiar customs of deposit, there is a personal guarantor system in the rental market in Japan. At the conclusion of a rental contract the seal of either a guarantor (Hoshonin; 保証人) or a joint surety (Rentai hoshonin; 連帯保証人) is required, but the requirement of a joint surety is the custom for a conclusion of a rental contract, since the landlord (=creditor) can collect the debt directly from the joint surety independently of the tenant.[16] It should be noted, however, that the word, 'guarantor' which is used in a contract or even in the governmental pamphlet of renting an apartment for foreigners, often means a joint surety whose liability is joint and primary with the tenant (=principal). On this ground, hereinafter a guarantor means a joint surety according to the custom in the rental market. Generally such a guarantor is a person with a relatively high income. In addition, it is common that a landlord requires a relative within the third degree of relationship for a guarantor, because the landlord believes that blood relationship makes the payment and performance of other obligations more certain.

This guarantor system makes it very difficult for certain groups of people to rent an apartment, because of age, alien status, specific circumstances arising from the family relationships, and so forth. However, as a recent development in rental praxis, a new system of using a surety company has appeared instead of the requirement of a guarantor who is a relative. But this system does not help those people completely, because they have to pay for such a service as long as they dwell in that apartment and often they cannot afford that cost.

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[16] On the contrary, a guarantor's liability is ancillary and the landlord (=creditor) should attempt to demand performance of the tenant (=principal) first before the landlord (=creditor) goes to the guarantor and the landlord must execute on the property of the principal, if the guarantor has proved that the tenant (=principal) has the financial resource to pay his/her obligation and that the execution would be easily performed.

If the tenant is a school or college student, the institution helps him/her with providing a guarantor (see in the introduction of this brochure). There are also number of support systems undertaken by local governments and other organizations. For instance, the Foundation for Senior Citizen's Housing becomes a guarantor to guarantee unpaid rent maximum 12 months and the recovery fee, in total for 2 years (renewal is possible) in a rental contract between a tenant and a landlord who agreed not to avoid the elderly, the handicapped, households with small children, foreigners, households who were evacuated because of dismissal from the work.[17] Some local governments have also support systems to let a surety company to become a guarantor in a rental contract between a local citizen and a landlord, based on an agreement between that local government and the surety company. In some cases the local government supports a part of the surety fee, or the local government itself becomes a guarantor for an elderly household[18].

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

The range of the obligations of a guarantor is very wide, since a guarantor guarantees all the tenant's obligations arising from the rental contract. Such obligations include unpaid rent, renewal fee, obligation to hand over the dwelling, obligation of restoration, damages due to the tenant's misusage of the dwelling, damages due to the delay of the handover of the dwelling after the valid cancellation of the contract, damages due to the tenant's or sublessee's suicide, etc. However, the range of the obligations of the guarantor will be limited in a certain situation in which a claim to the guarantor is against the principle of good faith, for example, in case of the accumulation of the debt caused by the landlord's late notice on the rent arrear.

3. During the Tenancy

[17] <http://www.koujuuzai.or.jp/html/page02_02.html>.

[18] For the former case, see Chofu city in Tokyo, <http://www.city.chofu.tokyo.jp/www/contents/1176118905485/index_p.html>; for the latter, see Kokubunji city in Tokyo, <http://www.city.kokubunji.tokyo.jp/kourei/5921/005604.html>.

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)

There are four categories of defects and disturbances which are legally relevant: (1) material defects, (2) legal defects, (3) psychological defects, and (4) environmental defects. (1) Material defects are, for example, a leak in the roof, termites, a slant floor, defect of plumbing system, flooded building, etc. (2) Legal defects are the defects which prevents free trade, such as servitude, superficies, and tenancy right, which are attached to the building, etc. (3) Psychological defects are, for example, if a suicide happened in the dwelling, which therefore lacks in normal characteristics supposed to be attached to the object. Examples are suicide and murder which occurred in the dwelling, as well as an office of Boryokudan (gangsters) which is located in the same building. (4) At last, environmental defects are such as noise, bad smell, vibrations, and troubles caused by neighbors can be recognized as defects. The standard is whether it disturbs a normal life.

(1) As for material defects, if defects existed at the time of contract conclusion, the landlord has a duty to repair, since the landlord's duty to repair (Art. 606 of CC) applies to the whole contractual period. If the defect is not known at the time of conclusion of the contract, the landlord has warranty (Arts. 566, 570, 559 of CC) and a duty of repair (Art. 606 (1) of CC) simultaneously.

When such a case is treated as a case of warranty, the term to claim for repair, for cancellation, or for damages should be within 1 year after the tenant knew the defect (Art. 566 (3) of CC). If it passes 10 years or longer since the handover of the dwelling without tenant's knowing a defect, the tenant does not

have a claim for damages according to the general provision of extinctive prescription of claim (Art. 167 (1) of CC). On the other hand, if it is considered as a case of the landlord's duty to repair, the prescription period for a claim for damages is 10 years (Art. 167 of CC).

In spite of the contradiction and uncertainty between Art. 606 and Art. 570, the tenant's claim in such cases is mostly based on non-performance of duty of repair, since Art. 606 stipulates a clear duty of the landlord; prescription period is longer than the case of warranty; and the range of damages is assumed to be greater than that of warranty, since it includes the defects both existing from the beginning and coming afterwards. However, provided that the repair is possible, the duty of repair based on either of the duties should be performed first by the landlord. And if the landlord does not perform that duty, then the tenant can claim for the reduction of rent or cancel the contract (a claim for damages is also possible). And if a repair is not possible, the tenant can have only a claim based on warranty.

(2) If the landlord has no right to lease the object (typically no property right), this may be classified as a legal defect. The renal contract is valid in this case. However, if the true owner of the object claim for return, the tenant cannot refuse this claim. The landlord has a duty to obtain property right or some other possible rights in order to let the tenant to use and take profits of the object completely (Art. 560 of CC). If the landlord does not perform this duty, the tenant can cancel the contract and claim for damages (Art. 561 of CC), and claim for the reduction of the rent (Art. 563 of CC). In addition, if the landlord has no right to lease the object and the tenant has a risk to lose a part of or the whole right to use and take profits of the object, the tenant can refuse to pay part of or whole rent according to the degree of that risk (Art. 576 of CC).

(3) In case of psychological defects, the landlord has a duty to disclose that information arising from the landlord's warranty (Art. 570 and Art. 559 of CC). If the landlord does not fulfill this duty, he/she cannot be exempted from the warranty and therefore, the tenant can cancel the contract and claim for damages. Since this is a culturally-molded particular defect (e.g. suicide which happened in the past) recognized by Japanese, you may be able to obtain such an apartment with the lower rent, if it does not matter for you as a foreigner.

(4) Environmental defects include noise or other kinds of nuisance of the neighbors. The landlord has a duty to let the tenant peacefully use and make

profits of the dwelling. Thus if the landlord does not fulfill that duty, the tenant can claim for damages.

The occupation of the house by the third parties is usually recognized not as a defect but as a breach of contract by the landlord. Therefore the tenant can claim for a damage (Art. 415 of CC) and cancel the contract (Art. 541 of CC). Who has the right to stay in the dwelling depends on when the tenant can claim for exclusion of interference, which originally stems from property right. According to the judicial precedent, the tenant has a claim for exclusion of interference, when he has a countervailing power through registration of his/her rental contract (Art. 605 of CC).

- 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 landlord has an obligation to effect repairs necessary for using and taking the profits of the leased thing (Art. 606 (1) of CC). Therefore, the landlord should pay for such repairs, and such expenses are called ‘necessary expenses’ (Hitsuyohi; 必要費) (Art. 608 (1) of CC). The landlord is supposed to be responsible for big repairs of the main part of the building, such as, roof, column, wall, and foundation, as well as intermediate repairs, such as, sink, bathtub, washing basin, toilet, carpet, and change of Tatami mattress. On the other hand, small repairs like, Tatami facing, Fusuma sliding screen, exchange of paper of Shoji sliding screen, electric bulbs, fluorescent lamps are the tenant’s responsibilities. Other than the above mentioned small repairs which the tenant is responsible for, the tenant may immediately demand the reimbursement of the money for a necessary expense which the tenant paid (Art. 608 (1) of CC).

The tenant can exercise set off and retention rights over the rent payment. If the tenant paid for the repair, he/she can refuse the rent payment according to the rule of defense for simultaneous performance (Art. 533 of CC). The major academic and judicial opinion sees that the tenant’s right to reimbursement of the repair cost and the landlord’s right to the rent payment can be offset (Art. 505~ of CC). However, if the tenant wants to avoid the

cancellation due to the tenant's non-payment, the tenant should make a manifestation of his/her intention of a setoff (Art. 506 (1) of CC) before the landlord indicates his/her intention of the cancellation.

- 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 changes made by the tenant can be treated in two ways. One is that the tenant is allowed to make improvements on the dwelling without a permission of the landlord and the tenant will be compensated at the end of the contract (Art. 608 (2) and Art. 196 (2) of CC). The expense for such improvements is called 'useful expenses' (Yuekihi; 有益費). In order for the tenant to be compensated, the improvement has to have an additional value at the time of termination of the contract. If the value has disappeared at the end of the contract and the landlord does not obtain any profit from it, the tenant has no claim for reimbursement of the costs.

Whether the tenant can claim for reimbursement based on Art. 608 (2) depends on whether the improvement/the added thing become part of the landlord's property. If an improvement or an added thing has become a part of the leased thing and therefore a property of the landlord (Art. 242 of CC) (that is, the tenant has no right and no duty to remove it), or its removal causes a damage to the leased thing, he/she has a claim for the expenses under the Art. 608 (2). However, if an improvement/attached part is physically and economically removable and independent from the leased thing, and therefore, it is a property of the tenant, the tenant should remove the things on his/her own expense and has no claim for such expenses (Arts. 616 and 598 of CC), because the tenant has a duty to return the object (Art. 597 (1) of CC) and he/she has to restore it.

The other way is that if the tenant added interior decorations and fixtures with the agreement of the landlord, the tenant may request of that the landlord

purchase said interior decorations and fixtures at the prevailing market price. It applies also to the things purchased from the landlord (Art. 33 (1) of ALBL). The landlord's agreement is valid for the present tenant who bought such a decoration from the former tenant, if the former tenant obtained the permission of the landlord. This is a formative right. That is, if the claim is made, there are the same effects as those of a sales contract. However, if the landlord and the tenant make a special agreement to exclude the application of Art. 33 of ALBL, the tenant cannot make such a claim.

Such interior decorations are, for example, shower equipment, gas equipment in the kitchen, flush toilet, lightening equipment, etc., which are property of the tenant (which is not a part of the landlord's property) and which give objective profits for the use of the building. On the contrary, the things which are independent and easily removed, and of which removal does not affect the value of the dwelling (such as furniture) are not included. In this sense, added interior decorations are interpreted as the things which can function completely by being attached to the building and decrease their value if detached, although they can be removed by the tenant. The amount the landlord should pay is the current price for the value of the decoration which functions completely by being attached to the building at the termination of the contract.

Renovation of a dwelling to accommodate the handicapped can be understood either as an improvement under Art. 608 (2) of CC or interior decoration under Art. 33 of ALBL, depending on whether the added thing has become part of the dwelling or not, that is, a part of the landlord's property or not. A toilet with washlet (a warm toilet seat with washing equipment which is common in Japan), rails, a fixed kitchen shelf are classified as the latter. The basic rule is that the tenant should return the dwelling as it was at the beginning. And in practice, the tenant should ask the landlord beforehand, whether he/she is allowed to make such a renovation of the dwelling. The both parties, however, can have a special agreement stating that the tenant will not claim for the cost of interior decoration at the termination of the contract.

Setting an elevator costs money and there is no information on it. There is also not so much legal debate on the tenant's barrier-free renovations. The ground for that might be because the handicapped are avoided by the landlord, the handicapped live in the owner occupied houses with their caretakers, or many of the economical private rental dwellings are anyway not suitable for the handicapped (without elevator, too small, etc.). On the other hand, a large scale

of public housing is suitable for the handicapped, and therefore, those people may try to find dwellings in the public housing. Additionally, there is a governmental subsidy program to enhance the use of vacant private housing for the people in need.[19] The government subsidizes renovations to accommodate the handicapped and the elderly, in return for the landlord's willingness to accept people with difficulties as tenants (the handicapped, the elderly, households with small children, etc.).

An antenna or a dish which the tenant fixed is a matter of Art. 33 of ALBL. The tenant can do it if he/she obtained the landlord's permission. The tenant can claim that the landlord should purchase that antenna at the termination of the contract, if all the conditions are met: that is, the tenant obtained the permission of the landlord before setting it, and there is no special agreement of the tenant's not claiming for the landlord's purchase at the termination of the contract.

Repainting and holes in the walls which penetrates the interior foundation board underneath of the surface are to be the tenant's responsibilities for restoration at returning the dwelling. In any case it is better to ask the landlord before repainting, drilling the walls, and the like, in order to avoid disputes at the end of the contract.

- 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

Whether the tenant can keep animal(s) depends on the contractual agreement. There are special rental dwelling in which the tenant can keep animals, but the tenant has to talk with the landlord beforehand about what kind of animals and how many of them the tenant can keep in the dwelling. As to producing smells, it may be difficult to prohibit the tenant from producing a smell,

[19] <http://www.minkan-safety-net.jp/outline.html>.

for example, of tobacco in the balcony, which does not destroy (disturb) either the dwelling or the common area. If it is about a bad smell as a neighbor's nuisance, the landlord or the managing company has to stop it for other tenants whose use and take profits of the dwelling is disturbed. There is often a contract clause on the forbidden acts of noise, bad smells, dangerous and harmful acts in light of sanitary, and thus the landlord may claim for the performance of such a duty to the disturbing tenant. Whether it is possible to receive guests or to let them stay over night depends on each agreement. There are cases that the tenant is not allowed to receive guests or let the guests stay over night, but they are mainly about the dwellings for singles, students, or the buildings of women's only.

If the purpose of use is a dwelling (not business) and the tenant wants to fix a pamphlet, which has nothing to do with the purpose of use (e.g. a pamphlet of a concert), the tenant has to obtain a permission of the landlord, since the rented area is limited to the inside of the dwelling and the outside wall is a common area which is the object of the landlord's management. On the other hand, fixing pamphlets is allowed, if the purpose of use is for a business and if the pamphlets are within the range of the business purpose.

Whether a commercial activity is allowed, depends on whether the rental object is for a business use and the landlord agreed upon it. If the purpose of use is a dwelling but the actual use is a commercial use or vice versa, or if the actual kind of business is different from the one in the original contract, it is non-performance of duty of the tenant. It can be a ground for a cancellation form the landlord without notice (Art. 541 of CC), since it has destroyed the mutual trusting relationship by itself.

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?

There is no rent control in the private rental market, although it existed in the past. The principle of freedom of contract is the basis of the private rental market now.

The landlord may raise the rent, if the building rent becomes unreasonable, as a result of increase in tax and other burden relating to the land or the building, rise of land or building prices, or fluctuations in other economic circumstances, or in comparison with the rent of similar buildings in the neighborhood in spite of special contract clauses regarding rent revisions according to Art. 32 (1) of ALBL which is a mandatory legal provision. In addition, this is a formative right, that is, revision of rent become effective without a consent of the other party, when the manifestation of intention of one party arrives at the tenant. It applies to the normal rental contracts, that is, rental contract unlimited in time and rental contract limited in time with renewal protection.

On the other hand, if it is about a fixed term rental contract (without renewal protection), the above said Art. 32 ALBL does not apply (Art. 38 (7) of ALBL), therefore special contractual clauses regarding rent revision are valid, if such clauses are written in the contract. Such a contract clause on rent revision should be the one to determine rent objectively enough to exclude the application of Art. 32 of ALBL. For example, special clauses of ‘no rent revision during the contractual period’, ‘automatic increase with a fixed rate after certain period’, ‘index-oriented increase after certain period (e.g. consumer price index)’ are valid special clauses. On the other hand, a clause stating that ‘the parties can revise the rent after consultation’ is just determining the way to change the rent and is not clear enough to exclude the application of Art. 32.

There are neither restrictions on how many times the rent may be increased nor ceiling of the maximum rent.

If the tenant refuses to accept rent increase, the landlord can file a conciliation for rent increase in the summary court (Art. 24-2, 3 of the Act for Conciliation of Civil Affairs). If they cannot reach an agreement, the case will go either to the summary court or the district court according to the amount of the claim (up to JPY 1,400,000 in the summary court, and more than that in the district court), and then the court will rule the adequate rent. The tenant can deposit the amount of rent which the tenant thinks adequate in the official depository (Art. 494 of CC~) until the valid amount of rent is given by the court, or by the conciliation, since non-payment of rent can be a justifiable cause for a cancellation by the landlord. If the amount which the tenant has paid during the dispute period is lower than the determined amount, the tenant should pay the difference with interest of 10 percent per year.

- 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?

In practice, the landlord and/or the managing company normally have/has a set of keys for each dwelling or master keys for all the dwellings in the building. However, they are not allowed to enter the premise without the consent of the tenant or without a justified reason. Such an act is a violation of Art. 130 of the Penal Code, breaking into a residence, and a tortious act from which a claim for damage arises (Art. 709 of CC).

The landlord has the duty to repair as well as the right to repair in order to preserve the leased object. Therefore, the landlord may enter the premises for the purpose of repairs. The tenant may not refuse if the landlord intends to engage in any act that is necessary for the preservation of the leased thing (Art. 606 (2) of CC). Thus, if the tenant refuses to let the landlord repair the defect in the dwelling, it is a breach of duty to accept repairs. The landlord can, therefore, cancel the contract based on the tenant’s non-performance of the duty to accept

repairs, provided that (1) the repair is necessary to preserve the building, that is, necessary for the purpose of use and making profits of the dwelling, and (2) the repair is minimum essential so that the tenant can use the dwelling according to its purpose. As a note, however, the landlord is not allowed to enter the dwelling by force without permission of the tenant, since self-enforcement is legally forbidden as a violation of the tenant's right to privacy, right to live peacefully or right to possess the dwelling.

The landlord's act to change the lock is illegal and considered as a self-enforcement which infringes the tenant's right to possession, if the purpose of such an act is to force the tenant to pay the unpaid rent or to hand over the dwelling. However, if the purpose is a disaster measure or crime prevention which the normal legal procedures for housing rental contract cannot realize, change of the lock has been allowed by the courts.

The landlord can seize the tenant's property in the rented dwelling through the proper legal procedure in case of rent arrears and other obligations arising from the lease relationship, such as, the landlord's claim for a damage of the leased thing (Art. 311 and Art. 312 of CC). Art. 313 (2) of CC rules that scope, stating that 'the statutory lien of a lessor of a building shall exist with respect to movables furnished to that building by the lessee.' In addition to the movables which were set in connection with the use of the leased dwelling (such as, Tatami mat, wooden fittings, furniture, office fixtures, etc.), the judicial precedent includes movables which the tenant brought to the dwelling for a certain period to rent that dwelling, such as, money, valuable papers or jewelry. However, if the landlord has received a security deposit (Shiki-kin), he/she can seize the tenant's property over the amount which exceeds that security deposit (Art. 316 of CC).

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?

If the contract type is contract unlimited in time, either party may request to terminate it at any time, if the parties do not specify the period of a rental contract. The notice period is 3 months for the tenant (Art. 617 (1) of CC). The tenant can inform the landlord of the termination orally, but it is common to use a content-certified mail with the certifying delivery system.

If the contract type is contract limited in time with renewal protection, there is often a contract clause on termination from the tenant, (1) the tenant can request for the termination of the contract 30 days before, (2) in spite of the former clause the tenant can terminate the contract at any time, if the tenant pays rent of 30 days after the date of such a request. The tenant can terminate the contract, if such a clause on reservation of the right to terminate is written in the contract (Art. 618 of CC). On the contrary, a contract clause which prohibits the tenant from terminating the contract is invalid (Art. 10 of the Consumer Contract Act or Art. 30 of ALBL). In addition, even if a contract clause states that the notice period is long and has to pay the rent of that period (e.g. 6 months and the tenant has to pay 6 months' rent to terminate the contract), too much burden on the tenant is not permitted by the court.

If the contract is a fixed term rental contract, the tenant has the right to terminate the contract before the agreed date of termination, only if the circumstances meet the conditions stipulated in Art. 38 (5) of ALBL. According to this provision, the object should be for a residence of less than 200 square meters (which includes a dwelling with a shop) and the tenant has an avoidable circumstances, such as a work-related transfer, the receiving of medical care, or the necessity of providing care to a relative. In this case, the building lease will be terminated when one month has passed since the day of the request to terminate.

There is no custom in Japan that the tenant looks for the next tenant, in case that the tenant has to terminate the contract before the agreed date of 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)?
    - 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?

Ordinary notice of termination is different according to the type of the contract.

In case of rental contract unlimited in time, as explained above, both parties can request to terminate the contract at any time, although the notice period for the landlord is 6 months according to a mandatory provision, Art. 27 (1) of ALBL, compared to 3 months for the tenant based on Art. 617 (1) of CC. However, the landlord has to have a 'just cause' to terminate the contract under Art. 28 of ALBL. And if the tenant continues to use the said property after the expiration date and if the landlord fails to make an objection without delay, the termination is not valid (Art. 27(2) and Art. 26 (2) of ALBL).

A just cause can be recognized by the court mainly through a comparison of the needs and necessities of both of the landlord and of the tenant according Art. 28 of ALBL. The considered elements are the landlord's need of the dwelling, the prior history in relation to the building lease, the conditions of the building's use, the current state of the building (e.g. deterioration of the building which needs a reconstruction, effective usage of the land); and an eviction fee. The landlord does not have to resort to the court, but if the tenant refuses to accept the termination, they may have to go to the court, although there are alternative dispute resolutions available and a conciliation by the court before starting trial is also a common practice. This just cause doctrine is strongly tenant-protective, and therefore, it plays a role of a sort of defense against an eviction. However, if the court has found the termination from the landlord valid, there is no defense available for the tenant against an eviction.

Secondly, if the contract type is contract limited in time with renewal protection, the protection of the tenant is very strong and it is almost impossible

for the landlord to terminate the contract. If there is no contract clause to reserve the right to terminate, the landlord (or either of them, depending on such a clause) cannot terminate the contract. If one party or the both parties reserve the right to terminate the contract during that period, the contract can be terminated 3 months after a request of termination as the case of a contract unlimited in time (Art. 618 and Art. 617 of CC).

In addition, the landlord can hardly terminate the contract by refusing a renewal. In order not to renew the contract, the landlord should give a notice of not renewing the contract (this apply to the tenant too) between one year and six months before the expiration date (Art. 26 (1) of ALBL). Otherwise, the contract will be automatically renewed with the conditions identical to those of the existing contract, but the period will be unlimited in time. Even though the landlord gives a notice of refusal of renewal, however, the contract is deemed to be renewed, if the tenant uses the said property after the expiration date and if the landlord fails to make an objection without delay (Art. 26 (2) of ALBL). Moreover, a refusal of renewal is not valid, if the landlord does not have a "just cause." A just cause can be recognized by the court mainly through a comparison of the needs and necessities of the landlord and those of the tenant. Already mentioned above, main elements to find a just cause are: necessity of the both parties, previous history of the said contract (e.g. existence of renewal fee, arrears of rent, etc.); conditions of the building; and a landlord's offer of monetary compensation or/and that of an alternative dwelling.

Thirdly, in case of fixed term rental contract, it expires at the end of the term of the contract. Under this contractual scheme the period of the contract can be less than 1 year which is different from the general rental contract. If the period is shorter than 1 year, the contract will be automatically terminated at the date of expiration. If it is 1 year or longer than 1 year, the landlord should notify the tenant between 1 year and 6 months before the expiration (notice period) that the said rental contract will be terminated by reason of the expiration of the period; otherwise, the landlord may not assert that termination against the tenant. However, if the landlord gives a notice after the notice period and it has passed 6 months after that notice, the landlord can assert that termination against the tenant. Regarding the question, whether the landlord can reserve the midterm termination right in the contract, the academic opinions are divided.

In the second and the third types of the contract, there are no defences available for the tenant after the court found the termination valid, other than the

strong tenant protection through the strict judgment of the validity of the termination.

There is another way to terminate the contract for the landlord, that is, cancellation. Cancellation is allowed in certain special cases, since a contract has a binding power. There are two grounds that the landlord can cancel the contract directly. (1) the tenant's assignment or subleasing of the object without the approval of the landlord (Art. 612 of CC), and (2) non-performance of the obligation (Art. 542 of CC), such as rent arrears and a breach of the usage obligation. The cancellation is effective only toward the future (Art. 620 of CC). However, the harsh impact of cancellation on the tenant is mitigated through the doctrine of destruction of the mutual trusting relationship. This doctrine is understood as follows: A rental contract is a continuous contract based on the mutual trusting relationship between the parties. Therefore, if a party betrays such a trusting relationship and acts in bad faith to prevent the parties to stay in a continuous rental contract relationship, the other party can cancel the contract from that point on. Against the landlord's cancellation, the tenant can claim that the contract cannot be cancelled because of non-existence of destruction of the mutual trusting relationship.

- 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?

As already mentioned, in case the tenant does not move out after the regular end of the tenancy, the landlord may not exercise the self-enforcement. The landlord should take a legal step, either a conciliation or a lawsuit. Regarding a conciliation, the landlord can file a petition for settlement with the summary court, or file for a conciliation before taking legal action. Both procedures need the consent of the other party, the tenant.

As to a lawsuit, the landlord can submit a letter of complaint regarding handover of the dwelling and (often) payment of the rent to the district court which has jurisdiction either the domicile of the tenant (where the tenant's address is) or the location of the building. Even after the lawsuit began, the court may give a settlement recommendation. If the both parties accept this settlement recommendation, the tenant hands over the dwelling voluntarily. If this settlement recommendation was accepted by both parties, but the handover has

not been done, the record of settlement is effective as a final and binding judgment. If the settlement recommendation is not accepted by the parties, the court renders the final and binding judgment, that is, enforceable title of obligation. Then the landlord demands compulsory execution of an obligation on the basis of an authenticated copy of the title of obligation attaching a certificate of execution. A court execution officer gives a notice of handover with a certain period (1 month) and if the handover does not occur by that determined date, a court execution officer evacuates the tenant by force. Even though a third party has the possession of the dwelling in the meanwhile, the court execution officer can perform compulsory execution to that third person.

If the tenant does not hand in (all) the keys of the dwelling, the landlord demands the tenant's returning all the keys and the rent for the period during the tenant has kept the keys since the tenant could have used the dwelling with the keys. The amount of rent can be at a daily rate or monthly, depending on a case. If the tenant does not give back the keys, the landlord can claim for a damage of the amount of rent arising from the tenant's non-returning keys. However, the landlord has also a duty to let a tenant use the dwelling and profit from it and therefore safety of the dwelling is included in that duty. Thus in practice the landlord change the key after the previous tenant moves out.

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?

There is no rule for when the deposit (Shikikin) should be returned to the tenant and it depends on each contract. It is often written in the contract regarding conditions of Shikikin, including by when it should be returned. However, Shikikin will be returned after the restoration has been done, since how much Shikikin is left will be known after the restoration is completed. It is normally around 1 month. As a special custom in the Japanese rental market, there may be a contract clause on 'Shikibiki,' the partial non-refund of Shikikin, especially in Kansai and the western area of Japan. This Shikibiki is used for the

restoration, but even though the amount of restoration is less than the amount of Shikibiki, the whole amount of Shikibiki will not be returned due to the 'Shikibiki' contractual clause (Shikibiki Tokuyaku; 敷引特約). If the amount of Shikibiki is too high, it will be invalid, although 3.5 times of the monthly rent Shikibiki was found valid by the Supreme Court. Recently many lawsuits due to the disputes over Shikibiki have occurred, and therefore, the government published a guideline on restoration, 'Troubles and Guideline for Restoration.'[20] According to this guideline, normal wear and tear is not included in the tenant's restoration duties and should not be paid from Shikikin, and there are items which the tenant is not responsible for, such as, 'house cleaning' or 'change the key' etc. You have to check the guideline to get the unjustified amount of Shikikin back.

Shikikin or the deposit can be used to cover rent arrears, the restoration cost which exceeds Shikibiki, and the damages from destruction of the object caused by intention or negligence of the tenant. Damages due to the ordinary use of furniture may not a be responsibility of the tenant according to the above mentioned guideline, since the rent includes furniture and other equipment too. However, furnished dwellings are not so common in Japan and therefore there is not so much information on it.

4.4. Adjudication of Disputes

- 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?

There are no specialised courts for adjudication of tenancy disputes in Japan. The summary court and the district court take cases of disputes arising from rental contracts as the first instance. The summary court undertakes conciliations and cases regarding tenant's handover of the dwelling, non-payment of rent, return of Shikikin/security deposit, rent increase and decrease. There is a system of small claim action (the amount of claim is JPY

[20] <http://www.mlit.go.jp/common/000991390.pdf>.

600,000 or less) as an accelerated form of procedure, which has only one trial and renders the decision on the same day. The district court undertakes the cases with the amount of more than JPY 1,400,000.

Alternative dispute resolutions (ADRs) are very common for rental disputes in Japan. Those procedures are less expensive, convenient (no need to choose the proper jurisdiction) and faster, but it is necessary to have the both parties' consent, to commence such a procedure. It is closed, opposite to the judicial procedure.

If a dispute is about increase or decrease of rent, the conciliation first principle applies. That is, the conciliation committee can settle the case in the summary court, if both parties have agreed to follow the committee's decision in writing (=civil conciliation). If they cannot reach an agreement, the case will go either to the summary court or the district court according to the amount of the claim and the court will deermine the adequate rent.

Regarding the cases other than the rent increase/decrease cases, the parties have a freedom to choose, either bring a case to the court or try to solve the dispute outside of the court. There are two kinds of classifications of ADRs. (A) One is the classification according to the settlement bodies: judicial, administrative, and private. (B) The other classification is according to its way and effect: mediation, conciliation, and arbitration.

(A)

(1) The court, especially summary court is involved in settlements. One is civil conciliation (民事調停) under Civil Conciliation Act. If the both parties reach an agreement and sign the record, the conciliation is deemed to be achieved and it has an effect as a final and binding judgment.

By the way, it is important to note that a judicial settlements (裁判上の和解) are different from a civil conciliation. The judicial settlement is based on the Code of Civil Procedure and has two kinds: one is the judicial settlement during a lawsuit given by the court and the other is the summary settlement which is brought to the summary court from the beginning (before starting a lawsuit) with regard to property concerned disputes. If the both parties agree, the settlement will also become effect as a final and binding judgment.

(2) Administrative ADR is done by an administrative body, such as, the National Consumer Affairs Center (NCAC). [21] The NCAC carries out conciliations or arbitrations without any initial fees (except fees for communication, transportation, etc.), but it takes only the disputes which NCAC finds important from a perspective of consumer protection.

(3) Private settlement bodies are the business bodies certified by the Minister of Justice, such as, Dispute Resolution Centers by Bar associations (under different names, such as, mediation center, ADR center, etc.), [22] consumer groups, or industry groups.

(B)

(1) The goal of mediation is to solve the problem with the settlement between the parties and mediation is suitable for dispute cases with less complicated legal and technical matters. In the mediation, no 'mediation offer' is given, compared to conciliation in which the conciliators give a 'settlement offer.' It is normally done by a single mediator and the mediation meeting is held one or two times. If the parties reach an agreement, they sign the settlement record. It has an effect of settlement under the Civil Code (Art. 695 of CC). However, this record does not have an enforcement power.[23]

If one party does not perform the obligation written in the settlement document, the other party files a case at the court and receives the decision according to the settlement record, and then he/she obtains a title of obligation which allows compulsory execution. The other way is to let the record notarized at the Notary Public Office and obtain a title of obligation. Moreover, if the

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[21] <http://www.kokusen.go.jp/adr/index.html>, for English, <http://www.kokusen.go.jp/ncac_index_e.html>.

[22] Japan Federation of Bar Associations, <http://www.nichibenren.or.jp/contact/consultation/bengoshikai_consultation/conflict.html>. According to JFBA, there are 35 Dispute Resolution Centers (of 32 Bar Associations) (April, 2013).

[23] On the other hand, a judicial settlement is a settlement which is made and authorized by the court. And it has an enforcement power according to Art. 267 of Code of Civil Procedure (Art. 267: When a settlement or a waiver or acknowledgement of a claim is stated in a record, such statement shall have the same effect as a final and binding judgment.) and Art. 22 (7) of Civil Execution Act.

mediation procedure is closed because of no expected resolution, and the party who demanded the mediation files a complaint at the court within one month after he/she received the notice, it is legally deemed that such a complaint was filed at the time of demand for a mediation (=nullification of prescription).

(2) When the case is more complicated and technical which does not fit a mediation, a conciliation is undertaken. Conciliators are normally 3 persons or less and the conciliation meeting is undertaken about 3 times.[24] Conciliators not only encourage consultation but also can recommend the parties to accept the draft of the record of settlement. The effect of the settlement is, as the case of mediation above, the settlement under the Civil Code and nullification of prescription is also applied.

(3) Arbitration is a type of ADR, of which the both parties have to follow the arbitration judgment by the arbitrators. Both parties have to agree to follow the arbitration judgment before its commencement. The arbitration judgment has an enforcement power. Therefore, the advantage of the arbitration is that the party can force the other party to perform the obligation written in the arbitration judgment. However, once the parties agreed to follow the arbitration judgment, neither party can bring a lawsuit on that dispute to the court. In addition, there is no system of appealing, neither party can file a complaint to the arbitration judgment.

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?

There are three types of public housing, **(1) rental housing owned by local government, (2) rental housing owned by the HSC**, and **(3) rental housing owned by the UR**.

(1) Public housing in the first category is constructed by local governments with subsidies from national government as well as bought and leased by local governments.

[24] <http://www.yokoben.or.jp/consult/by_content/consult14/>.

- Standard criteria
  - An applicant should be 20 years and older
  - A foreigner with a visa status with a period of more than 3 month or more than 1 year according to the local government
  - Registration in the said municipal as a foreign resident
  - An applicant has low household income and has difficulty with the present dwelling
  - An applicant should already live in the place (e.g. in the prefecture where the public housing is located) for a certain period of time
  - Prospective dwellers should be no members of the gangsters (Boryokudan, Yakuza)
  - An applicant has to have a guarantor preferably of a relative
  - An applicant has to pay a deposit of 3 months' rent at the beginning
- Cohabitation requirements
  - An applicant will live with relatives within the 3rd degree of relationship
  - Engaged couples and couples without being married are allowed; however, engaged couples should officially get married by the designated moving day, and cohabitant couples should submit the residential registration stating their cohabitation status
  - But 'intentionally unnaturally separated family, such as separate living of a couple or parents' is not allowed to apply to the public housing.
- Allocation system: By lottery
- Categorical priorities:
  - The elderly
  - The handicapped
  - Single parents
  - The ill with specific diseases
  - Victims of domestic violence and other criminal offenses
  - Family with the elderly and children
  - Family with public aid
  - Sufferers from natural disasters
  - etc.
- Procedure

Each local government which has public housing posts the information in the website and advertises vacant dwellings. An example of the procedure of the

Osaka city public housing for general households is: fill out the application→submit the application to the office→first screening with the application→receive the allocated number for the lottery, if qualified to apply (a household with more than 3 children can get two numbers, so that the probability rate becomes higher)→lottery→second screening with other official documents→conclusion of a contract; deposit and an official certificate of the seal of the guarantor should be submitted→move in.[25]

Recently public housing dwellings are open for single persons, but the requirement is often a certain categorical attribution, such as, the elderly, the handicapped, victims of domestic violence, etc. in other words, young single persons are not allowed to live there.

Subsidization for a tenant is possible in the form of rent assistance as part of the livelihood protection measures provided under the public aid system, if the said tenant meets requirements to receive the welfare benefit.

(2) Rental housing owned or managed by the HSC is for middle class households and has two basic subcategories. One is **(a) general rental housing** and the other is **(b) specified excellent housing**. Both types of housing are also not available for the 'unnaturally separated household.' There is also **(c) housing for the elderly**.

(a) General rental housing does not have rental assistance, but the amount of rent is determined depending on the income of the tenant.

- Standard criteria
  - An applicant should be 20 years old or older
  - A Japanese national or a foreign national with the visa status of permanent resident, special permanent resident or intermediate-long term residential permission of more than 3 months
  - An applicant has minimum income or minimum amount of saving
  - An applicant should have had no rent arrears in the public housing or the HSC housing in the past
  - An applicant should behave as a good neighbor

[25] <http://www.city.osaka.lg.jp/toshiseibi/cmsfiles/contents/0000161/161799/flow.pdf>.

- The purpose of renting a dwelling is for his/her own use.
- An applicant has to have a guarantor or otherwise an agreement with the designated surety company.
- An applicant and cohabitants should not be gangsters and have nothing to do with them.
- 3 months' deposit is necessary though estate agency fee, Reikin, and renewal fee are not required

■ Cohabitation requirements
- A single tenant is Okay
- House-sharing with non-family members is Okay
- Employees' housing is Okay

■ Allocation system:
- 'First-come, first-serve' system
- In case of newly built housing, by lottery
- Priorities for the elderly, family with small children, the handicapped may be considered, for example, through 7 days earlier application (e.g. Tokyo).

(b) Specified excellent housing is housing with rent subsidy. This type of housing may be owned either by the local government or a private landlord. The private rental housing may be rented and subleased by the local government, or only managed by the local government for the purpose of the HSC. The contract is concluded, therefore, between the tenant and the local government in the former case, and between the tenant and the landlord in the latter case. The amount of rent is called 'contracted rent' which is as equivalent to the rent of neighborhood market rental price. The actual rent which the tenant has to pay is determined according to the income classification which he/she belongs to, and it increases by 3.5% each year.

■ Standard criteria: Same as the HSC general rental housing above
- However, income should fall in between the minimum and maximum levels

■ Allocation system: 'First-come, first-serve' system.

(c) Housing for the elderly does not have a requirement of the minimum income and it has a rent subsidy according to the income classification.

- Standard criteria
  - General requirements for the HSC housing
  - 60 years old or older
  - An applicant should have an contact person
  - An applicant can receive care if necessary
- Procedure

The procedure may be: application→screening with the required documents and explanation on the contract→submission of the contract and other related documents, pay the deposit, rent, fee for the common area, etc.→conclusion of a contract (the issue date) and passing over the key→submission of new residential registration of all the dwellers within 20 days after the issue date.

(3) The UR rental housing is offered to the middle class households.

- Standard criteria
  - Income requirement with minimum income. The monthly income should be more than the standard monthly income, that is, at least 4 times as much as the rent or more than JPY 330,000 (if the rent is more than JPY 200,000, the income should be more than JPY 400,000), or the saving should be more than 100 times as much as the rent.
  - The elderly, the handicapped, single parent family, and students older than 18 years old can apply, even though the income is less than the standard. However, such an applicant should have an support obligator of lineal relative by blood or relative within the 3rd degree whose monthly income is more than the standard income or the saving said above. This support obligator should sign the contract to become a joint surety for the said tenant's obligation with the registered seal of the obligator and an official certificate of the seal impression and should submit an official document to prove the blood relationship, such as 'family register.'
  - An applicant should be a Japanese or a foreign national with the visa status of permanent residence, special permanent residence, and intermediate-long term residential permission (more than 3 months)
  - The purpose of renting a dwelling is for his/her own use.
  - Family should not be unnaturally separated.

- Prospective dwellers should not be gangsters and should have nothing to do with them.
- A person who has no debt due to arrear with rent to the UR in the past
- Being a good neighbor requirement
- No requirements of Reikin, estate agent's fee, renewal fee, and especially no requirement of a guarantor.
- Deposit fee of 3 months' rent is required.

- Allocation system: 'First-come, first-served' system, except newly built dwellings.
- Procedure

Check vacant dwellings in the UR's website→apply either in the internet or in the UR service offices→preliminary check of the dwelling→submission of the required documents, such as, the application, residential registration certificate (or alien registration in case of a foreigner) and income certificate of all the prospective dwellers→conclusion of a contract with the registered seal of the tenant, an official certificate of the seal impression is also required→move in.

There is no separate housing allowance in general, but there is a housing allowance for the people who lost a job or who are in danger of losing a job.[26] Other than that, rent assistance is included in the the livelihood protection measures. The requirement for a foreigner to receive the livelihood protection is to have certain kinds of visa which allow to stay in Japan longer, such as, permanent resident, spouse of a permanent resident, long-term resident, spouse of a Japanese, or refugees. However, there were cases in which the courts denied foreigners the livelihood protection and there is no official information on the requirements for foreigners.

- Is any kind of insurance recommendable to a tenant?

There are several kinds of insurances with regard to renting a dwelling. It is mostly required to buy a 'dwelling fire insurance,' which covers the damage of household goods in case of fire. However, it does not cover the room or the building. A tenant has an obligation to restore the dwelling to its original

[26] <http://www.mhlw.go.jp/bunya/koyou/safety_net/63.html>.

condition and if the tenant cannot perform that obligation, the landlord can claim for the damage. Therefore, an optional contract of tenant's compensation (tenant's liability insurance) attached to the said fire insurance is preferably required by the landlord. This insurance will cover the damage of the apartment or the building, when a fire or other kinds of damages occurs because of the tenant's negligence.

A third party liability insurance (individual liability insurance), which is also an optional contract attached to the main dwelling fire insurance, applies to the case in which, for example, the neighbor's house was burned down because of the fire arising from the tenant's intentional act or gross negligence. Such a case is the case, which the Act on the Liability of Accidental Fire[27] does not apply to, and which the tenant is responsible for.

The earthquake insurance exists in Japan. After the Great East Japan Earthquake in 2011, there was a great increase of attachment of the earthquake insurance especially in the disaster areas. However, it covers only the goods in the dwelling in case of tenancy and the premium is relatively expensive in contrast to the coverage. That is why it is not so common for a tenant to buy this insurance.

If you are a student, as already mentioned, an insurance for foreign students, 'Comprehensive Renters Insurance for Foreign Students Studying in Japan' is recommendable to solve the problem of finding a guarantor.[28] A foreign student who goes to one of the university affiliated with this insurance system can join this insurance. It covers the rent arrears or other damages arising from a rental contract which were paid by either the institution or a person in that institution as his/her guarantor, as well as other general damages caused by a foreign student (liability insurance). [29]

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

Japan has an official system of legal aid for civil cases. The Japan Legal

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[27] This Act exempts the tortfeasor's liability for the damages of the neighborhood, except it occurred because of the tortfeasor's intention or gross negligence.

[28] <http://www.jees.or.jp/crifs/index.htm>.

[29] English explanation of the service, see <http://www.jees.or.jp/crifs/pdf/crifs_en.pdf>.

Support Center (JLSC)[30] supports the people who need legal support comprehensively by using measures, such as, giving information and advice on legal issues on the phone, supporting victims of crimes, supporting lawyers under-populated areas, coordinating court-appointed contract attorneys at law, and other works.

One of the most important businesses of JLSC is legal aid. This is the system that a person who cannot afford to pay for legal services receives such services with various supports. In order to receive legal aid, (1) his/her income and assets are less than a certain level, (2) there must be a chance to resolve the dispute, such as, win the case or reach a settlement, and (3) his/her purpose should be suitable for the one of legal aid, e.g. it should not be only to fulfil the retaliatory emotions or a commercial purpose, or should not be an abuse of right. If a person meets above three requirements, he/she can receive following legal services, that is, JLSC gives a legal consultation for free, pays temporarily the fees for a lawyer or a judicial scrivener, or the judicial procedure, or fees for making legal documents. If a person receives livelihood protection, he/she receives a waiting period to return it until the dispute is resolved, and will be exempted from returning the fees which JLSC paid for him/her. There is also a simple legal aid by which a lawyer or a judicial scrivener helps a person with only writing legal documents on behalf of that person, if such assistance is enough to solve the problem. JLSC has its main office in Tokyo and 50 local offices in the cities where main district courts are located. Even though there is no office nearby, more than 10,000 lawyers and 5,000 judicial scriveners have contracts with JLSC and they give legal consultations in their law offices

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

[30] Its legal form is an independent administrative agency under Ministry of Justice. <http://www.houterasu.or.jp/index.html>. The English version is <http://www.houterasu.or.jp/en/index.html>. Before 2006 the Association of Legal Aid (established in 1952) had given the service of legal aid and in 2006 it was handed over to JLSC. <http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html>.

1. The national federation of associations of tenants of land and dwellings
(established in 1967) consisting of 120 associations
Address: 1-5-5, Shinjuku, Shinjuku-ku, Tokyo, 160-0022
Tel:03-3352-0448
Fax:03-3356-4928
http://www.zensyakuren.jp/shoukai/shoukai.html.

Information of each association:

Tokyo	Tel: 03-3982-7277, http://www.zensyakuren.jp/tosyakuren/
Chiba	Tel: 047-342-3938
Kanagawa	Tel: 045-322-2622
Hamamatsu-city, Shizuoka	Tel: 053-473-0009
Shizuoka-city, Shizuoka	Tel: 054-271-5269
Nagano	Tel: 0263-32-8849
Fukui	Tel: 0778-23-8734
Kyoto	Tel: 075-811-9364
Osaka	Tel: 06-4802-8870
Amagasaki-city, Hyogo	Tel: 06-6429-1500, http://www.h4.dion.ne.jp/~syakuya/

2. Japan Legal Support Center (Houterasu)
Tel: 0570-078374
Weekdays 9:00 – 21:00
Saturday 9:00 – 17:00
Internet site in English: http://www.houterasu.or.jp/en/index.html
Email: from the website,
https://www.houterasu.or.jp/cgi-bin/toiawase/show_entry.cgi

3. National Consumer Affairs Center of Japan
Tel: 0570-064-370
Internet site: http://www.kokusen.go.jp/map/
Internet site in English: http://www.kokusen.go.jp/ncac_index_e.html
Counseling per email is not available

There are regional consumer affairs centers.

Check the branch close to your place: http://www.kokusen.go.jp/map/

4. Local government offices

Each prefecture, city, or town has an internet site regarding housing and housing problems.

5. Japan Federation of Bar Associations

Internet site in English: http://www.nichibenren.or.jp/en/

Legal counseling for foreigners (charged consultation, but free counseling may be possible for those who have no or low income; an appointment in advance is required)
http://www.nichibenren.or.jp/en/legalinfo/counceling.html

<Locations>
[Tokyo]

Tokyo Bar Association Legal Counseling Center

Address: Yotsuya Ekimae Bldg. 2F, 1-4 Yotsuya, Shinjuku-ku, Tokyo
Tel: 03-5367-5280

- To make an appointment (in Japanese):
9:30 am - 4:30 pm, every Monday to Saturday (Except Holidays)

- Legal Counseling (in Japanese, English, Chinese):
1:00 pm - 4:00 pm, every Monday, Tuesday, Wednesday and Friday (Except Holidays)
5,250 yen for a 30 min (consumption tax included)

Mita Office, Bar Association Legal Counseling Center

Address: Honshiba Bldg. 2F, 4-3-11 Shiba, Minato-ku, Tokyo
Tel: 03-6435-3040

- To make an appointment (in Japanese, English, Chinese, Spanish)
10:00 am - 5:00 pm, every Monday to Friday (Except Holidays)

- Legal Counseling (ask about possible languages)

5:30 pm - 7:30 pm, every Monday, Wednesday and Friday
5,250 yen for a 30 min (consumption tax included)

[Kanagawa]
Yokohama Bar Association
Address: 9 Nihon-Odori, Naka-ku, Yokohama
Tel: 045-211-7700

- To make an appointment (in Japanese)
9:30 am - 5:00 pm, every Monday to Friday (Except Holidays)

- Legal Counseling (in Japanese, English, Chinese, Spanish, Korean)
1:15 pm - 4:15 pm, every Wednesday
7,500 yen for 60 min

[Saitama]
Saitama Bar Association
Address: 4-2-1 Takasago, Urawa-ku, Saitama
Tel: 048-710-5666

- To make an appointment (in Japanese)
9:00 am - 5:00 pm, every Monday to Friday (Except Holidays)

- Legal Counseling (ask about possible languages)
1:00 pm - 4:00 pm, every Friday
*For free

[Aichi]
Aichi Bar Association
Address: Dai-Tohkai Bldg. 9F, 3-22-8 Meieki, Chuo-ku, Nagoya
Tel: 052-565-6110

- To make an appointment (in Japanese)
9:30 am - 8:00 pm, every Monday to Friday (Except Holidays) / 9:30 am to 5:30 pm, every Saturday, Sunday and Holidays

- Legal Counseling (ask about possible languages)
Time and Date (ask)
5,250 yen for a 30 min (consumption tax included)

[Osaka]
Osaka Bar Association
Address: 1-12-5 Nishi-temma, Kita-ku, Osaka
Tel: 06-6364-1248

- To make an appointment (in Japanese)
9:15 am - 4:45 pm, every Monday to Friday (Except Holidays)

- Legal Counseling (ask about possible languages)
1:00 pm - 3:00 pm, every Monday to Friday (Except Holidays)
5,250 yen for a 30 min (consumption tax included)

Foreigners' Rights Advisory Center (Telephone Legal Counseling)
Tel: 06-6364-6251

- Legal Counseling (in Japanese, English, Korean, and Chinese)
0:00 pm - 5:00 pm, 2nd and 4th Fridays
*For free

[Fukuoka]
Fukuoka Bar Association
Address: Minami-tenjin Bldg. 2F, 5-14-12 Watanabe-dori, Chuo-ku, Fukuoka
Tel: 092-737-7555

- To make an appointment (in Japanese)
10:00 am - 4:00 pm, every Monday to Friday (Except Holidays)

- Legal Counseling (in Japanese, English, Chinese)
1:00 pm - 4:00 pm, 2nd and 4th Fridays
*For free