



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

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Tenant's Rights Brochure for

MALTA

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1. Introductory information

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

The majority of occupied dwellings in Malta are owner occupied (75.5%). The number of rented dwellings amount to roughly one-fifth of the total housing stock (20.%). With a current vacant stock estimated at around 32% of the total number of dwellings Malta's housing problem lies in affordability rather than availability, however, in this respect the liberalisation of the housing market seems to have been successful both in encouraging the release of new properties into the rental market as well as in bringing about a general lowering of prices. The number of households is expected to keep rising at least till 2020 due to the growing numbers of single parents, separated persons and foreign migrants.

In 2005, households that rented their dwellings paid on average €719.78 annually. The relatively low amount is owed to around to the large number of tenancies that were protected by the special laws (Caps. 69 and 158 of the Laws of Malta). The leases that were entered into prior to 1995 will be gradually phased out through the operation of Articles 1531B to 1531L of the Civil Code along with the means test criteria established in the Continuation of Tenancies (Means Testing Criteria) Regulations.

- Main current problems of the national rental market from the perspective of tenants
 - a) Absence of a reference index: it is difficult for tenants to assess whether they are paying a fair price for the property that they would be renting.
 - b) Lawful amount of deposit: no provision on the lawful amount of deposit/down-payment which may lead landlords to demand excessive rates in certain cases
 - c) Utility bills: if landlords do not allow tenants to register the billing account on their names tenants might be charged higher rates than the subsidised ones that they would be eligible for
 - d) Interruption of water and electricity supply: it appears customary amongst landlords to interrupt the provision of water and electricity if the tenant defaults payment – this practice is uncensored by the Court.

e) Tenants' Union: Malta does not have a tenants' union which means that tenants who cannot afford lawyer's fees remain unassisted.

- o Significance of different forms of rental tenure
 - Private renting

The private renting sector is estimated to comprise around 70% of all rented dwellings. Within this sector, however, lie hundreds of frozen and controlled rents that keep rates at well-below market levels. In 2005, 72% of all rents paid to private landlords did not exceed the annual €465.

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

Social Housing is estimated to constitute around 6% of the total dwelling stock. In 2005, the Government's share of rented dwellings stood at 28.02% of the total rented dwellings whilst that of the Church amounted to 1.98%. In Malta, rented social housing is represented solely by Government-owned dwellings (with a small number of exceptions that are owned by the Church but still administered by the State). A number of NGOs also provide temporary shelter for those who those persons who end up in homelessness. Government additionally subsidises the rents of low-income families who rent privately owned dwellings: in the last ten years the Housing Authority received 4,646 applications for this particular subsidy.

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

Foreigners may choose from a wide array of estate agencies that operate within the private rental sector. The steady number of property purchases during the past years, particularly in the up-market range, has very much opened up the sector to foreigners. Communication barriers are certainly non-existent for English speakers since Malta is a bilingual island. The recent issue regarding the differentiation in tariffs between Maltese and foreign nationals has also been cleared and passports or e-residence cards (issued by the Maltese authorities to EU foreigners) are now sufficient to ensure the subsidised "residential" rates for non-Maltese citizens.

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

Written contract: tax-evading landlords might refuse to draw up a contract in writing; the law is now clear in stipulating that a contract of lease must necessarily be penned

down – this case is particularly serious when the tenant would be eligible to apply for rent subsidies

Retention of deposit: it is a common occurrence for landlords to refuse to return the deposited amount by claiming that their property would have been damaged by the tenant; the drawing up of an inventory is highly suggested

Utility bills: in the absence of specific provisions certain landlords may fail to provide tenants with a copy of the bill

Discrimination: it is very common for landlords and estate agents to ask for the prospective tenant's nationality prior to answering any further questions; any such cases of discrimination have to be reported to the National Commission for the Promotion of Equality

Persons with disability: certain landlords might not allow persons with disability to introduce certain necessary ameliorations to their rented dwellings; however, they may do so by right as long as they would be able to restore the premises as it was prior to their arrival

- Compile a very brief section of “*Important legal terms related to tenancy law*” by quoting their original in the national language

Term in Maltese	English Translation
<i>Avviż</i>	Notice
<i>Bord li Jirregola l-Kera</i>	Rent Regulation Board
<i>Danni</i>	Damages
<i>Depożitu ta' garanzija</i>	Security deposit
<i>Fond</i>	Premises
<i>Ftehim tal-kiri</i>	Rent agreement
<i>Garanzija b'ipoteka</i>	Hypothecary security
<i>Ħall tal-kuntratt</i>	Dissolution of contract
<i>Indennizz</i>	Indemnification
<i>Inkwilin/Kerrej/Konduttur</i>	Lessee/Tenant
<i>Kera</i>	Rental
<i>Kera/Korrispettiv</i>	Rent
<i>Kreditu privileġġati fuq ħwejjeġ mobbli</i>	Privileged debts over particular movables
<i>Lokazzjoni/Kirja</i>	Lease

<i>Manutenzjoni ordinararja</i>	Ordinary maintenance
<i>Miljoramenti</i>	Improvements
<i>Obbligi</i>	Obligations
<i>Rekwiziti tal-kuntratt</i>	Contractual requirements
<i>Rexxissjoni</i>	Rescission
<i>Rizoluzzjoni</i>	Resolution
<i>Sid il-keru/Lokatur</i>	Lessor/Landlord
<i>Sub-konduttur</i>	Sublessee
<i>Sullokatur</i>	Sublessor
<i>Sullokazzjoni</i>	Sublease
<i>Tiswijiet strutturali</i>	Structural repairs
<i>Użu miftiehem</i>	Agreed use
<i>Żgumbrament</i>	Eviction

In general the market is highly accessible to foreigners since the use of the English language is widely diffused on the island. The leading journals, where for instance most of the properties are advertised, are in English. Both locals as well as foreigners are therefore as likely to encounter the term in English as much as in Maltese.

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?

The Equal Treatment of Persons Order prohibits discrimination on the part of either a private or public entity in relation to housing. The Status of Long-Term Residents (Third Country Nationals) Regulations also guarantee equal treatment to third country nationals who are granted long-term residence status in Malta in regard to “procedures for obtaining housing”. In the social sector however, certain categories are given preferential status. These are: danger or substandard condition of the premises, lack of sanitary facilities, overcrowding, social cases, homelessness, disability, elderly cases who live on their own or share accommodation, cases of refugees and excessive rent.

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

does the tenant have the right to lie?

Questions on the basis of gender and family responsibilities, race/ethnic origin, sexual orientation, age, religion or belief, and gender identity are prohibited and if this information were to be requested, tenants could report these landlords to the National Commission for the Promotion of Equality (NCPE). Nothing, however, precludes a landlord from making questions regarding the tenant's employment or from requesting a copy of his fiscal transactions, although the diffused practice in case of untrusted tenants is that of requesting a hefty advance payment.

- 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)?

Several landlords request a down payment upon the tenant's entry into the property. This usually consists of one or two months' rent although in certain cases, especially in the particular one referred above, the requested amount could be much higher. This practice is not foreseen by the Civil Code therefore, besides being unregulated there is also doubt regarding the legal nature of such deposits.

- 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 Data Protection Act prohibits any institution from giving away any personal data without the subject's consent. It follows that such details may only be provided voluntarily by the prospective tenant and the landlord is certainly not entitled to request such information from any third parties.

- 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 majority of local property owners seem to prefer to let out property directly to tenants rather than make use of the services of estate agents. Low-income tenants may similarly opt to carry out the search for their prospective dwellings on their own. There is no doubt, however, that due to their better knowledge of the market conditions they would be a very useful source for tenants. This sector is not regulated by any special legislation but estate agents are held to be brokers by Maltese law; the amount requested by them upon the conclusion of a tenancy agreement is usually equivalent to one month's rent (these costs are usually divided by the landlord and the tenant). In Malta, however, estate agents have also proven to be "gatekeepers" for certain areas and they are often led by the landlords into the perpetration of several discriminatory offences in respect of Sub-Saharan and North-African tenants.

In the absence of a union tenants have no other means of assistance on the private rental market. Properties are identified through personal contacts, news paper adverts, magazines, online classifieds or “To Let” signs.

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

No such registries are available.

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)?

Any contract of lease for a residential dwelling has to be made in writing regardless of its duration. Prior to the 1 of January 2010 only contracts in excess of two years’ duration had to be in the written form, either through a private writing or a public deed.

In the absence of a lease registry there is no obligation on any of the parties to register their contract anywhere. Although provisions for the establishment of this registry were introduced in 2010 no administration has yet proceeded with its implementation. The Civil Code also states that the Minister may eventually decide whether to make the registration of the contract necessary for the validity itself of the contract.

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

The five necessary requirements that need to be listed in the contract are: i) the property being leased, ii) the agreed use for the property, iii) the period for which that property would be let, iv) whether such lease might be extended and in what manner and finally v) the amount of rent to be paid and the manner in which such payment would have to be made.

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

No open-ended lease contracts are possible in Malta since the law states that the

contract must be for a specified time. Courts would consider any clause stating the lease to be indefinite as null.

Indefinite contracts are only permissible under the special statutes that give lifetime security of tenure the lessees. This applies only to contracts signed up till the 31 May 1995. In such cases the tenant would also have the right to transfer the lease to his spouse and to certain cases, which have however been limited severely, to his descendants or ascendants.

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

A lease contract must necessarily contain the amount of rent to be paid as well as the manner in which such payment would have to be made; by *manner* the law intends the period after which the rent would be due and whether it would be payable in advance or in arrears. Usually tenants are asked to pay in advance. Arrangements regarding utility costs do not need to feature in the agreement.

According to the law, should the tenant fail to pay the rent punctually, the landlord would be entitled to summon him by means of a judicial letter demanding him to proceed with the payment within a period of fifteen days. If the tenant persisted in his fault he would be liable to eviction.

- 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?

Under Maltese law the lessee of an urban tenement is responsible for all repairs other than the structural ones. *Structural repairs* are any works relating to the structure of the building including the ceilings. Works of routine maintenance are therefore the responsibility of the lessee including the cleansing of cisterns, sinks, cesspits and chimneys that are specifically mentioned in the law.

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

The only obligation laid down by the Code of Police Laws is that every house should be provided with a lavatory. There are no other provisions concerning kitchens, bathtubs or showers although in relation to habitability the Development Control Policy and Design Guidance 2007 establishes the minimum gross floor area of all new built and rehabilitated housing units at 45m², 76m² and 96m² for one-, two- and three-bedroom apartments respectively. Any furniture or appliances that the landlord

would have to provide would depend on the lease agreement.

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

An inventory, checked by the tenant in the presence of the landlord, would usually be attached to the rental contract and signed by both parties. The tenant would be excused for fair wear and tear of the furniture or the appliances. It is certainly advisable for tenants to press for such inventories since one of the most reported malpractices on the part of local landlords is that of alleging any excuse in order to retain any deposited amounts. Contracts might also stipulate the condition in which the tenant would be expected to leave the premises on the expiration of the lease.

- Any other usual contractual clauses of relevance to the tenant

Usual contractual clauses of relevance to the tenant are the following:

- a. clauses on any security deposit and the conditions for its return
- b. clauses on the payment of water, electricity and telephone bills
- c. clause on improvements to the dwelling
- d. clauses on the prohibition to keep domestic animals, hang clothes in the balcony
- e. clause on the right of the landlord to inspect the dwelling
- f. clause on period of notice in case tenant were to have to leave the premises due to force majeure

- Parties to the contract

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

The tenant enjoys considerable freedom in housing third parties with him as long as he would not be subletting any part of the property without the landlord's consent. Spouses, partners, children or any ascendants may therefore move in with the tenant quite freely although they would hold no direct link with the landlord. The number of persons that can live within the premises is, however, limited by the Police laws (each person requires a minimum surface of 3.75m² and a height of 2.75m).

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

If the premises would be rented for residential purposes, the failure on the part of the tenant to reside in it for a period exceeding one year would be considered to constitute a bad use. This would of course entitle the landlord to file proceedings for eviction. The only justifiable absences would be those due to work, study or reception of health care.

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

In case of separation it would be the Court to decide which of the parties would be entitled to remain in occupation of the premises, both whilst the proceedings would be taking place as well as after the separation would be declared. If the property would be used as the matrimonial home it would not make a difference whether the lease would have been contracted individually prior to the marriage or jointly by both spouses. The position in respect of civil unions, upon the imminent introduction of the Civil Unions Act, will be identical.

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

A student tenant is allowed to assign his lease to another, however, this possibility would require the prior consent of the landlord. The assignment entails the complete transfer of the sitting tenant's rights and obligations onto the replacing one. In some cases assignment might be prohibited by the rental contract, and unless it would expressly allowed the tenant would not be able to proceed with the assignment without permission. If the assignment takes place behind the landlord's back the latter would have the right to terminate the contract.

- death of tenant;

Under Maltese law the lease does not end with the death of the tenant and his heirs would therefore be entitled to remain, or continue to make use of the premises, until the contract reached its natural expiration. The tenant may also bestow the lease as a legacy on any other person, such as a cohabitant.

- bankruptcy of the landlord;

The alienation of the property does not affect the tenant's right to remain in occupation of the premises until the expiration of the stipulated term. The landlord could, however, reserve to himself the power to dissolve the lease upon the alienation of the property in the rental 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?

The tenant cannot sublet the premises unless this right were to be expressly agreed upon in the contract. Where the contract would be silent the tenant would therefore require the consent of the landlord before proceeding with subletting. Under Maltese law a sublease would create a whole new contract and the principal landlord would be totally extraneous to it; there would be no link between the original landlord and the sublessee and the former would, for instance, be unable to institute a contractual action for damages directly against the latter. If the tenant were to sublet the premises without the landlord's consent it would constitute a ground for the dissolution of the original lease.

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

The acquirer of a rented premises would step into the shoes of the previous landlord and he would not have any right to terminate the letting contract with the sitting tenant. The new owner would therefore have to respect the contract until the expiration of its term along with any conditions that would have been stipulated by his predecessor.

- 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?

Maltese law does not regulate the payment of utilities in lease agreements. Tenants are allowed to apply for a new service at Automated Revenue Management Services (ARMS) as long as they presented the lease agreement as proof of their link to the property. The relationship from then on would be strictly between ARMS and the account holder. This is the most advisable option since the tenant would be able to benefit from the discounted 'residential' rates although the movement of the registration from one premises to another is restricted to once yearly.

The respective water and electricity corporations are entitled to require the landlord to bind himself with the tenant for the regular payment of any amounts that become due if the premises were let or if they were let for a period inferior to 3 months. If any request for payment is not honoured within fourteen days of its presentation, the corporation would be able to interrupt the supply.

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

Although landlords prefer to keep the billing accounts on their name it is extremely important for tenants to be aware of the importance of either transferring the account on their name or else seek registration on it. This is the only way through which they might access the discounted residential rates and the related eco-benefits. The methods through which a tenant may apply for the residential rate are either through ARMS Form F (Registration of Change of Customer) or ARMS Form H (Change in number of persons declaration). If the tenant transfers the account onto his name, besides the administration fee of €4.66, he would also be requested to pay a guarantee deposit of €466 although if the consumer is registered as a social case this amount could be waived.

In case that the landlord would oppose himself to the transfer, the tenant could alternatively request the registration of his household directly onto the premises (by filling in Form H) without resorting to the change of customer procedure. The obvious advantage in this case is that the tenant would not be liable to leave any deposit, however, in turn he would not have direct access to the account since the registered consumer would remain the landlord. In both cases the tenant does not have a rightfully direct access to the billing company and whichever avenue he opted for would involve both the landlord's prior consent as well as his acceptance to sign the relevant forms.

A further subsidy known as the 'Energy Benefit' is available to certain low-income households in order to mitigate the effect of the increase in expenditure on water and electricity bills.

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

No such specific taxes are levied on property owners or tenants.

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

According to the Condominium Act the landlord has the right to demand from the tenant such part of any expenses relating to preservation, maintenance, repairs, or alterations to the common parts, unless it would have been otherwise agreed between them. It is further specified that the tenant may even decide to partake in the enjoyment of certain excessively onerous costs or decorative alterations to the common parts – by obviously giving his contribution – despite the landlords' refusal to participate in such expenses. Such costs would, in line with the Civil Code principles, not be reimbursable by the landlord at the end of the tenancy.

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

Having been left unregulated the amount of deposit is ruled completely by custom. Security deposits, in fact, seem to be characterised by an element of self-help on the part of landlords and these would be perfectly enforceable under Maltese law due to the wide observance of the principle of *pacta sunt servanda* (lit: agreements must be respected). Some landlords require a month or two months' worth in the form of a down payment; if there are doubts or feelings of distrust towards the tenant, the amount could even rise higher. Other landlords might instead request two separate deposits; one as a guarantee against any damage to the property or the furniture and another as a form of security towards the payment of utility bills.

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

It is still unclear under which legal form would the deposit be qualified. Although functionally similar to a pledge it does not endow the landlord with any privilege over the other creditors. If, nevertheless, an analogy were to be drawn with a Pledge, the landlord would be forbidden from deriving any advantage from the deposited sum and he would only be able to appropriate any yields or interests accruing from it for the specific purpose of deducting them from any interests that would be owed to him.

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

The request of a personal guarantor is both foreseen and allowed by Maltese law. Landlords are therefore entitled to request the tenant to be backed by a surety, or a personal guarantor, although the security would not be extended automatically if the tenant chose to renew the lease or if he prolonged his occupation beyond the agreed term (unless the surety would have expressly bound himself for the whole time until the lessee would have surrendered the thing).

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

The personal guarantor would usually cover all rent payments together with any ancillary expenses such as utility bills and, if agreed upon, condominium costs. The practice of requiring a surety seems to have largely given way to that of requesting a deposit.

3. During the Tenancy

3.1. Tenant's Rights

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

The landlord is not bound to warrant against molestations caused by the acts of third parties, unless it were an act that touched on their right to occupy the leased premises. Maltese law, in fact, makes a distinction between the so-called 'molestations of right' and 'molestations of fact'. The warranty against molestations of right stems from the landlord's obligation to ensure the peaceful possession of the premises. If, on the other hand, the molestations did not affect the rights emanating from the contract of lease, the tenant would not be able to call on the landlord in order to remove those nuisances, but he would have to act on his own behalf. Molestations of fact include exposition to noise and similar inconveniences.

Hidden defects in the property, on the other hand, have to be warranted by the landlord. This is a corollary of the landlord's obligation to deliver the thing in a proper state for the tenant's enjoyment. The defect in this case must be serious i.e. it must be such that it prevented or lessened the use of the premises and if the defect pre-existed the contract it must have been latent i.e. it must have been noticeable to the tenant prior to the moment of conclusion of the contract. The landlord must similarly warrant property against accidents and events caused by 'force majeure'.

- 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)

A variety of remedies exist for the tenant depending on the situation:

- a) Rent reduction can be afforded in the case of:
 - i) any urgent repairs lasting longer than forty days
 - ii) partial destruction of the property or partial eviction (dissolution of contract in this case would only be possible if the part of the property left could no longer serve the purpose for which it would have been rented)

- iii) discovery of latent faults and defects
- b) Recovery of damages would be possible in case of:
- i) eviction by third parties (in such cases the tenant has to give notice of the molestation to the landlord in due time, the cause for eviction has to have arisen before the stipulation of the contract and the landlord must have been aware of the matter)
 - ii) hidden defects (if the tenant could prove bad faith on part of landlord)
- c) The tenant would be able to proceed with the necessary works if:
- i) despite being called to take action through a judicial act, the landlord persisted in neglecting any structural damage
 - ii) if the nature of the damage was so urgent that it required immediate action (saving, in both cases, the right to be reimbursed by the landlord)
- d) A tenant would also be able to exercise the action for spoliation if he suffered any illicit trespass on his leased property

The period of prescription for these remedies is the usual contractual timeframe of five years from the first day on which such right could have been exercised.

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

The landlord is obliged to carry out all repairs of a structural nature; ordinary works of maintenance, on the other hand, are at the charge of the tenant. However, the tenant may still be made to shoulder responsibility for structural damages if he ever failed to: i) invigilate on the integrity and safety of the property, ii) take all necessary precautions for its conservation, iii) see to the ordinary repairs that he would have been responsible for and iv) give the landlord immediate notification regarding any repairs that would have been at his charge. The law, therefore, requires the tenant to assume an active attitude in protecting the capital interests of the landlord.

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

Under Maltese law a tenant is not entitled to refuse payment or to keep the rent on the basis of an alleged claim against the landlord. An exception is constituted by two

specific instances in which the tenant would be authorised to proceed with any necessary structural repairs (that should have been at the charge of the landlord) and consequently set off the incurred costs against the rental payments. These concern the carrying out of neglected structural repairs following the unsuccessful summoning of the landlord and the undertaking of such works which needed immediate attention due to their urgency.

- Alterations of the dwelling

The tenant may not make any alterations to the leased dwellings without the consent of the landlord, he may, however, carry out works of a temporary nature and restore the property as it was prior to his departure. In no case can the tenant claim the value of any unconsented improvements, although if these could be separated from the premises, and the landlord refused to offer compensation, he would be allowed to take them with him. If, however, the unconsented alterations caused any prejudice to the property, the tenant would be liable for damages.

The improvements which the landlord is expected to tolerate:

- a) have to be partial and of no particular importance
- b) do not have to change the express or presumed use of the dwelling
- c) do not have to prejudice property rights, particularly what concerns the solidity of the building
- d) would have to be capable of being restored at the end of the lease
- e) have to be necessary and useful for the enjoyment of the premises

If the alterations did not respect any of these criteria the landlord would be entitled to file an action for the dissolution of the contract.

- 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.)

The Equal Opportunities (Persons with Disability) Act expressly lays down that no person can prohibit a person with disability from making alterations to his property if i) the latter would have undertaken to restore, at his own expense, the accommodation back to its original condition and ii) the works did not involve the alteration of property occupied by other persons. The Condominium Act also provides that a tenant may, at his own expense, install or erect any facilities that would enable him to mitigate or eliminate problems of mobility although in no case could these works prejudice the rights of the other condomini. Therefore, under Maltese law, a landlord would be limited in refusing certain changes. In case of such improvements persons with disability could additionally benefit from grants offered by the Housing Authority.

- Affixing antennas and dishes

There does not seem to be any prohibition on the affixation of such devices although the case could be different if the leased property formed part of a condominium. The tenant would need to verify whether the wall or the roof on which the antenna or dish were going to be fixed were considered as a common part or not. In that event the other condomini would possibly have a rightful claim against him if he proceeded to install any devices without their consent. In addition, if the installation were sizable enough to detract from the character of the façade, the tenant would require the unanimous consent of all the other condomini.

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

A tenant is certainly allowed to proceed with such improvements although he would be bound to restore the premises back to their original state.

- Uses of the dwelling

The tenant is bound to make use of the property as a prudent father of the family and for the sole purpose stated in the contract. A bad or improper use of the dwelling on the part of the tenant would give the landlord a ground for the dissolution of the contract.

- Are the following uses allowed or forbidden?
 - keeping domestic animals

There is no express preclusion from keeping animals within the rented premises under Maltese law so any prohibition would have to be contained in the rental agreement. The issue could additionally be regulated by the specific set of rules of the condominium agreement.

- producing smells

In line with the Abandonment, Dumping and Disposal of Waste in Streets and Public Places or Areas Regulations the deposit of any litter receptacle or bag in any street or public place is unlawful unless it is left at a time that is reasonably approximate to the time of collection.

- receiving guests over night

The Criminal Code lists amongst its contraventions the disturbance of the repose of inhabitants due to rowdiness, bawling or any other reason. Tenants would be able to host such functions as long as they ensured the orderly behaviour of their guests.

- fixing pamphlets outside

The only prohibition against fixing pamphlets would be the one contained in the Condominium Act in the case that it detracted from the character of the façade (it would require the unanimous consent of the condomini). In addition the pamphlets should be in rule with any relevant legislation amongst which the Press Act, the Seditious Propaganda (Prohibition) Ordinance and the Advertisements (Regulation) Order.

- small commercial activity

Whether this use would be prohibited or not depends on the entity of the activity. The tenant would certainly not be precluded from carrying on minor profit-making trade, however, the same could not be said if the premises were used in the ambit of a much larger business activity. The transformation of a room into a clinic, for instance, would be in clear breach of the contract since the tenant cannot singlehandedly decide to change the use of the premises, even if just a part of it, from a residential to a commercial one.

3.2. Landlord's Rights

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

There is no rent control mechanism foreseen for contracts signed after the 1 June 1995. In such contracts, therefore, increases can either be foreseen by the rental contract or else negotiated by the parties upon renewal.

Contracts signed prior to the 1 June 1995 increase statutorily on a triennial basis according to index of inflation.

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

The only restrictions that exist concern pre-1995 contracts. In such cases increases can only take place once every three years, with the first permitted increase having taken place on the 1 January 2013.

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

Increase caps are similarly foreseen solely for contracts signed prior to 1995. The permitted increase rate is proportional to the index of inflation. This, however, does not apply in cases where a different increase method would have been contemplated in the contract.

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

The landlord can proceed to request the permitted amount at the turn of every three-year period; in case the tenant wanted to contest the increase he would be able to clarify the issue in front of the Rent Regulation Board.

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

The landlord has the right to enter the premises during any time and in any manner that would have been agreed upon in the contract. If in any case the tenant denied him access the landlord would be able to apply to the Rent Regulation Board and the matter could even be decided summarily. If the tenant persisted in his obstructive behaviour the ruling would be exercised under the supervision of a court marshal.

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

Although the law does not expressly prohibit a landlord from keeping a set of keys to the apartment, the tenant would be justified in requesting the landlord to relinquish any set of keys in line with the latter's obligation of ensuring the peaceful possession of the premises.

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

A landlord is absolutely prohibited from locking the tenant out of the premises. Maltese Courts would consider such action as arbitrary and proceed to order the reinstatement of the tenant within the premises. This would even be the case if the landlord were authorized to terminate the lease by the letting contract itself.

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

Maltese law grants the landlord a special privilege over the value of any of the tenant's movables that serve to furnish the dwelling. This privilege cannot extend itself onto objects belonging to third parties.

4. Ending the Tenancy

4.1. Termination by the Tenant

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

The only open-ended contracts that are allowed in Malta are those that were concluded prior to the 1 June 1995. In such cases the tenant would have lifelong security of tenure at rigorously controlled rents. The tenant could choose to abandon the tenancy at will although he would hardly be able to match the favourable conditions enjoyed under such protected contracts.

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

The tenant has six grounds upon which to file an action for dissolution of the contract:

- i) want of repairs (following a demand to the RRB and the latter's imposition of a time limit on the landlord for the carrying out of such repairs)
- ii) discovery of fault or defects in the property (as long as they prevented or lessened the use for which the property would have been let)
- iii) urgent repairs rendering the tenement inhabitable for any period of time
- iv) partial eviction of the property following an action brought by a third party touching a right on the thing let
- v) the happening of an express resolutive condition
- vi) the happening of a tacit resolutive condition if the landlord failed to abide by any of his obligations

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

The tenant cannot decide to terminate the contract unilaterally and in the absence of a pre-negotiated resolutive condition that entitled him to do so he would have to respect the terms of the lease until the end of the stipulated period.

The concept of suitable replacement is not contemplated under Maltese law although the proposition of a new tenant could unarguably render the landlord much more willing to accept the rescission. If a new tenant were proposed and recognised by the landlord it be not be considered an assignment of the lease, but rather a whole new letting agreement altogether.

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?

Open-ended, therefore pre-1995, contracts may only be terminated by the landlord after an application to the Rent Regulation Board. The allowed reasons for termination are:

- i) if the tenant failed to pay the rent punctually
- ii) if the tenant caused any damage to the property or failed to comply with any conditions
- iii) if the tenant used the premises for any purpose other than that stipulated in the contract
- iv) if the tenant would have sublet the property without the landlord's consent
- v) if the landlord required the premises for his own occupation or for that of any of his ascendants, descendants, brother or sister (the Board would have to be satisfied about the availability and the suitability of any alternative accommodation for the tenant and it would additionally have to assess whether the greater hardship would be caused to the landlord if permission for recovery were refused or to the tenant if it were granted)
- vi) if the tenant were recovering in a hospital or in an old people's home and such institution certified that tenant would have become permanently dependent on the institution (in such cases there must also be no qualifying beneficiary on whom the tenant would have the right to transfer the lease)

- 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?

In any contract signed after 1 June 1995 the landlord would be able to avail himself of any following grounds:

- i) change of use, improper use or non-use by the tenant (the failure to use the premises for a period of 12 months would be considered non-use unless the absence would be justifiable due to work, education or health care)
- ii) the happening of an express resolutive condition negotiated in the contract
- iii) the happening of a tacit resolutive condition if the tenant failed to respect any of his obligations
- iv) rent arrears
- v) immoral use of premises by sublessee despite consent to sublet
- vi) need of the premises for landlord's own habitation (only if expressly stipulated in the contract)
- vii) alienation of the dwelling (only if expressly stipulated in the contract)

Prior to filing an action for dissolution due to default in rent payment, the landlord would have to call upon the lessee by means of a judicial letter and only if the tenant remained in default for a further 15-day period would the landlord be entitled to proceed with the judicial steps for dissolution. This procedure must be respected very strictly.

- What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?

If the tenant remained in occupation of the premises beyond the stipulated period the tenant would be able to file an action for his eviction in front of Rent Regulation Board. In this case he could request the case to be heard summarily and decided on the first hearing; this procedure would be accorded to the landlord unless the tenant brought any satisfactory *prima facie* defence.

If despite an unfavourable decision the tenant refused to vacate the premises the landlord would be able to file an application for a warrant of eviction. Upon the issue of the warrant by the competent judge the Court Marshall would give the tenant a final period of up to 8 days and if he still failed to comply with this request the judicial officer would be empowered to proceed with the physical ejection of the tenant. The law entitles the Court Marshall both to break any outer doors as well as to require the assistance of the police.

4.3. Return of the Deposit

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

Since the law does not foresee this practice there is no rule that lays down the time-limit within which the landlord would be obliged to return the security. Normally the agreement would state that the sum would be returned upon a final inspection of the premises or upon the final settlement of any remaining costs. The malpractice on the part of landlords to claim the deposit despite no sufficiently valid reason is one of the main obstacles faced by local tenants. The onus of proving the damage that justifies the retention of the deposit rests on the landlord.

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

The deposited amount would usually cover any damage except for any deteriorations owed to ordinary wear and tear.

4.4. Adjudication of Disputes

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

All matters relating to lease of immovables lie within the competence of the Rent Regulation Board. The ordinary courts have nevertheless retained the power to decide matters relating to the contractual validity of the letting agreement although their competence would abate as soon as a valid title at law would emerge. The competence of the tribunal would therefore be determined by the declarations and pleas raised by the parties.

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

In 2010 a new procedure was introduced in order to expedite cases of eviction. The Board is now vested with the authority to decide such matters on the basis of a special summary procedure i.e. judgment could be given directly on the first hearing should the respondent fail to either appear at the sitting or prove a valid defence in his favour. The application should be accompanied by a sworn affidavit containing the relevant facts and a clear reference to the summary procedure being employed

must be made. The respondent would subsequently be ordered to appear within a period of fifteen to thirty days from the receipt of the application, at which point, the Board would either decide the matter forthwith, or else, in the case that the Board were to be satisfied with the *prima facie* defence brought by the respondent, provide him with a further twenty days to file a reply. Where leave to defend would be given, the action would be tried and determined in the ordinary course.

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

Both Mediation and Arbitration are available in Malta. Despite the possible advantages of such methods of dispute resolution, these do not seem to be considered much by local landlords and tenants. In fact, neither the Mediation Centre nor the Arbitration Centre has ever received any applications regarding tenancy law. Moreover, arbitration is only mandatory in certain specific cases contemplated in the Condominium Act.

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?

Applicants can refer directly to the Housing Authority in order to apply for social accommodation. If a person's income did not exceed €8,200 in the case of single persons, or €10,500 plus an additional €700 per child in case of married couples and single or separated persons, he could qualify for a Government unit. Government properties are assigned according to a points system and certain applicants are afforded priority due to: danger or substandard condition of the premises, lack of sanitary facilities, overcrowding, social cases, homelessness, disability, elderly cases who live on their own or share accommodation, cases of refugees and excessive rent.

Individuals who, on the other hand, do not possess assets exceeding €10,000, may apply for a subsidy on the rent of their private rented dwelling, depending on the income that they would earn. The subsidy would be revised every two years.

Any information could be found on: <http://www.housingauthority.com.mt> and the authority could be contacted directly on: customer.care@ha.gov.mt.

- Is any kind of insurance recommendable to a tenant?

There is no legal provision compelling landlords or tenants to insure the premises. It is generally safe for the tenant to inquire whether the premises would have been insured by the landlord or not. In some cases it would be the landlord himself who would pass on the costs of the insurance to the tenant whilst in some others the landlord would simply insure the building, leaving the insurance of the contents in the hands of the tenant. In the case that the building were not insured at all, the tenant would have sufficient insurable interest to cover any possible liability himself. The policies that are offered in the sector are the 'Fire and Special Perils' (FSP), which is meant to cover damage to the property in general (fire, explosion, smoke, escape of water, storm, impact by vehicle etc.), and the 'Public Liability Policy' that covers liabilities for which the insured would be legally liable to pay third parties (e.g. fire spreading to adjacent premises). A tenant might additionally opt for a policy that covered his rent payments in the case that any unforeseeable event prevented him from fulfilling his legal obligations.

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

Legal aid is foreseen by the COCP and is provided at all levels including the appellate courts. It is available both when the person benefiting from legal aid would want to proceed against a third party as well as when any claim is brought against him. Any claim could be referred directly to the Advocate for Legal Aid, whose office is found inside the law courts.

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

In the absence of tenant unions the only entities that might be able to help tenants are the Consumer's Association and the Malta Competition and Consumer Affairs Authority but only in those cases of leases contracted with professional landlords. These bodies can be contacted on: <http://www.camalta.org.mt> and www.mccaa.org.mt. In any other case the tenant would have to resort to his personal lawyer.