



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

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

---

### **Tenant's Rights Brochure for the NETHERLANDS**

Authors from Delft University of Technology:

Hafida Bounjough & Menno van Veen, TU Delft

Team Leader: Hendrik Ploeger

National Supervisor: Hendrik Ploeger

## **Brochure on The Netherlands**

### **Summary of Contents**

- 1. Introductory information**
- 2. Looking for a place to live**
  - 2.1. Rights of the prospective tenant**
  - 2.2. The rental agreement**
- 3. During the tenancy**
  - 3.1. Tenant's rights**
  - 3.2. Landlord's rights**
- 4. Ending the tenancy**
  - 4.1. Termination by the tenant**
  - 4.2. Termination by the landlord**
  - 4.3. Return of the deposit**
  - 4.4. Adjudicating a dispute**
- 5. Additional information**

## **1. Introductory information**

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

The total occupied housing stock in the Netherlands was 7.2 million dwellings in 2010. 4.3 million dwellings are owned, while the private rental sector exists of 646,000 dwellings and the social rental sector slightly increased to 2.3 million dwellings.

The rental system in the Netherlands can be characterized with a few relatively unique features.

- It is the biggest social rental sector in Europe, covering 34% of the total housing stock.
- Tenancy law, especially rent control, is not organized based on dwelling ownership (social versus private), but on dwelling rent level. Therefore, the rent levels of 92% of the rental sector – dwellings with a monthly rent up to € 631.73 between 1 July 2008 and 1 July 2009 – are regulated (Section 3.2, 3.6 and 4.1). Dwellings with a rent level higher than the € 631.73 at the start of the rental contract have a so-called deregulated or liberalized rent level.
- Rent control is concerned with rent levels at the start of the rental contract (rent setting) and with annual rent increases (rent adjustment). The rent level is dependent on the quality of a dwelling which is expressed in number of quality points.
- Officially, it social landlords have a public task, while private landlords do not. Having a public task or not is therefore irrelevant for tenancy law.
  - Main current problems of the national rental market from the perspective of tenants

At the moment there is shortage of rental dwellings in the price range € 700 – 1100. Because of this shortage many tenants do not move to larger houses, although this would make sense regarding their personal situation.

Obtaining a rental apartment at an affordable price in the cities can therefore take a very long time.

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

For tenancy law as such, the difference between social and public is irrelevant as the legal regime that applies to a dwelling depends on the qualities of the dwelling and not on the nature of the landlord. The only practical difference between private renting and housing with a public task is that Housing Corporations, which own most of the houses in the social sector, use a waiting list for the allotment of their stock.

- 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)

For foreigners that look for a rental home in the Netherlands (and who are not immigrants) it is advisable to hire an agent, as most of the stock is divided by housing corporations that use a waiting list or are rented out for a high price.

- Main problems and “traps” (circa 5) in tenancy law from the perspective of tenants
- Tenants are often unaware of the mandatory nature of most of the provisions of tenancy law; therefore they often pay too much rent or have signed for obligations that they cannot be asked to sign;
- It is very hard for tenants who are already paying a rent that is lowered because of the defects in their dwelling, to force the landlord to repair the defect;

*Important legal terms related to tenancy law (see Table 1.1)*

**Table 1.1** Important legal terms related to tenancy law

| <b>Dutch</b>                         | <b>English</b>  |
|--------------------------------------|---|
| <i>Kale huur</i>                     | Rent without extra costs  |
| <i>Koop breekt geen huur</i>         | Purchase is subject to existing lease   |
| <i>Puntensysteem</i>                 | Point system; used to determine if a dwelling falls in or outside the regulated category and to determine the price of those that fall within that category |
| <i>Geliberaliseerde huurprijs</i>    | Rent of a dwelling that falls outside the regulated category  |
| <i>Huurcommissie</i>                 | Rental committee; rules on legal disputes regarding dwellings in regulated category   |
| <i>Gebrek</i>                        | Defect  |
| <i>Huuropzegging</i>                 | Notice  |
| <i>Dringend eigen gebruik</i>        | the landlord needs the dwelling for a compelling reason   |
| <i>All-in huur</i>                   | The (illegal) practice of a rent that makes no difference between the price for the dwelling and other costs  |
| <i>Servicekosten</i>                 | Extra costs for services charged by the landlord (he is not allowed to make a profit from these costs)  |
| <i>Borgsom</i>                       | Deposit   |
| <i>Goed huurderschap</i>             | The legal requirements of behaviour from a tenant   |
| <i>Naar zijn aard van korte duur</i> | Contracts that are of short term by nature (they fall outside the scope of tenancy law)   |
| <i>Hospita</i>                       | Landlady (in case of rooming)   |

|                             |  |
|-----------------------------|--|
| <i>Campuscontract</i>       | Contract for studenthousing  |
| <i>Onderhuur</i>            | Subletting   |
| <i>Huurverhoging</i>        | Rent increase  |
| <i>Duurzame huishouding</i> | Sustainable household (it is required to become a co-tenant, to have shared a household for at least two years with the main tenant) |
| <i>Medehuurder</i>          | Co-tenant (has the same rights as the main tenant)   |
| <i>Hoofdhuurder</i>         | Main tenant  |
| <i>Urgentieverklaring</i>   | Declaration of the municipality that a person is in urgent need to get a house in the regulated sector                               |
| <i>Sleutelgeld</i>          | Keymoney (illegal practice where landlords asks a sum for the mere closing of the contract (handing over the key))                   |

## **2. Looking for a place to live**

### **2.1. Rights of the prospective tenant**

- What bases for discrimination in the selection of tenants are allowed/prohibited? What about, for example, status as a foreigner, student, unmarried partner, or person with a short-term work contract?

A prospective landlord can choose his own tenants when his dwelling falls in the liberalised price regime. However, he has to act within the limitations of the General Act of Equal Treatment that forbid him to discriminate on grounds or race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. A tenant has the right to live with his partner in a sustainable household, also when he is not married.

For the majority of houses that fall within the regulated regime, some discrimination in the selection of the tenants is allowed. Housing corporations that rent out most of the stock use a waiting list system based on a mix of years of enlistment and other factors (e.g. urgent need). Municipalities often use a housing permit system for dwellings that fall within the system, based on which they will give permits only to people that fit social and economic requirements.

In metropolitan areas, a policy can be adopted that a housing permit will not be granted to people that want access to the housing market for regulated rental dwellings that have not already lived for six years or more in the neighbourhood. In addition, the policy can determine that the housing permit will only be issued if the applicant has a means of income.

There is a shortage of student housing in most university cities. The rules above apply to students. In addition, there are housing corporations that manage the housing stock of universities and only rent out to students. They use campus contracts that are terminated by the landlord, when the tenant is no longer registered as a student.

Immigrants that have received a residence permit must quickly take part in Dutch society. To that aim, central government based on the Housing Allocation sets a task for each municipality twice a year about the number households to be housed. Municipalities will usually make use of the social rental stock to house the immigrants with a residence permit. This procedure should take no longer than sixteen weeks.

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

The landlord can ask for information that concerns the personal situation, family size, solvency etc. (see directly below). A landlord cannot refuse to rent out a dwelling because of race, sexual orientation, or other information that is related to the Equal Treatment Act. Suppose that a potential tenant does not disclose that he or she is gay, the landlord cannot rescind the contract for that reason.

However, if a tenant has not disclosed the size of his family, this could provide a reason for rescission as the specific dwelling may not be meant for that number of persons.

- Is a “reservation fee” usual and legal (i.e. money charged by the landlord to allow the prospective tenant to participate in the selection process)?

A reservation fee is unusual and may be illegal as it seems to be analogue to the illegal practice where a tenant has to pay the landlord key money to receive the key to his dwelling.

Housing corporations charge tenants to become a member of their organization and thus to participate in their selection process. This is not illegal.

### **Fees for conclusion of contract**

Fees for the conclusion of a lease contract will in most circumstances be qualified as ‘key money. By this is meant, that the tenant has to pay to receive the key to his apartment. Such agreements are void, as they are considered as unreasonable advantages for one of the parties to the agreement (landlord) that concern the creation of the contract.

Landlords can only charge tenants for costs that are also in the interest of tenants. A real estate agent cannot charge a tenant for an income check, because this check only serves the interests of the landlord. A housing corporation can only charge tenants for administration costs to the extent that tenants do actually profit from these checks.

### **Specific rules; broker costs**

Contractual agreements that include unreasonable advantages for third parties in the context of the closing of a tenancy contract are void. The protection only applies if the landlord or the agency would have received an unreasonable advantage; charging for a service delivered is not unreasonable.

As a basic rule, an unreasonable advantage exists when the tenant does not (or hardly) profit from the service for which he has to pay. For example, a housing corporation was not allowed to charge its tenants for payments for ‘administration costs’ whereas on the other hand, it could charge its tenants for the costs that it made for getting them a housing permit from the municipality.

- 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)?

*Housing corporations usually ask for:*

1. Proof of income and financial reliability

- A declaration of income or a tax-overview. This is used to check if the income of the tenant makes him entitled to the house.
- Recent specifications of income or welfare; these are used for the same reason and are proof that the tenant is capable of paying the rent because of his income and/or his entitlement to subsidy.
- Proof from his mortgagee or his previous landlord that he pays regularly.

2. Identity and address

- Passport or European identity-card.
- A recent overview from the city register (gemeentelijke basisadministratie / register of persons kept by the municipality of residence); this shows the 'housing history' of tenant, including how long he has lived in the region of the housing corporation, the size of his household and his marital status.

3. Proof of behaviour

- Proof from previous landlord that he has behaved as a good tenant

*Other checks:*

When a housing permit is required from the municipality, the tenant will usually have to show that he is economically or socially bound to the region (see above, housing permit).

A real estate agency usually acts on behalf of the landlord and is bound to a duty of care that follows from the agency contract. Therefore, their checks on the credibility of the tenant are more extensive.

When the house is in the liberalized sector or is put on the market by a real estate agency, the checks usually only regard his financial situation. The Dutch association of real estate brokers has developed a standard screening test for tenants and includes: an identity check; a credit-check; and a list of questions based on which risk-factors (such as illegal behaviour) are checked.

The credit-check is more extensive than the one that housing corporations usually undertake and includes information from all public sources, such as real estate possession, phone companies, personal financial history (bankruptcy) etc. Usually, a letter from the tenant's employer on the nature of the employment contract is also required.

Information on potential tenants can also be gathered by specialized agencies that do credit checks. However, the landlord cannot check whether a tenant has a criminal record.

In addition, landlords cannot demand that the tenant shows a document on the nature of his behaviour (Verklaring Omtrent Gedrag, VOG). The latter is a formal document (provided by the government) that provides information on whether he has or does not have a criminal record. This document can only be asked for in the context of work-relations.

- 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?

Houses that are not owned by housing corporations are rented by individual landlords or through real estate agents. The large online providers of houses that are for sale have also opened rental sections on their websites. Most real estate agents have small sections for houses that are for rent. There are some agencies that specialise in tenancy contract. For most dwellings the role of estate agents is very limited, as housing corporations own them and they fall within the regulated category. Housing corporations have their own system to get tenants that combines a lottery system, a qualification of urgency (e.g. for medical reasons) and years of attendance. Most importantly, dwellings are divided in accordance with the years of attendance, meaning that someone who has been waiting 10 years for a house, has more chance to gain the house than someone who has been waiting for only 1 year. However, prospective tenants that are in possession of declarations of urgency will go first.

The role of real estate agents outside of the sphere of housing corporations can be twofold: real estate agents operate as broker between landlord and tenant or as a trustee/administrator for the landlord. In the first situation, the agent's only role is to bring the parties together. In the second situation, the tenant will pay his rent to the administrator who is also responsible for the maintenance of the dwelling, delivery of utilities etc. The administrator can then, based on his contract with the owner, act in his own name or on behalf of the (known) landlord.

Note that real estate agents do not only rent out houses for a commercial rate. They often also administer a number of houses that fall in the regulated rent category and that are not owned by a housing corporation. In addition, they sometimes represent housing corporations for houses that fall within the liberalised rental market or that are for sale.

It is not allowed to charge a tenant for the broker-costs if the agency was hired by the landlord (see below). If the agency was hired by the tenant, there are no specific rules that would forbid the agency to charge for its (reasonable) costs as an agency that is hired by a tenant acts as a regular mandatory or broker.

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

To be able to exchange more information on the behaviour of tenants, housing corporations and professional landlords have started a Register of complaints and opportunities. They use it to collect and exchange information on tenants that have committed housing fraud (e.g. illegal subletting of their apartment) or have misbehaved. If a tenant has caused severe nuisance, this is registered by the landlord who also states if the nuisance is caused by 'criminal behaviour', 'financial nuisance (non-payment, subletting etc.) or psychological nuisance (severe noise e.g. severe neglect of the state of the dwelling).

The register is only accessible for authorised employees of the large, institutional landlords. If a tenant's name is in the register, the landlord will only close a contract with

him if he agrees to additional conditions that regard professional assistance regarding his personal and/ or social behaviour. Such a condition applies for 5 years.

### *Bad landlord*

It is not common practice for tenants to perform checks on their landlords. An exception of some relevance is the landlord-blacklist that many student organizations keep that assist in finding rooms for students. There are some examples of lists of bad landlords in large cities and in Amsterdam there is a hotline for 'undesirable landlord behaviour.'

## **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)?

### **Formal requirements**

For a tenancy contract is required that the specific good (living space) is made available for the tenant in exchange for a specified counter-performance. Therefore, it is relevant that the object of the lease is determinable.

Except for that, the mere meeting of minds and legitimate trust-requirements of Dutch contract law are enough. It is sufficient that if a tenant starts to pay rent and if this rent is not refused by the landlord, it is assumed that there is a contract. In addition, it is not necessary that the rent is paid in money: it can also be paid by providing a service (such as maintenance or renovation of the dwelling) but only if parties have specifically agreed to that.

### **Duty to register**

There are no registration duties for lease contracts.

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

A tenancy contract must include the address of the dwelling. If a mistake is made, this will usually be without consequences when both parties are aware of what is the actual object of the lease. Other formal requirements do not exist. A written contract is not a constitutive requirement for the emergence of the legal relation. If it is incomplete, the civil code-rules apply to the relation and, as most rules are mandatory, the most important aspects of the contract are the agreement on price, extra costs (service costs) and a description of the object of lease and its defects.

Legal consequences will most likely occur when defects of the dwelling are not mentioned in the contract. They are then not said to be included in the rent and could result in a lower rent.

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

The general rule in Dutch tenancy law is that contracts are open-ended. There are some

exceptions. The so-called campus contract that applies to student housing can be terminated by the landlord, when the tenant is no longer registered as a student and on the condition that he rents out the dwelling or room to someone who is.

There are contracts that are closed to prevent vacancy of dwellings (based on the Vacancy Act). They have to be closed for a minimum period of six months and require a permit.

Note that if the contract does not specifically refer to this permit, the contracts will be considered to be for an open-ended period, no matter what parties have agreed to.

Also note that fixed term-contracts do bind the tenant. Thus, if a tenant has agreed to stay in a dwelling for 1 year, he will have to do so. But after this year, the landlord can only terminate the contract under specific circumstances as open-endedness is the general legal rule.

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

There are no specific requirements but, as a general rule, the contract will have to separate rent from other costs. If the landlord fails to do so, he will risk a severe penalty (the rental committee will lower the rent to 55 % of what it deems to be the maximum reasonable price).

The general rule is that rent is paid monthly; if parties want to make a different agreement or want to set a specific date for payment, it is advisable to write this down.

- 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?

Dutch tenancy law draws a distinction between small defects that have to be repaired by the tenant, and all other defects that have to be repaired by the landlord. Landlords cannot shift the costs for repairs that he is legally obliged to carry out to tenants.

A defect is defined as a situation or feature of the good, for which the tenant cannot be blamed and due to which the good cannot be of use to the tenant in a way that a tenant, when the contract was signed, could have expected from the good as such. Specific shortcomings are listed as defects by Governmental Decree Decision on defects. This decision distinguishes three categories of defects: A, B and C. When a defect falls within one of these categories, the legal consequence is that the rent can be reduced to 20% (A-defects), 30% (B-defects) or 40% (C-defects) of the so-called maximum reasonable rent for houses that fall into the regulated price category. For houses in the liberalised regime the lists of defects are still of some relevance but the tenant will have to start a procedure at a regular court, instead of turning to the Rental Committee, and legal consequences are not as clear.

Note that if the dwelling has a defect the tenant has first of all the duty to notify the landlord of the existence of the defect. If he fails to do so, he can be held responsible for the damages that are caused by his omission.

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

- No, not in a general sense.
  - 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)?

Yes, this is always advisable.

- Any other usual contractual clauses of relevance to the tenant

The tenant should check which defects are already included in the price of the apartment. It is advisable to have his contract and the rent checked within six months after closing by one of the many rental advice teams, as many landlords ask a rent that is too high or include other conditions (such as a fixed period) that are void. The six month period is of importance because a tenant who has signed for a liberalised rent can within this period ask the rental committee to declare that his dwelling falls in fact in the regulated category and lower the rent accordingly.

- 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.)?

There are no specific restrictions to who can or cannot be a tenant in Dutch tenancy law. The tenant is allowed to live with his spouse or his partner.

For Dutch law the concept of co-tenants and sustainable household are of importance in this regard.

The category applies to relations like those of married people between two people that live as partners in a sustainable household relation that is meant to last and not, for example, to students (that are sharing a household for financial reasons) or parents and children (the shared household of which is meant to end). Spouses and registered partners (unmarried couples that have registered their relation) are always regarded as co-tenants as long as the dwelling is their main residence. If a tenant shares a sustainable household with someone, he can apply for co-tenancy after two years.

Tenants can live with one (unregistered) partner who can also become co-tenant. It follows from the constitutional right to family life that a tenant can live with his children. In practice, if the tenant has somebody to move in, this is not in itself a ground for eviction as long as he keeps his main residence in the dwelling. He may also sub-lease a part of his dwelling.

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

As a general rule, the tenant is not obligated to live in the dwelling. However, the Civil Code requires the tenant to use his dwelling as a good lessee and that will under normal circumstances mean that he has to live in the dwelling. Of relevance here is that most dwellings are owned by housing corporations that have a duty towards other potential tenants. This makes the duty to use the dwelling as a main residence of enhanced

importance, because if it is not used accordingly the landlord (housing corporation) has an interest to rent the dwelling to another tenant. If a dwelling is used as a *pied à terre* and the landlord is not a housing corporation, the situation will be different. Still, the duty to use the dwelling does not necessarily mean that the tenant needs to have his main residence in his dwelling, if the contract does not say so. Therefore, most landlords include this duty in the contract. Note that the tenant has the burden of proof that he uses the dwelling as his main residence if the landlord claims otherwise.

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

There is a specific regulation for the case of divorce or separation to protect the partner that moves out pending the separation procedure. His or hers moving out does not affect the position as co-tenant. However, when leaving of the marital dwelling is not connected to the divorce, the spouse will lose co-tenancy rights as a result of his/her moving out. However, he or she can still become main-tenant if determined in the divorce-covenant. If the spouses cannot reach an agreement on who should stay in the dwelling after separation, they may ask the court to take that decision for them. He will make his decision, based on a weighing of interests.

In the case of a non-marital relation, the situation depends on whether the partner is a co-tenant or not. If so, the ex-partners have to make an arrangement for the dwelling amongst them or have to ask the court to do so for them. If not, the dwelling will stay with the main tenant.

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

Contractual co-tenancy can be combined with a co-optation right for the group to choose a new tenant. This is often the case in student houses. There is no statutory regulation of co-optation. The practices are either based on contractual agreements with the landlord or on behavioural practices. If the latter is the case, the landlord has more options to change the practice if his interests outweigh those of tenants. If the co-optation right of tenants is mentioned in the contract, the landlord cannot end it. He may however choose to not rent out the specific room (-s) and choose an 'extinction' strategy to end the co-optation practice. He can also give notice to the group, but only on the limited grounds that are mentioned in the civil code.

- death of tenant;

When a tenant dies, the persons with whom he lived have a right to stay in the house for six months, after which he can become the main tenant, but only by court order if the landlord refuses to continue the contract with them.

- bankruptcy of the landlord;

When a tenant is bankrupt both, the receiver ('curator') and the landlord, may

prematurely terminate the lease agreement, provided notice of termination is given at an effective termination date. Furthermore, the agreed or customary notice periods must be observed, on the understanding, however, that three months' notice will in any case be sufficient. If rent has been paid in advance, no notice of termination of the lease can be given at an effective termination date before the last day of the period for which the rent has been paid already. The rent that becomes indebted as of the day of the declaration of bankruptcy will be an estate debt.

- 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?

#### *Subletting: main rule*

A tenant is not allowed to sublet the dwelling without consent of his landlord. However, he is allowed to sublet a part of his dwelling as long as he stays to have his 'main residence' in that dwelling. The consent for subletting can be tacit. However, this has to be shown by the main tenant as consent is not presumed.

#### *Subletting as a circumvention practice*

The most common type of abuse of the subletting practice is the subletting of apartments by tenants. The reason is that the market value of dwellings with regulated rents is often higher than the rent itself, especially in the cities. When a tenant moves out of his apartment, for example to live with his or her partner, he will often sublet his apartment for a profit.

#### *Subtenant becomes main tenant*

When the relation between the main tenant and the landlord ends, the law provides a rule that allows the subtenant (of independent living space) to become main-tenant. He will have to notify the landlord that he wants to continue the tenancy. It is irrelevant whether the landlord has previously agreed to the situation. In practice this means that he has to start paying the rent to the landlord. If the rent is not refused by the landlord within six months, he will have to accept the new tenant.

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

The principle is that tenancy agreements are not terminated by sale. As of the moment of transfer, the new owner becomes, by law, the new landlord and has all the rights and obligations the previous owner had towards the tenant. After the transfer, the old owner can no longer be held liable to perform. At the most, he can be liable to compensate the damage caused by his actions. In addition, the new owner cannot base legal claims on breach of the contract by the tenant that took place before he became owner.

The acquiring party is only bound by those contractual provisions of the lease agreement that directly relate to the use of the leased property as granted by the landlord in exchange of the counter performance to be performed by the tenant. The connectedness is of relevance, not if he was aware of the existing duty. He will for example be bound to an option-to-buy of the tenant if this option has resulted in a higher rent (is part of the agreement), he is bound to a verbal agreement that allows the tenant to not pay the rent for a few months, he is bound to a co-optation rights of tenants. He is

not bound to the agreement between tenant and landlord that the garden of the building (not part of the rented dwelling) may be used to stall bicycles.

- 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?

Utilities costs are costs and expenses associated with a service or performance of which the tenant takes advantage, mainly heating, electricity and gas. Common practice is that the tenant concludes a contract of supply with a utility company. But it does happen that the landlord concludes a contract and charges these costs to the tenant. In some apartment buildings have a central heating system for the whole block that deprives the tenant of the option to choose his own provider.

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

The costs for utilities are covered in the civil code. The section refers to the Decision on Service costs of the Minister of Housing. This lists ten categories of service costs that can be charged from the tenant:

- heating, electricity, gas and water;
- movables (including furniture, heating installations, kitchen appliances);
- small repairs that fall under the responsibility of the tenant but are being carried out by the landlord;
- costs related to garbage collection and transport;
- costs for the caretakers;
- administration costs for the specific services;
- signal delivery for internet, radio and television;
- electronic appliances (e.g. alarm; intercom);
- insurances;
- costs for the services for the common spaces such as a common rooms or staircases.

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

Sewerage charges, pollution levy, waste collection levy, refuse collection charges , immovable property tax are not considered as costs for which the landlord has provided a service. These costs are directly charged to the landlord or user of the dwelling. The landlord may charge these cost separately to the tenant, if the tenant hasn't received assessment and paid the amount due.

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

Yes, but only if specifically agreed in the contract and the landlord is not allowed to make a profit from these costs.

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

The landlord will usually require a security deposit at the beginning of the contract. An agreement concerning a security deposit is valid unless the amount is unreasonably high. Generally speaking a deposit of one month of rent is stipulated by the tenant. An amount of more than three months' rent is usually considered to be unreasonable and therefore null and void

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

The deposit may be paid into a separate blocked account. Alternatively the tenant may issue a bank guarantee. In practice, it is often just sent to the landlord and settled with the rent for the last month before the tenant moves out.

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

These are lawful but not usual. The practice of a personal guarantee is mostly known in parent-student relations where a parent will personally guarantee the rent payments. Alternatively goods could be pledged, but this is not common practice.

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

The deposit may be used for:

- repairing damages to the dwelling beyond normal wear and tear;
- setting off against the outstanding rent;
- restoring the landlord's personal property, such as keys or furniture, other than normal wear and tear. If the deposit hasn't been set off or used to pay the damage, the landlord must return the deposit (but not the interest).

### **3. During the tenancy**

#### **3.1. Tenant's rights**

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

A defect is a situation or feature of the good, for which the tenant cannot be blamed and due to which the good cannot be of use to the tenant in a way that a tenant, when the contract was signed, could have expected from a good as such. For living space, the civil code determines that specific shortcomings can be listed as defects by Governmental Decree, this has resulted in a regulation (Decision on defects) of the Minister of Housing that was worked out by the Rental Commission in the Book of Defects. There are three categories of defects: A, B and C. When a defect falls within one these categories, the legal consequence is that the rent can be reduced to 20% (A-defects), 30% (B-defects) or 40% (C-defects) of the so-called maximum reasonable rent for houses in the regulated price category. If, for example, the highest reasonable price for the house is € 500, the rental commission will lower it to € 150 when there are severe smells from the sewerage system.

For dwellings in the liberalised category, the lists of defects is also of relevance but the tenant will have to start a procedure at a regular court, instead of turning to the Rental Committee, and the percentage of rent-reduction is not as clear.

The general definition specifically excludes the situation in which third parties claim a right to the leased object, or are in practice disturbing the enjoyment of the good (e.g. by occupation of the dwelling). Mould and humidity are defects and can result in rent-reduction.

Noise can be a so-called C-defect (see above). Generally speaking, a defect exists when noise is the result of a condition in the dwelling that falls under the responsibility of the landlord, e.g. cracking sounds of the floor or stairs, a noisy technical installation, or a lack of isolation of the floors or walls. If the neighbours are causing noise (or any other kind of trouble) and are renting from the same landlord, the noise will be a defect and the landlord will have to take action towards his tenants reminding them of their duty to behave as good tenants. However, if the noise is caused by third parties (not renting from landlord), the noise will not qualify as a defect.

- 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)

If there is a defect of the dwelling the tenant has the duty to notify the landlord of the existence of the defect. If he fails to do so, he can be held responsible for the damages that are caused by his omission.

If the defect is not a small defect that he can repair himself, and the landlord does not take action upon the notification, the tenant has various options:

- If the dwelling is within the regulated regime, he can, 6 weeks after the notification, start a procedure at the Rental Committee and ask for a rent reduction. He has to start the procedure within 6 months.
- The tenant can also start a procedure at district court to obtain a rent reduction pro rata of the infringement the defect. For a house in the regulated regime this would usually mean asking the court to apply the defect categories of the rental commission as mentioned above. The court is not required to apply the policy of

- He can repair the defect on behalf of the landlord (and on his costs).
  - In practice tenants will announce their plan to have the defect repaired to the landlord and then diminish the rent accordingly until he is reimbursed for the costs.
  - He can suspend his payment of the rent while waiting for the landlord to take action. However, tenants should be careful not to stop paying the rent in total and, preferably, reserve the payments in a specific account.
  - He can ask the court to (partially) terminate the agreement in accordance with the nature of the defect.
  - He can claim damages.
- Repairs of the dwelling
    - Which kinds of repairs is the landlord obliged to carry out?

The tenant can only be held responsible for small repairs. This rule cannot be set aside. If the tenant carries out other than small repairs this will have to be understood as in-kind payment of rent.

The Decision on small repairs of the Minister of Housing limits the small repairs that the tenant has to carry out or for which he can be charged.

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

Tenants have a statutory right to repair defects that have not been repaired by the landlord but fall under his responsibility. He can do so without court order, after he has given the landlord a (final) term to repair the defect. If the landlord then fails to undertake action, the tenant may have the defects repaired and settle the reasonable costs with the rent. If he chooses to do so without court-order, he risks a procedure of the landlord who may claim that there wasn't any defect to be repaired or that the costs made by the tenant were unreasonable high.

- 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.)

Tenancy law discerns two categories: improvements and repairs. Here we discuss changes and improvements. The civil code includes a regulation on changes of leased objects that is semi-obligatory for tenants. The general rule is that a tenant, without

consent, is allowed to make changes to the dwelling that can easily be removed. The law determines that the landlord has to consent to changes that do not result in a decrease in value and do not decrease the chance of the landlord to rent out the dwelling within 8 weeks. If the landlord does not consent, the tenant can start a court procedure in which the landlord has to include the persons that have a real right in the dwelling. The court can add conditions to his consent, including the right for the landlord to increase the rent.

The other general rule is that the tenant removes the improvements and changes that he legitimately made, but does not have to do so without a court order (or a specific agreement with the landlord). If the landlord profits from the changes, he might have a claim based on unjustified enrichment. This is not often the case and it is common practice that the tenant closes an agreement with the new tenant (if any) who will then pay for (or accept) the improvements and changes to the dwelling.

When a tenant is handicapped, the alterations he needs to use his house may fall under his legal right to add changes that are easily removable, or to his right to changes that are necessary for his enjoyment or for an adequate use of his dwelling.

Various cases concerning parabolic antennas have resulted in many nuances. The general rule is that a court will regard the provision that the right to change the façade can be excluded as a legal authorization of a third party (the landlord) to infringe the tenant's constitutional rights that is not unlimited and meets the requirement of proportionality and relativity. It will then weigh the landlord's interests against those of the tenant. Generally speaking, the court will ask: whether the parabolic antenna is disfiguring. This is for example not the case if it is not visible from the street. If so, there should be an explicit provision in the contract to prevent the instalment and even then there should be an alternative available for the tenant to gather the information he needs.

The general rule is that a tenant, without consent, is allowed to make changes to the dwelling that can easily be removed. This will include painting and drilling.

- 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

The landlord can include in the contract the interdiction to keep pets. This interdiction cannot be absolute.

Tenants have the right to produce smells, however not to the extent that these smells cause unreasonable nuisance for the neighbours.

The landlord can prevent a tenant from living with (too many) other people, receiving guests or keeping animals if they are causing (severe) nuisance. The landlord cannot prevent a tenant to share a household with his partner or family. He can not prevent a tenant to receive overnight guests.

The general rule is that a tenant has the right to the enjoyment of his dwelling. This includes the use of the window that he has leased. However, if the poster would cause severe nuisance to his neighbours, his right to enjoy his leased object and (depending on the content) his right to express his opinion would have to be weighed against the nuisance.

As a general rule, the tenant will have to use his dwelling in accordance with its destination. This will in most circumstances prevent him from starting a hotel or any other commercial activities in his dwelling, even when this is not specifically forbidden in his contract. However, not every commercial activity is a severe breach of the contract. Especially not, when it does not cause nuisance to the neighbours and does not result in a change of destination of the dwelling (e.g. renting out one room during specific holidays).

Many cases have dealt with illegal hemp plantations of tenants in their dwellings. The existence of such a plantation is in itself not a cause for rescission of the contract. Only if the plantation results in a change of destination of the dwelling (a plantation in one room vs virtually changing the whole dwelling into a plantation), if the plantation serves a commercial cause, if the tenant illegally taps electricity for the plantation, and if he causes nuisance to his neighbours, this gives cause for rescission..

### **3.2. Landlord's rights**

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

Dutch tenancy law qualifies the value of living space in an objective manner, meaning that the price depends on the characteristics of the object and not on the nature of the landlord. This system determines whether a dwelling falls in the regulated sector or the 'liberalized' sector, the latter meaning that landlords are free to set the price themselves. As a result, most of the rents are regulated by the national government. The government applies a point system to determine the maximum price that is applicable to all rentals that fall within the regulated regime.

Within this system, there are four different categories:

- Independent living space;
- Dependent living space (such as rooms);
- Mobile homes and their stands;
- Service flats.

A dwelling qualified as independent living space that has more than 142 points falls in the liberalised category. However, contracts that were closed before or on 1 July 1994 fall within the regulated system as long as they were not closed for houses that were

realised after or on 1 July 1989. All other houses that are governed by the section on tenancy law in the civil code also fall within the regulated system.

- 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?

For regulated rents, the maximum increase-percentage is yearly set by the Minister of Housing. Automatic increase clauses (index-oriented) are allowed, but only if they do not exceed that maximum amount.

There are no general rules for liberalized rents, except for the rule that an increase of rent can only take place once per year. In addition, the rent itself can be unreasonable if there is a major difference between the rent and what is generally paid for comparable houses.

For dwellings that fall within the liberalized regime, indexation clauses are common practice.

#### *Facilities and energy performance*

If specific facilities have been added to the dwelling by the landlord, such as facilities for disabled people or facilities that increase the quality of the dwelling (e.g. isolation or other energy performance measures), the rent can be increased in accordance with the costs of those facilities.

This regulation does not include the repair of defects. However, if the landlord has repaired defects in the dwelling, he may increase the rent once one more time (2 times instead of 1 time per year) with the increase that he could not add because of the defect.

A case in point are isolation of outside walls and crawl space and the replacement of the heating kettle. The tenant can force the landlord to take these measures as long as he is willing to pay an increase of the rent.

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

There is no maximum rent as such. However, regulated rents are determined by the point systems. Every point corresponds with an amount in euros. Therefore, every house in the regulated category has a maximum rent.

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

The rent increase announcement has to be sent to the tenant two months in advance. The proposal should contain the present price, the percentage of increase, the date from which on the new price will be used, and the way in which the tenant can object to the increase. There is no fixed legal consequence when the landlord does not fulfil these

requirements. However, when the tenant objects to the increase and the landlord starts a procedure at the Rental Committee, his claim may not be accepted by the commission because of formal defects.

If the tenant objects to the increase, he has to respond to the proposal in writing within 6 weeks. If he does so, the landlord can start a procedure at the rental commission. If the tenant fails to respond and does not pay the increase, the landlord has to send him a reminder-letter within 6 weeks (after the expiration of the first six weeks period) after which the tenant has to start a procedure at the Rental Committee. However, if the landlord has sent him a registered letter, he can start the procedure himself after 6 weeks.

If the tenant pays the rent and does not start a procedure at the Rental Commission he is assumed to have accepted the increase.

In 2013 a regime was introduced that allows landlords to increase the rent of their tenants based on their income. The income is measured by household. The percentage of increase is yearly set by the Minister of Housing.

#### *Objection of tenant to rent-increase*

Objections that a tenant can make to the increase are:

- the price has been lowered by the Rental Committee because of defects;
- his household income is lower than the income the landlord based his rent increase on;
- the increase has not been sent to him in accordance with the law.

For dwellings in the liberalized regime, there are no general rules setting a maximum rent increase or the way in which the tenant has to be notified of the increase.

The rule of one price increase per year does apply to dwellings that fall within the liberalized regime as well as the exception that an extra price increase is allowed only when the quality of the dwelling is improved by the landlord.

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

As a principle, the landlord cannot enter the premises without consent of the tenant. This follows from the constitution that provides individuals with the right to privacy and provides a specific prohibition to enter somebody's house without permission. To make sure the landlord has the right to rent out his house to a new tenant or to sell it after termination of the contract, the tenant has to allow him to show the premises to interested parties. This duty is specifically dealt with in the civil code.

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

The landlord is not entitled to a set of keys

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

The landlord is not allowed to lock a tenant out of the premises himself. He will have to

hire an usher to do so.

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

He does not have a specific right to do so, but as a creditor he can ask the court for permission to do so.

#### **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?

For the termination of contracts, the general rule is that the tenant can terminate the lease contract for a period that is equal to the period of the rent payment (but never longer than 3 months), which is usually 1 month. This rule cannot be set aside.

Dutch tenancy law accepts three grounds for termination of contracts:

- notice;
  - rescission and termination by mutual agreement. A contract does not end when the period has expired: the tenant has to give notice.
- 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)?

If tenancy contracts are closed for a fixed period, the tenant will have to respect that period and cannot terminate the contract unless agreed otherwise. In (very) exceptional circumstances, general principles of contract law, such as unforeseen circumstances or rules of good faith, may lead to a different result.

Some other exceptional circumstances can result in the rescission of the contract. When a defect results in a situation that makes it impossible to live in the dwelling or that causes danger, the tenant can then terminate the contract immediately without court interference.

In addition, when a defect exists in the dwelling, the landlord is under no obligation to restore but that, on the other hand, makes it impossible to enjoy the fruits of the contract, the tenant (as well as the landlord) can terminate the lease. The termination may still result in a duty to pay for damages, based on the specific rules for defects or the general duties of breach of contract. Examples hereof are defects that fall under the tenant's liability or under his accountability

Another example is when the dwelling cannot be used due to an unforeseen government measure . These situations do only apply when it is undisputed that the dwelling cannot be used, otherwise the lease can only be terminated by a court or will be replaced by a partial termination of the contract that will result in a lower rent for the period of the lease.

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

For the termination of contracts, the general rule is that the tenant can terminate the lease contract for a period that is equal to the period of the rent payment (but never longer than 3 months), which is usually 1 month. This rule cannot be set aside and he does not have to find a replacement tenant. However in the exceptional situation in which the tenant has bound himself to a fixed period, he does not have such right and will have to ask for cooperation of the landlord.

#### **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?

Dutch tenancy agreements do not expire unless they are terminated by notice of the tenant or the landlord, whereby the landlord is bound to a limited number of legal grounds for notice.

For open-ended contracts the landlord has to respect one month for every year that the agreement has lasted to give notice with a minimum of 3 months and a maximum of 6 months in advance.

In case of time-limited contracts the landlord has to give notice at the moment that parties have agreed on.

There are some exceptions to these rules that concern specific categories:

- Student housing (campus contracts): the contract ends when the tenant is no longer registered as a student.
- Contracts that are of short term by nature of the agreement: the general rule of lease contracts applies which mean that they end on their terms.
- Dwellings that are listed to be demolished by the municipality.
- Dwellings that fall under the Vacancy Act: the period of notice is not shorter than 3 months. In addition, if the period to give notice is not being taken into account, the notice is treated as if it was given in the right manner.

| <b>Similar rules for all types of dwelling</b> |  |
|--|--|
| Eviction procedure                             | Separate ruling of court required; can only be carried out by a bailiff.   |
| Protection from eviction                       | No general rules on protection; courts may grant a <i>term de grâce</i> to tenants   |
| Effects of bankruptcy                          | Bankruptcy will provide a reason for termination of contract but termination (based on non-payment) may be prevented if decision on 'clearing of debt for tenant' is taken by court (or as a preliminary decision by mayor & aldermen). The tenant will then have to fulfil duties of contract from then |

|  |
|--|
| on but the landlord cannot evict tenants because of previous breach. |
|--|

A landlord can terminate an agreement if:

- A tenant does not behave as can be expected from a good tenant;
- If the rules for urgent self-use apply;
- If, in rare circumstances, a contract ends on its terms;
- If the object of the agreement (the dwelling) can no longer be used in the agreed manner.

Besides this, the local government can evict tenants if:

- They are causing severe nuisance (either related to drugs or criminal behaviour)
- It is dangerous to live in the house.

The sole legal basis for the eviction is that the tenant does not longer have a legal right to live in the dwelling. In court cases, landlords will usually ask the court to terminate the lease and to grant the right to evict the tenant as a landlord cannot evict a tenant without a court order. As a contract cannot easily be terminated, the court will weigh the tenant's interests against the landlord's interests in the termination-procedure.

If the court has granted the termination, it will usually also grant the eviction.

It will grant a *term de grâce* to the tenant, if it feels that to be reasonable.

#### *Termination of contract without court interference*

##### - Rescission based on of closing of the dwelling by the municipality

A specific situation exists when a municipality closes the dwelling because of violations of the Opium Act, or severe nuisance. In such a situation the landlord can terminate the contract without court interference. In the specific circumstance that the tenant is not responsible for the behaviour that caused the municipality to close the dwelling, the city may have a duty to provide an alternative living space because of a violation of the tenant's constitutional rights (Article 8 ECHR).

##### - Rescission based on of impossibility

The other exception to the requirement that a contract can only be terminated by one of the party's with a court order exists when the enjoyment of the good has become impossible due to a cause that the landlord does not have to repair, he and the tenant can terminate the contract.

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

The landlord can only terminate a lease contract in specific situations that are laid down in the Civil Code. The law distinguishes between the statutory grounds for notice, that apply specifically to dwellings and the general grounds for rescission of a lease contract by court.

The statutory grounds for termination are limited to 7 specific cases:

1) Bad behaviour of tenant

The tenant does not behave as can be expected from a good tenant.

2) Rent out and move back (diplomat- clause)

A tenant or landlord wants to move back in his apartment after the agreed fixed period of the contract (so-called 'diplomat-clause,').

3) Urgency

The landlord needs the dwelling for such an urgent reason for his own needs that his interest should prevail over that of tenants or sub-tenants. In this situation, he will have to provide an alternative for his tenant.

4) Refusal or reasonable offer

A tenant refuses to accept a reasonable offer for the same dwelling when that dwelling has been renovated or, in case of a dwelling that falls in the liberalized category, a reasonable offer for a rent-increase is refused by the tenant.

5) Realisation of land use plan

The landlord wants to realise the use for the dwelling, as determined by the municipal land use plan.

6) Dependent living space: interests of landlord outweigh those of tenant

The lease concerns a living space that is not independent but depends on other spaces in the dwelling where the landlord has his main residence, and he can reasonably argue that his interests for the termination of the contract outweigh the interests of the tenant to continue the lease.

7) Extra-judicial rescission; Enjoyment of good is impossible

The contract can be rescinded when the enjoyment of a leased good has become impossible because of a deficit that the lessor is not required to repair, the contract can be set aside by the lessee or the lessor without the obligation to ask the court to set aside the contract. This is the case when repair is either impossible or involves (high) financial investments that cannot be expected of the lessor.

*Execution proceedings*

The landlord has the right to terminate the lease in case of renovation works, when he wants to realise the new function of the building as mentioned in the zoning plan, and when he wants or needs to demolish the building in which the tenants are living and replace it with a new building. It must however be proven that the tenant cannot return to the renovated or new-constructed building.

In case of termination the landlord is required to pay at least a minimum payment for moving and refurnishing costs. The Minister of Housing yearly decides on a minimum amount for these costs in the Regulation on the minimum contribution for moving- and furnishing costs for renovation. In 2013, this minimum amount was set at €5,658.

- 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?

If the previous tenant refuses to hand over the dwelling to the new tenant, the landlord will have to start a legal procedure (eviction) to force the tenant to handover the dwelling.

For double-lease situations, the general rule is that the tenant that came first, has the right to the dwelling. This is based on an analogous interpretation of the rules for real rights. However, if the second tenant is already living in the dwelling and is paying rent, he may claim the protection that the law gives to tenants. In that case, the court will have to weigh the interests of the tenants. The landlord has to pay damages. Courts have also allowed landlords to offer a replacement dwelling to the tenant. If the second tenant (that now lives in the apartment) acted in bad faith, the first tenant will be able to file a claim based on tort (misuse of the breach of a third party) and ask for in-kind damages (the dwelling).

- 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 previous tenant refuses to hand over the dwelling to the new tenant, the landlord will have to start a legal procedure (eviction) to force the tenant to handover the dwelling.

For double-lease situations, the general rule is that the tenant that came first, has the right to the dwelling. This is based on an analogous interpretation of the rules for real rights. However, if the second tenant is already living in the dwelling and is paying rent, he may claim the protection that the law gives to tenants. In that case, the court will have to weigh the interests of the tenants. The landlord has to pay damages. Courts have also allowed landlords to offer a replacement dwelling to the tenant. If the second tenant (that now lives in the apartment) acted in bad faith, the first tenant will be able to file a claim based on tort (misuse of the breach of a third party) and ask for in-kind damages (the dwelling).

#### **4.3. Return of the deposit**

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

If the dwelling is returned in a state of good repair and the tenant is not behind on his rent, the deposit should be returned within 1 month of notice.

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

The landlord will usually require a security deposit at the beginning of the contract. An agreement concerning a security deposit is valid unless the amount is unreasonably high. It can be used as a guarantee deposit to cover future claims of the landlord or even to set off against the outstanding rent.

The deposit may be used for:

- repairing damages to the dwelling beyond normal wear and tear;
- setting off against the outstanding rent;
- restoring the landlord's personal property, such as keys or furniture, other than normal wear and tear. If the deposit hasn't been set off or used to pay the damage, the landlord must return the deposit (but not the interest).

#### 4.4. Adjudicating a dispute

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

| Lower Court   | Appeal                             | Type of cases   |
|---|------------------------------------|---|
| Section Kanton District Court, Subdistrict sector ( | Supreme Court                      | All cases in first appeal with the exception of the ones that fall under rent committee jurisdiction; appeals from rent committee cases |
| Rental Committee                                    | District Court, Subdistrict sector | For regulated rents: Prices, defects, service costs, & conflicts between tenant-committees/ organizations and landlord                  |

For regulated rents there is a specific, low-cost jurisdiction: the Rental Committee. This is an independent administrative body, established by the State Department of Internal Affairs. It is a national institution that takes seat in various cities across the country. It rules about 8,000 cases per year. These cases are generally about defects, service costs, the height of the rent (about 60% of the cases), the height of the yearly rent increase, so-called rent subsidy-declarations, and conflicts that stem from the *Tenants and Landlords (Consultation) Act*.

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

Landlords often choose interim proceedings if they want to terminate a rental agreement. In cases of non-payment of rent, or bad tenant behaviour this option is available and often used. Tenants use this procedure in case of urgency, for example when landlords do not repair a defect that causes a dangerous situation.

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

This is available, however, not compulsory and also not commonly used although this may change in the near future as some pilots have started

## **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?

Housing corporations often use a lottery system (see above) to distribute dwellings. In addition, tenants have to fulfill the requirements for a housing permit that are set by the municipality. These requirements will often concern economic or social binding with the specific city.

- Is any kind of insurance recommendable to a tenant?

It is advisable to insure private liability for damages and to insure the household property of the dwelling.

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

Yes, many cities have installed advice groups that are free of charge. In addition, access to the rental commission is cheap.

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

**Woonbond** (interest organization for (prospective) tenants)

Nederlandse Woonbond

Nieuwe Achtergracht 17

1018 XV Amsterdam

[www.woonbond.nl](http://www.woonbond.nl);

hotline: +31 (0) 205517755

**Huurcommissie** (Rental Commission)

Hotline: 1400/ +31 (0) 774656767

Huurcommissie: [www.huurcommissie.nl](http://www.huurcommissie.nl)