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

Tenant's Rights Brochure for

POLAND

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II. Tenant's Rights Brochure Questionnaire

(max ca. 20-30 pages per country)

Summary of Contents

1. Introductory information

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

Despite various government initiatives, the scarcity of housing units has remained a considerable problem in the 21st Century. Despite the increased investment activeness of developers and Social Building Associations, in the last decade no drastic improvement could be observed. The roots of this situation can be traced to the scarcity of funds available for investment and insufficient spatial planning. In the period between 2003 and 2009, the number of newly built housing units was 950 thousand, while the number of households increased by about 1,100 thousand. This means the actual deficit of about 1,850 thousand. Taking into account the grey market of residential leases and premises occupied without any reported tenure, the deficit has reached the level of approximately 1.4 – 1.5 million units. Various sources provide differing data in this respect. In 2011, A. Szelągowska assessed the shortage at 1,162 million.

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

The most striking problem regarding the housing situation in Poland is scarcity of housing units. The number of units per 1000 inhabitants is the second lowest in Europe, following Albania. This problem and its scale has multiple grounds and requires much time, as well as political attention to be addressed properly. In 2008, the proportion of houses erected before 1989 to the overall number of residential houses amounted to 84,8. Over the past 20 years, the housing stock has grown, however, the demand has not been satisfied to a sufficient degree.

Another problem is the relatively poor condition of private tenements, attributable to former regulation of rents which could not be freely raised even when they finally became negotiable. A survey carried out in 2010 in 21 Polish cities revealed that in most of the examined places, both when it comes to municipal stock and housing cooperatives, the level of rents and bills did not cover necessary replacement investments and renovation of the available resources. While cooperatives generally handle the situation without any major problems, municipalities must cope with their old stock. Large cities, where repairs and new constructions are more frequent, make an exception in this respect.

- Significance of different forms of rental tenure
  - Private renting

In the private rental market, there is a considerable number of "informal" lease contracts, not registered at tax offices. The reason for such omission is the intention to avoid tax. The actual volume of this phenomenon is rather obscure to Polish authorities. According to Eurostat data, the share of private rental sector in he overall housing stock in 2013 was assessed at 4%.

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

Public task is detectable in municipal tenancies. Pursuant to art. 4(2) of the Tenants Protection Act (TPA), municipalities are required to assure social and replacement units and cater to the housing needs of low income households on the terms provided by law. In light of the above, social premises make a part of the municipal housing stock destined for the poorest persons living in difficult conditions, in particular the ones evicted from other places, e.g. for irregular payment of rent. As opposed to the remaining municipal housing resources, tenancy contracts are in this case concluded for a definite period, and renewed only where the tenants continue to meet the criteria set by the municipality (most importantly in terms of income). According to the latest accessible data, at the end of 2007 municipalities held 57 thousand social housing units.

Since 1995, the so called Social Building Associations, operating in the form of commercial companies, make an alternative to municipal social housing. Their share in the market is small (0.7%), yet, they were quite active investors in the 2000's.

- 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)

It seems advisable for a foreigner who does not speak Polish to ask a native speaker to come along to the viewing of a dwelling in order to avoid possible communication problems or misunderstandings. Often, it is convenient to use assistance of a real estate agent whom the foreigner may contact even from abroad, before actually moving to Poland.

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

- rentals by unauthorised landlords who only purport to be the owner;
- rentals by a co-owner (majority of shares is required to decide about lease arrangements)
- rentals by unauthorised agents

- *Important legal terms related to tenancy law*

Polish	English translation
abuzywne klauzule	abusive clauses
akt notarialny	notarial deed
bliska osoba	close relation
centralne ogrzewanie	central heating
część wspólna	common property
czynsz (wolny/regulowany)	rent (free/regulated)
dochód	income
faktura	invoice
inflacja	inflation
instalacja elektryczna	electrical installations
instalacja gazowa	gas installations
instalacja wodno-kanalizacyjna	draining and sewage system
kamienica	tenement
kara umowna	contractual penalty/liquidated damages
kaucja	deposit
klauzula waloryzacyjna	valorisation/indexation clause
komornik	bailiff
konsument	consumer
koszt odtworzenia	replacement cost
koszty utrzymania lokalu	maintenance costs
księga wieczysta	land register
lokator	tenant/occupier
najem okazjonalny	incidental lease
najemca	tenant
naprawa	repair
odsetki narosłe/ustawowe	accrued/statutory interests

odszkodowanie	compensation/indemnification
okres wypowiedzenia	notice period
opłaty (eksploatacyjne)	fees/charges/bills
posiadacz samoistny/zależny	owner-like/ dependent possessor
roszczenie (osoby trzeciej)	(third party) claim
spółdzielnia mieszkaniowa	housing cooperative
szkoda	damage (loss)
ugoda (sądowa/mediacyjna)	(in-court/mediation) settlement
umowa (najmu/adhezyjna)	(lease/adhesion) contract
wartość (rynkowa/odtworzeniowa)	(market/replacement) value
wynajmujący	landlord
wypowiedzenie umowy	contract termination
wzorzec umowy	standard contract terms

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?

Under the Anti-Discrimination Act transposing the Directive 2000/78/EC and 2000/43/WE, protection against discrimination is afforded in the fields of: housing, education, social security and health care. The Act prescribes equal treatment based on sex, race, ethnic origins, nationality, religion, faith, believe, disability, age or sexual orientation. As regards lease in the municipal stock, municipal councils enact uniform criteria, referring predominantly to income. These factors may not involve elements contrary to the Anti-Discrimination Act. Landlords in the private stock are also bound by the Act. Short-term work contracts, as such, could be related to potential tenant's financial standing, and so, it may play a certain role in tenant selection.

- 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 may ask about the full name, address, other contact data, such as telephone number or email address, current place of residence, date of birth, number of household members (however, any question about the intention to have children would not be allowed), profession, employer, earnings, proof of income, bank details, and possible consumer bankruptcy.

The landlord may not ask about marital status, sexual orientation, intention to have children of form a family, membership in political parties and associations, criminal record, or the so called Schufa rating (although in practice the last querry would not be

uncommon).

- 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)?

Such practices are not common in Poland. This matter has not been directly covered by any legal regulation.

- 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)?

Although the landlord may not ask the tenant-to-be about his or her criminal record, the landlord may check it itself at an Information Centre of the National Criminal Register. As far as financial capacities of the prospective tenant are concerned, a statement on the candidate's credit history may be requested from the Credit Information Bureau. The Credit Information Bureau S.A. was founded by banks and the Polish Bank Association. Its responsibilities comprise collection of data concerning credit history of bank and para-bank clients. The Bureau cooperates with all commercial and cooperative banking institutions in Poland. Such a database generally helps lenders to making decisions concerning potential loans, however, it is also accessible to potential landlords.

Information about notorious debtors is also provided by the National Debt Register, which operates via internet.

- 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 basic role of a real estate agent consists in provision of necessary and useful information to persons willing to buy, sell, rent or let a property so that the latter could enter into a respective contract on most suitable terms. Apart from informing the parties, an agent arranges their transactions. For their services, agents charge commissions. Commission is generally dependent on completion of the transaction, which makes the agent strongly induced to achieve that end. It would be against the law to stipulate that agent remuneration will still be payable if the client manages to enter into a contract by him- or herself, without the agent's assistance. However, advance payments are also charged upon inception of preliminary contracts. As regards the value, commission for a tenancy contract makes usually an equivalent of one monthly rent instalment.

Although for many years the profession of real estate agents used to be regulated, last year, the legislator repealed the relevant provisions, leaving this type of agency entirely open to free market. Real estate agents no longer have to be licensed or have a liability insurance in order to lawfully practice.

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

Currently, in Poland there are no legal blacklists of bad tenants or landlords in the strict sense of the word. The entities indicated in reference to possible checks on a person's financial status are the only legal sources of information about prospective tenants. The access to those databases is wide enough to enable verification of tenants-to-be. The access is qualified by formal or financial restrictions (the need to pay a fee in order to obtain full report from the National Debt Register).

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)?

Under a contract of lease, as defined in relation to all leases in art. 659 of the Polish Civil Code (PCC), a landlord commits to deliver a thing for tenant's use for a specified or unspecified period, in exchange of which the tenant commits to pay the landlord the agreed rent. No written form is generally required. However, in the case of the so called incidental lease (fixed duration leases of up to 10 years available to natural person landlords in which the tenant protection regime has been restricted) not only is it necessary but the contract must be enclosed with the tenant's declaration, executed as notarial deed, that he or she has a place to go in case of eviction. If the special requirements set for incidental lease are not met, the agreement still holds, however, such contract should be qualified as general lease (with full tenant protection).

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

The necessary elements of the contract of lease include specification of rent and the object of lease. Obviously, the parties have to be named. In the absence of any agreement on the term of lease, the contract is deemed to have been concluded for unspecified duration.

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

Time limited contracts are generally admissible. This possibility has been excluded in the general municipal stock to the exclusion of social units, which make a portion of the municipal stock destined for households of the lowest incomes. Leases in social units are always concluded for a fixed term dependent on the municipality's housing policy. Social housing is meant to provide temporary assistance until a household's financial situation improves. In practice, however, social leases are successively prolonged.

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

The amount of rent or a manner of its determination must be determined. In the absence of such stipulation, the contract may be interpreted as loan for use, which is always gratuitous. In the absence of specification of intervals between rent instalments, default

statutory terms apply, i.e. rent is payable on monthly basis.

- 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?

Distribution of responsibilities concerning repairs and outlays on the unit is subject to special statutory regulation. Pursuant to art. 662(1) PCC, the landlord should deliver the agreed thing to the tenant in a condition fit for the agreed use and keep it in such condition throughout the term of the contract. In accordance with art. 662(2) PCC, minor outlays connected with ordinary enjoyment of the thing burden the tenant. Under art. 681 PCC, in turn, such minor outlays to be borne by the tenant occupying the unit include in particular: minor floor, door and window repairs, painting of walls, floors and the inner side of the entrance door, as well as minor repairs to installations and technical equipment ensuring lighting, heating, water supply and discharge.

The statutory distribution of responsibilities is mandatory in the public housing stock. At the same time, these rules are only default in relation to private rentals, where the parties are free to arrange their respective duties.

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

As opposed to the exhaustive statutory list of tenant responsibilities relating to repairs and furnishings, a similar list referring to landlords is only exemplary. The landlord is in particular obliged to carry out:

a) repairs to and replacement of internal installations of running water, hot water supply and gas - without fittings and accessories, as well as repairs to and replacement of the internal sewage system, central heating together with radiators, electrical wiring, and diversity antenna,

b) replacement of heaters, window frames and door joinery, floors, flooring, carpets and plaster.

    - 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)?

Although such inventory is always optional, it is definitely recommendable to prevent any future disputes.

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

Deposit clause, valorisation clause (indexation of rent), specific terms of termination, provisions concerning reimbursement of outlays made by the tenant.

- Parties to the contract

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

The legislator has defined the term "household" in the Housing Benefits Act 2001 in which the notion is understood as household run by a single occupier, the tenant's spouse and other persons who live with him permanently, sharing the common budget, whose rights to enjoy the premises derive from the direct tenant. Apart from spouses or cohabitants, this refers to children, both minor and major, other members of the tenant's family and individuals not akin to the tenant who share the home budget. The decisive factors are permanence of accommodation and contributions to common maintenance. In the end, however, it is the tenant, and not the landlord, who decides which persons from among this group should live in the leased unit.

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

A tenant is only entitled, rather than obliged, to occupy the dwelling. If, however, he or she fails to move in although the housing unit has been made accessible by the landlord in due course, the tenant is still obliged to pay the rent.

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

If the lease contract has been concluded during matrimony and the leased premises are to serve the housing needs of the spouses' family, the spouses become, by operation of law, co-tenants, even where only one of them signed it. In divorce cases, under art. 58(2) of the Family and Guardianship Code, it is the court's obligation to rule about the use of the housing unit jointly occupied by the ex-spouses for the period of further common occupancy. Should one of the spouses blatantly disenable common living by reprehensible conduct, the court may order eviction at the other spouse's request. On their joint motion, the court may also include in the divorce judgment a resolution concerning division of the lodging or its award to one of the spouses if the other one agrees to voluntarily move out, as long as such decision seems feasible.

The right of lease has a particular value, which has to be considered when the common marital property is divided.

No similar solutions have been provided for factual cohabitants or same-sex couples. In such cases, any changes are dependent on the settlement between the parties.

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

No changes are possible without permission of the landlord. In fact, another contract must be concluded with the subsequent tenant.

  - death of tenant;

Provisions of succession law as such do not apply to lease of housing units, which means that lease of a housing unit may not be lawfully devised. The only possibility to succeed a deceased tenant follows from art. 691 PCC.

As regards the catalogue of persons capable of accession to the contract upon death of the previous tenant, these include the spouse of the deceased, his (and his spouse's) children, other persons entitled to alimony from the deceased, as well as his or her factual cohabitant (including same-sex couples). Under art. 691(2), out of the this group, only the ones who lived in the unit with the deceased tenant before his or her death may become (co-)tenants. In accordance with art. 691(4), persons who accede to the tenancy by operation of law may terminate it by notice at the period prescribed by statute even if the contract was concluded for specified duration. Termination by only some of the successors does not extinguish the tenure. In such cases, the remaining beneficiaries hold the right jointly. In the absence of such individuals, the tenure does not make a part of the inherited estate anyway. On such occasions, the lease terminates.

- bankruptcy of the landlord;

Bankruptcy of the landlord, or landlord succession, has not been listed among the lawful grounds for termination in the Tenants Protection Act. If the house should be sold in execution proceedings, the buyer automatically replaces the bankrupt debtor as landlord.

There are, however, special provisions in the field of bankruptcy law. It is important to note, that in bankruptcy proceedings leases, as a rule do not expire (see art. 108 of the Law on Bankruptcy and Reorganisation (LOB)). However, the bankruptcy court may terminate any lease with three months' notice if its existence hinders the sale of the assets or if the payable rent differs from rents paid for similar premises (art. 109 LOB).

- o Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

Each time the landlord's consent is needed. In Poland, sublease does not generally lead to abuse of the tenant's rights, as the Tenants Protection Act affords the same protection to a tenant and subtenant. Sublease always expires upon termination of the principal lease relationship.

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

On general terms, a buyer becomes the new landlord by operation of law. Although the general regulation of lease allows on such occasions for early termination by the new owner at a statutory period, such possibility is precluded in reference to housing tenancies.

- 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?

The types of utilities supplied to a unit depend on the provisions of construction law which define conditions to be met by housing premises, as well as usages accepted in a given region, access of the property to particular supply lines and, finally, needs of the tenant himself.

The general rule is that there must be a possibility to connect the building with water supply, sewage and heating systems. It is deemed equivalent to access to heat networks if individual sources of heat are operative in the building. In the absence of the sewage system, the owner should assure that sewage be disposed of in septic tanks. In some cases, gas supply has been entirely replaced by electric energy. Most definitely, a housing unit must be connected to electricity, water supply and sewage disposal lines. Depending on local situation, it is possible to supply gas (connection to gas line) and heating (access to central heating rather than individual facilities).

As regards contracts with utility providers, both models are possible: contracts between the landlord and the provider or a direct contracts between the tenant and the provider.

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

The landlord may not bother tenant with "charges independent of the landlord" if they are not mentioned in art. 2(1) item 8 TPA. The cited provision covers supply of energy, gas, water and disposal of sewage, solid and liquid waste. Bills independent of the landlord are charged in such cases along with rent, however, principles governing their increase have been relaxed. Notably, these charges are levied for utilities supplied directly to a unit, and not to common parts of the building.

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

Waste collection expenses count as charges independent of the landlord which are added to rent. Costs of road repairs are not imposed on either landlords or tenants. Tenants are not encumbered with any local taxation.

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

These may only be included directly in the rent charged by the landlord, however, the amount of rent must be reasonable. Possibilities of rent increase have been regulated in

the TPA, which prevents arbitrariness of landlord's decisions in matters crucial to tenants.

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

The amount of rent payable and its increase have been regulated in the TPA, which prevents arbitrariness of landlord's decisions in matters of fundamental importance to tenants.

In general, the amount of deposit may not exceed the equivalent of twelve monthly rent instalments for a given unit, as specified on the date of contract conclusion. In respect of incidental leases, this amount may not overstep the equivalent of six monthly rent instalments for a unit. There is no lower limit to a deposit, however, in practice it will be a single monthly instalment. In theory, it is possible to fix the deposit at lower level than one monthly rent rate, yet, on such occasions it would be necessary to determine the percentage (fraction) of the monthly instalment to be deposited, e.g. 0.5 or 0.25.

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

Provisions of the TPA omit to envisage the duty to transfer the deposit to a bank account. Decision as to the method and place of payment has been left to the parties of the agreement, in practice, the parties to the lease contract. For the lack of respective contractual stipulations, the method of safekeeping the deposited sum depends on the discretion of the landlord. In the absence of any agreement to the contrary, the landlord is not bound to invest the deposited amount or pay any interest on capital while in possession of the money.

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

The tenants protection regime does not provide for any additional guarantees. Such guarantees, however, would be possible based on general freedom of contract. Most definitely, any additional/alternative securities are, however, precluded in the public stock.

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

Tenant dues under the lease of a unit secured by the deposit include the outstanding rent and other charges attached to the lease, as well as compensation for any damages

to the unit inflicted by tenant's culpable conduct. However, lease of a social or replacement unit cannot be contingent on advance of the 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; exposure to noise e.g. from a building site in front of the dwelling; noisy neighbours; occupation by third parties)?

Neither provisions of the Tenants Protection Act nor the Polish Civil Code provide legal definition of a defect in a housing unit or, in yet broader terms, a defect in the object of lease. Instead, scholars and courts reach for the definitions prescribed for sale contracts. A physical defect of a thing is a shortcoming which lessens its value or usefulness with regard to the thing's purpose agreed by the parties or following from the circumstances or its normal use, or deficiency in the thing's properties about which the seller had assured the buyer, or, finally, where the thing was surrendered to the buyer in incomplete condition.
Typical defects comprise: delivery of unit of floor area smaller than agreed, inordinate noise in the unit made by neighbours or coming from outside; absence of or inadequate heating; leakiness of window joinery causing breeze; mould or dampness of the unit's walls; defective sewage system or missing sewage outflow; nasty smell; malfunction or irregular parameters of installations situated in the unit; vibrations, emission of hazardous substances or waste; danger of collapse of the building or abruption of its part; inoperative elevator.

    - 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)

As provided in art. 664(1) PCC, where the object of lease has defects which reduce its fitness for the agreed use, the tenant may claim proportional rent decrease for the duration of the defects. Additionally, in accordance with art. 664(2) PCC, where at the time of delivery to the tenant the thing was defective in a way which precluded its use as agreed by the parties, or if such defects emerged at later time and the landlord, although duly notified about that fact, failed to cure the defects in due time, or where defects are irremovable, the tenant may terminate the contract immediately. None of the entitlements mentioned above (either claim for rent reduction or right to terminate the contract) have been vested in the tenant if he knew about the defects at the time of entry into contract (art. 664(3) PCC).

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

The landlord is obliged to carry out in particular:

1) maintenance in due condition, assurance of order and cleanliness to spaces and equipment in the building destined for common use of all occupiers, as well as the building's vicinity;

2) repairs to the building, its spaces and equipment referred to in item 1, restoration of previous condition if the building has been damaged, regardless of cause to the damage; however, the tenant has to indemnify losses inflicted by his or her culpable behaviour;

3) repairs to the unit involving maintenance or replacement of installations and elements of technical furnishings to the extent that they do not burden the tenant, in particular:

a) repairs to and replacement of internal installations of running water, hot water and gas supply - without fittings and accessories, as well as repairs to and replacement of the internal sewage system, central heating together with radiators, electrical wiring, diversity antenna,

b) replacement of heaters, window frames and door joinery, floors, flooring, carpets and plaster.

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

Under provisions on non-performance of contractual obligations, the tenant may claim to have the defects repaired at the expense of the landlord. If the landlord is unwilling to repair, judicial authorisation is necessary.

- Alterations of the dwelling
    - Is the tenant allowed to make other changes to the dwelling?

The tenant may not make changes to the rented thing which would stand in conflict with the contract or the purpose of the thing without consent of the landlord. Paragraph (2) of the aforementioned article sets forth the consequences of enjoyment of the thing which transgresses contractual stipulations or ignores the thing's purpose. If the tenant's wrongful conduct proves persistent, i.e. he would not stop to enjoy the agreed object in a manner contrary to the above criteria, or where the tenant neglects the thing to an extent which threatens its loss or damage, the landlord may terminate the contract without notice.

As regards other improvements, they are admissible and generally unproblematic. Improvements as such can be defined as outlays on the rented thing which improve (on

the date of the thing's return) the value or utility of the object of lease. These are not to be confused with minor repairs and outlays related to maintenance which should be borne by tenant under art. 662(2) PCC. The discussed provision is applicable only to modifications upgrading the thing. Reimbursement for the outlays may be claimed during the period of lease. The tenant, on the other hand, is not in a position to set off his expenses against rent instalments, even when the landlord declares his will to preserve the modifications.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

There is no direct legal regulation of such adaptations within the context of tenancy arrangements. Such modifications seem to affect the use of the leased premises seriously enough to require landlord consent.

- Affixing antennas and dishes

This is a frequent type of improvement. Generally, fitting and maintenance of such devices is not the landlord's responsibility.

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

Generally allowed, unless changes to walls should oppose the purpose (use) of the dwelling

- Uses of the dwelling
    - Are the following uses allowed or prohibited?
        - keeping domestic animals

The question of domestic animals has not been regulated by law. In practice, it depends on the rules and regulations imposed by the landlord or specific stipulations in the contract. Domestic animals are so widespread that it is generally permissible to keep them unless otherwise restricted by the landlord.

- producing smells

This would generally make an inadmissible use of the dwelling. If such nuisance hindered enjoyment of units by other occupiers in the building, or if the quality of the

premises decreased, termination by landlord at monthly notice would be possible under art 11(2) item 1 TPA.

- receiving guests over night

Generally permissible, unless such visits disturb domestic peace on regular basis.

- fixing pamphlets outside

This matter has not been directly regulated by law. The problem emerges only if it is not covered either by the contract or landlord's rules and regulations. Whether or not the tenant is entitled to fix a pamphlet in the window or at the front depends essentially on its content. Furthermore, the tenant's freedom of expression has to be weighed against the landlord's property right as well as against the other tenants' rights.

- small-scale commercial activity

This always requires consent of the lessor. Operation of a business in the rented premises without consent of the landlord would stand in conflict with the agreed use of the dwelling, which might lead to the contract's termination by landlord at one month's notice, given at the end of a calendar month.

3.2. Landlord's rights

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

The system of rent control in Poland has been replaced by a model of restrictions on rent increase. Some forms of rent control have been preserved in the public and semi-public stock. the institution of regulated rent has been preserved in the stock of Social Building Associations where rates of rent for $1m^2$ of usable floor area of a unit are set by the general meeting of the Social Building Association's shareholders so that the aggregate of rental incomes in the Association should allow to cover maintenance and repair costs relating to the stock, as well as refund of the credit drawn for construction. Paragraph (2) of the same article provides that rent calculated in accordance with the method laid down in paragraph (1) may on no account exceed in a single year the amount of 4% of replacement value of the rented unit.

The same basis of measurement ($1m^2$) applies to principles of rent calculation in rentals belonging to the municipal stock. Again, it is the owner of the units (mayor within the limits set by resolution of the municipal council adopted under art. 21 TPA) that designates the rate of rent per one square meter, taking into account: location of the building, location of the unit within the building, the unit's or building's furnishing with

technical equipment and installations, their condition and general technical standard of the building. The statutory list of criteria envisaged in art. 7(1) TPA does not cross out other factors increasing or decreasing the unit's value in use.

As regards the social housing within municipal resources, rent in such housing unit may not overstep 50% of the lowest rent in the remaining municipal stock.

- 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?

According to art. 9(1b) TPA, increases of rent or other payments for use of the rented unit, except for charges independent of the landlord (for supply of utilities) may not be introduced more frequently than once in 6 months.

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

Any increase of the annual value of rent rate beyond 3% of the replacement value of a unit may be effectuated only in justified cases set out in art. 8a(4a) TPA. These involve situations in which the owner cannot receive incomes from rent which would allow for proper maintenance of the premises along with additional return. Such return is also calculated meticulously, taking as the basis the landlord's expenses connected with the unit's construction, purchase and repairs. Pursuant to art. 8a(4b) item 2, profits reaped by the landlord should be reasonable. On tenant's demand, the landlord should present precise calculations substantiating legitimacy of such an increase. Tenants dissatisfied with an excessive increase have a cause of action. In such cases, it is the court that decides whether or not the questioned increase is justifiable.

The principles discussed above do not apply to modifications concerning charges which are not dependent on the landlord. This category comprises bills for electricity, gas, water, waste and effluent sewage disposal. As the services are provided to the benefit of a tenant, it is him who should bear their cost. Nevertheless, in the event of their increase, the landlord is still obliged under art. 9(2) TPA to present a detailed breakdown of specific charges owed to third party providers.

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

Rent increases should always be notified to a landlord in writing. A landlord inclined to increase rent should notify the tenant before the end of a calendar month and comply with the statutory or contractual notice period no shorter than 3 months (art. 8a(1-3)).

As pointed out above, tenants dissatisfied with an excessive increase have a cause of action which can be brought before a court (art. 8a(5) item 2 TPA. In such cases, it is the court that decides whether or not the questioned increase is justifiable. Alternatively, the tenant may refuse to accept the increase, which results in termination of the contract as a whole (art. 8a(5) item 1 TPA).

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

Although the lessor is usually the owner of the premises, he or she forfeits the right to enjoy the unit as a result of the entry into the lease contract. He cannot stay in the rented premises. The lessor is authorised to enter the rented dwelling only in extraordinary situations, e.g. when it is necessary to make a repair for which the lessor is responsible. In case of a defect in the object of lease which causes or threatens loss, the lessee is obliged to provide access to the unit in accordance with art. 10 TPA. The lessor may also enter the premises to make an overview of its general condition and technical outfit, or carry out works encumbering the lessee if the latter omits to fulfil his or her obligations. On such occasions the date of entry should be negotiated between the parties (art. 10(3) TPA).

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

The question of spare keys has not been expressly regulated. however, art. 690 PCC provides the lessee with owner-like protection against any third parties, including the landlord. This means that the lessee might sue the latter in the event of unjustified use of such hidden set of keys.

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

That would be illegal and might expose the landlord to serious legal consequences. Each time the termination and execution procedures must be followed.

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

Not in a direct physical sense. In accordance with art. 670 PCC, to secure the rent and other renditions in which the lessee defaults for no longer than one year, the landlord has statutory pledge on the tenant's movables brought into the rented object unless the things are exempt from attachment. Statutory pledge refers to chattels, whether owned or co-owner by the lessee. The seizure must be effected by recourse to official executive proceedings.

Pursuant to art. 671 PCC, the statutory pledge is extinguished when the pledged things are removed from the rented object. The lessor may object to such removal and retain

the chattels at his own risk until the overdue rent is paid and secured. By doing so, the lessee might become exposed to compensatory liability towards the lessee. If the pledged things are removed under an order issued by a state authority, the landlord still retains his statutory right of pledge if, within three days, he reports it to the authority that ordered the removal (art. 671(3) PCC).

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?

In pursuance of the general provision of art 673(1) PCC), where the period of lease is indeterminate, both lessor and lessee may terminate the contract by complying with the agreed notice period, or, in the absence of accord in this regard, in accordance with statutory periods. Art. 688 ordains that lease may be terminated at three months' notice given at the end of a calendar month as long as the duration of lease is unspecified and rent is paid monthly. This provision is not applicable where the parties provided for other intervals between consecutive rent instalments. In such cases, one has to take recourse to art. 673(2), which also stipulates statutory notice periods depending on the intervals at which rent is payable. Where this term is longer than one month, termination is permissible at three month notice given at the end of a calendar month. If it is shorter than month, the notice period amounts to three days. Where rent is paid daily, notice is to be given one day in advance.

- 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)?

Generally, fixed term contracts may not be terminated before expiry of the agreed period. Obviously, the parties themselves may account for the possibility of termination in specific situations, including the vague, but popular, specification "for important reasons."
Otherwise, the tenant may terminate the contract immediately in the event of serious defects of the unit. Under art. 664 PCC, this may be the case where, at the time of delivery, the object of lease is defective in such a manner which precludes its agreed use, or where such defects appear later but the landlord fails to cure it due time despite prior notification by the tenant. Under art 682 PCC, immediate termination by tenant is possible if the unit's defects pose danger to the health of the tenant's household members or employees. In the latter case, the tenant may terminate the legal relationship even if he knew about the defects at the time of entering into the contract.

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

It would not be possible without a separate agreement with the landlord, dissolving the

previous lease.

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?

The landlord does not have to resort to court. He or she is, however, restricted by a rather stringent tenant protection regime, as termination by landlord is admissible only in situations expressly indicated in the Tenants Protection Act. The landlord may terminate the legal relationship (art. 11(2) TPA) at monthly notice given at the end of a calendar month if the tenant:

1) continues to use the unit in a manner contrary to the agreement or the unit's purpose despite an earlier written admonition, neglects his or her obligations inflicting, in the same way, damage to the premises, damages equipment intended for common use of tenants residing in the same building, or transgresses blatantly or insistently against house rules and regulations in a way which impairs enjoyment of other apartments in the house;

2) defaults with rent or other charges accrued for enjoyment of the unit for at least three full periods of payment in spite of having been admonished in writing about the landlord's intent to terminate the contract and given additional monthly term to pay the outstanding and current liabilities;

3) has let, sublet or transferred for non-gratuitous use the unit in whole or its part without written consent of the landlord; or

4) occupies the unit which has to be vacated because of the need to demolish or restore the building with the proviso of art. 10(4) TPA, which means that on such occasions the landlord must assure replacement premises, and that restoration may not take longer than a year.

By virtue of art. 19e TPA, the first three points on the list above do not apply to incidental lease. Instead, arts. 685 PPC (immediate termination justified by gross and persistently transgressions against domestic peace) and 687 PPC provide legal grounds for termination without notice. In the latter case termination is possible if the tenant delays with rent for at least two full periods of payment, however, a monthly deadline to clear the arrears must first be given.

On general terms, legitimate reasons for termination may also relate to the fact that the tenant's housing needs are already catered to in another way. Under art. 11(3) TPA, the landlord of a unit in which yearly rent is lower than 3% of its replacement value is free to terminate the lease:

1) at 6 months' notice if the tenant fails to occupy the unit for a period longer than twelve months;

2) at monthly notice at the end of a calendar month if the tenant has a legal title to enjoy

other premises located in the same city, town or village, and the tenant may use that other lodging, which, in addition, must comply with all requirements provided for a replacement dwelling.

Pursuant to art. 11(4) TPA, the landlord may terminate the contract at six months' notice given at the end of a calendar month if he wishes to live in the unit or pass it over to one of his or her close relations, and the tenant is authorized to use another unit which meets the minimal requirements of replacement premises. If the tenant is not in a position to use any alternative lodging, this period of termination is prolonged to 3 years under art. 11(5) TPA.

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

Direct objections do not produce any legal effects. Since the TPA regime defines strictly grounds for termination, the tenant who does not agree with the landlord's understanding of a statutory provision providing foundation for termination may always have recourse to court.

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

This would also be limited to situations expressly prescribed in art. 11 of the Tenants Protection Act.

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

In the case of termination justified by the landlord's own housing needs under art. 11(5) TPA (where the tenant has no alternative place to go), art. 11(12) TPA reserves, with regard to tenants aged over 75 years, that termination may only be effective upon their death, unless there are persons obliged to provide them with alimony.

- 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?

The landlord would have to go through the eviction procedure, which generally requires prior resort to court. Judicial proceedings are avoided where the tenant voluntarily submitted to execution in the form of a notarial deed, that is in the case of incidental lease.

4.3. Return of the deposit

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

The deposit is to be returned within one month from the date of vacating the unit or its purchase by an ordinary or occasional lessee, after the offset of dues owed to the lessor under the lease contract (art. 6(4) and art. 19a(5) TPA). As per art. 6(3) TPA, valorised

deposit is returned in the amount of monthly rent payable on the date of such return multiplied by the coefficient (number of instalments) chosen when the deposit had been initially made.

- 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 may deduct any debts owed under the tenancy which are mature and payable to the landlord at the unit's vacation date. Ordinary wear and tear of the furniture does not count as damage. Other infringements to the unit, its fittings and furniture, may be considered, as long as the tenant's guilt can be evinced.

4.4. Adjudicating a dispute

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

The Court structure in tenancy cases does not stray from the general regulation. Under art. 1 of the System of Common Courts Law Act 2001, in Poland there are district courts, circuit courts and courts of appeal. There is also the Supreme Court, which carries out review functions, interprets legal provision so as to assure uniform lines of jurisdiction. Although its case-law is in no way officially binding on regular courts, SC interpretations are generally followed.

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

In pursuance of art. 505^1 of the Polish Code of Civil Procedure, disputes concerning rents and fees payable by cooperative rights holders are, regardless of their value, resolved in a summary process. In principle, such mode of proceedings is to be more convenient to the plaintiff. However, a summary process is highly formalized and requires the plaintiff to file most of the pleadings, including petition, on official forms. Only in the rare cases, where the dispute value exceeds PLN 75 thousand, the summary procedure is omitted.

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

All conceivable modes of amicable dealing are admissible. Below, attention is drawn to its two specific forms.

A prospective claimant may initiate judicial conciliation. This procedure is instituted by motion for conciliation filed in each case with a district court (regardless of the value in dispute) in whose area the respondent resides (court exercising general jurisdiction in litigation). The court acts in this proceeding as a body inducing the parties to settle the case by themselves. It does not resolve the dispute authoritatively. If the opponent turns

out to be unwilling to settle, conciliation usually concludes with a ruling as to its costs. One crucial advantage of the motion for conciliation is the fact that it interrupts the limitation of claims to which it refers. As turns out in practice, however, this procedure is used exceptionally rarely in housing law disputes.

Secondly, the parties may resort to mediation. The most pronounced characteristic of mediation is its voluntary character. Mediation is carried out based on an agreement for mediation or a court ruling which refers the parties to mediation. In this agreement, the parties specify in particular the object of mediation, the mediator or the manner of his election. As a rule, mediation is commenced before the action is brought to court, but it is also admissible to refer the case to mediation in the course of pending proceedings.

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?

A candidate for a municipal unit must file an application with municipal authorities. The body competent to sign the contract on behalf of a municipality is the mayor. He or she must, however, observe the terms of selection of tenants enacted by the municipal council (usually based on income criteria). This procedure is followed both in reference to the general municipal housing stock and social units in the strict sense of the word.

As regards Social Building Associations, nowadays, it is practically impossible to obtain a new dwelling as their investments were bought to a halt due to governmental savings and discontinuance of subsidies from the National Housing Fund. An applicant would have to declare household incomes below average. This income should not exceed the basic quota of 1,3 of an average monthly salary in a given voivodeship (regional level self-government), announced before the conclusion of the contract, by more than 20% in a single-person household, 80% in a two-person household and 40% for each additional person. Prospective tenants may also be required to cover a part of the investment costs.

Housing benefits may be granted to: tenants, sub-tenants of housing units, holders of a tenancy cooperative right, owner-occupiers, persons with any other rightful tenure in a unit who bear expenses related to its enjoyment, or even occupiers without a valid tenure waiting for a replacement or social unit. The application must be submitted to a mayor who acts by way of administrative decisions. The average monthly income per household member in the three months preceding the application may not exceed 175% of the lowest old age pension at the time of application for single-person households and 125% of the same indicator for multi-person households. The benefits are awarded for 6 months as of the beginning of the month following the application. Respective sums are remitted to the owners of the premises to partly discharge the dues of the entitled persons. Owner-occupiers receive the benefit directly.

- Is any kind of insurance recommendable to a tenant?

No insurance is required by law. It is frequent for a landlord to request the tenant to buy

a liability insurance (against any third party loss, e.g. caused by water leaks).

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

In the Polish system of civil procedure, a party may apply for exemption from judicial costs and appointment of a court-assigned attorney. As revealed by legal practice, the procedure of exemption from judicial costs functions properly. Less affluent litigants are exempted from judicial costs in whole or in appropriate proportion. Such exemption does not cover costs of the proceedings incurred by the opponent. This means that where the party exempt from costs loses the case, the losing party is obliged to refund costs of the process to the adversary

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

Apart from the Ombudsman, generally preoccupied with civil rights and freedoms, there are various associations of tenants operating on the nationwide and local levels. Contact data of some of these organisations are given below.

Rzecznik Praw Obywatelskich (Ombudsman)
Warszawa, Aleja Solidarności 77, tel. (+ 48 22) 55 17 700
email: biurorzecznika@brpo.gov.pl

Komitet Obrony Lokatorów (Tenants Protection Committee)
Warszawa, ul. Targowa 22, tel. +48 693 713 567, +48 609 444 686
email: obronalokatorow@gmail.com

Polskie Zrzeszenie Lokatorów (Polish Union of Tenants)
Kraków, ul. ks. F. Blachnickiego 7A, tel/fax. + 48 (12) 422-65-47

Warszawskie Stowarzyszenie Lokatorów (Warsaw Association of Tenants)
Warszawa, ul. Klaudyny 28/38, tel. +48 790 823 850, + 48 601 365 690

Wielkopolskie Stowarzyszenie Lokatorów (Wielkopolska Association of Tenants)
Poznań, ul. Piaskowa 3/17, tel. +48 Tel. 501-097-760
email: wsl.stowarzyszenie@gmail.com

Stowarzyszenie Krakowska Grupa Inicjatywna Obrony Praw Lokatorów
(Association: Cracow Initiative Group for Tenants Protection)
Kraków, ul. Długa 9/ 8, tel. +48 12 421 08 53, +48 609 171 778
email: jagataj@vp.pl , grazyna@mally.pl