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

Tenant's Right Brochure for

PORTUGAL

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Tenant's Rights Brochure

PORTUGAL

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1. Introductory information

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

Portuguese citizens are currently choosing to rent instead of buying a dwelling. According to the latest catalogue of studies of the Association of Professionals and Real Estate Companies of Portugal (APEMIP), covering the first half of 2013, the demand for rental surpassed the demand for buying houses in the districts of Lisbon and Oporto (52.5% and 51.4%, respectively).

These figures for renting demand do not mean that the offer is in proportion to the demand. According to the APEMIP, the weight of the rental housing supply in Portugal over 2013 was 7.26% in the first quarter and 7.55% during the third quarter. In conclusion, levels of supply remain far from the demand that already exists in the sector.

- Main current problems of the national rental market from the perspective of tenants:
 - Difficulty in finding an affordable rental dwelling, mainly in the bigger cities
 - Difficulty in paying the rent, due to the economic constraints families are facing and the high level of unemployment
 - Difficulty in accessing a rent subsidy

- Significance of different forms of rental tenure

Private renting:

About 97% of all rental dwellings are rented out on the private rental market, in which landlords are free to determine the initial amount of rent and the parties are free to decide about the subsequent increase in rent.

“Housing with a public task”:

Only about 3% of all rental dwellings are offered by public bodies and only those with very low income are entitled to this kind of rental housing.

- 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 is advisable for a foreigner who does not speak Portuguese very well to ask a native speaker to come along to the viewing of a dwelling in order to avoid possible communication problems or misunderstandings.
 - Guest students should contact the international office or the student services of the university they will visit.
 - Foreigners who come to Portugal for work may ask their employer or colleagues how to find an apartment or whether the company even offers special dwellings for their workers.
 - It is advisable to ask for a document which proves that the landlord is the owner of the dwelling;
 - It is advisable to find a rental home from an estate agency, especially for foreigners.

o Main problems and “traps” in tenancy law from the perspective of tenants

- Some landlords tend to persuade tenants to pay less rent in exchange for not getting a payment receipt and not signing a contract, so that the landlord does not have to pay taxes over the received rent
- Contract terms are frequently formulated to give advantage to the landlord; therefore, tenants need legal knowledge or legal advice in order to defend their rights

- *“Important legal terms related to tenancy law”*

PORTUGUESE	TRANSLATION TO ENGLISH
Resolução do contrato	Termination of contract
Obras	Repairs
Vícios do bem locado	Defects of leased property
Renda	Rent
Caução	Security Deposit
Benfeitorias	Improvements
Sublocação	Sublease/Subletting
Contrato com prazo certo	Contract with fixed term
Contrato por duração indeterminada	Contract of open-ended duration
Despejo	Eviction
Encargos da coisa locada	Charges of the leased thing
Reparações ou outras despesas urgentes	Repairs or other urgent expenses
Caducidade	Expiry of the contract
Transmissão da posição contratual	Transmission of the contractual position

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?

According to the broad non-discrimination rule enshrined in the General Act of Equal Treatment, discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation is prohibited.

Foreign students can always resort to the international relations office of the host University and ask for help or tips on obtaining accommodations.

A person with a short-term work contract can have a similar solution. The employer can always help or even give accommodation (by contracting with a landlord or for a dwelling belonging to the employer).

- 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 is allowed to ask any questions regarding the solvency of the tenant in order to assess if he/she will be able to fulfil his/her obligations.

If the landlord's questions are regarding the solvency of the tenant, the tenant must answer truthfully.

A landlord cannot ask questions about the tenant's sexual orientation since it gives rise to a possible discrimination.

- 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)?

- To ask for a "reservation fee" is not usual or legal.

- What kinds of checks on the personal and financial status of the tenant are usual and legal (e.g. the landlord requiring an independent credit report)?

The following checks on the personal and financial status of the potential tenant are usual:

- Demanding submission of a salary statement from the prospective tenant and /or copy of the annual tax form
- Contacting a lawyer in order to do an inspection of lists of debtors maintained by the local courts or other credit agencies, since the landlord is not legally permitted to do so by him/herself.

- 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?

In order to find a dwelling, the tenant may consult an estate agent who assists him in the search, especially by proposing and executing viewings of dwellings corresponding to the tenants' needs.

If a tenancy contract is entered into as the result of negotiations carried out by the estate agent, the same may demand a fee for its services.

If the tenant is searching for social housing, he/she can be assisted by municipalities or search online (on websites created by the state or in partnership with the state), for dwellings available for citizens with social needs.

These can be found, among others, on:

- www.mercadosocialarrendamento.msss.pt
- <http://www4.seg-social.pt/venda-e-arrendamento-de-imoveis>
- https://www.portaldahabitacao.pt/pt/portal/mercado_social_arrendamento/mercado_social_arrendamento.html

If the tenant wants to find a dwelling on his own, he can search for housing advertisements in newspapers (dwellings are usually offered by the landlord himself) or he may search on the following popular internet sites:

- <http://www.imovirtual.com/imoveis/arrendar/>
- <http://www.casa.iol.pt/pesquisar/tipo-apartamentos/local-porto/para-arrendamento/pagina-1/>
- <http://www.queroarrendar.com/>

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

There are no “blacklists”, or equivalent mechanisms, of bad landlords/tenants.

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)?

Article 1069 Civil Code stipulates that a rental contract must be in written form in order to be valid.

The Tax Authorities must be informed by the landlord when a rental contract is signed. This obligation is imposed by Article 60 of the Stamp Taxation Code (C.I.S. - Código do Imposto de Selo).

There is a fee applied to this Stamp Taxation and it must be paid by the end of the month following the start of the rental contract, by the landlord or, if a sublease takes place, by the sublessor.

It is in the General Table of Stamp Taxation that the taxable values for this tax are planned, reporting, also, the applicable tax rates.

- This tax is paid on rents or on their conventional increase, in renting or sublease contracts.
 - In rental contracts with less than one month's duration, this tax is payable at the rate of 10%, on the amount of rent or the stipulated increase for the period of its duration.
- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?

Required content of the Renting Agreement

- The identity of the parties, including nationality, date of birth and marital status;
- The identification of the dwelling;
- Housing purpose;
- The existence of a licence for use, its number, date and issuer;
- Amount of rent;
- Date of signature.

Possible content (when applicable)

- The identification of areas for the private use of the tenant and those for common use to which he/she has access, and attachments rented with the principal object of the contract;
 - The nature of the right of the landlord, whenever the contract is concluded on the basis of a temporary right or power to administer the goods of others;
 - The registration number with the land registry;
 - The regime of rent, or its update;
 - The term;
 - The existence of any horizontal property regulation;
 - Any other clauses permitted by law and intended by the parties, either directly or by reference to a regulatory annex.
- Duration: open-ended vs. time-limited contracts (if legal, under what conditions?)

Tenancy contracts can be open-ended or time limited contracts.

If concluded for a limited time, the parties may agree that, after the first renovation, the contract has an open-ended duration, but if the parties don't agree on any term, the contract is to be considered a time-limited contract concluded for 2 years.

- Whenever the parties agree on a time-limited contract, it must be written in the contract; that period of time, however, cannot surpass 30 years and any other duration longer than 30 years is to be considered reduced to that period.
- Whenever the parties agree on an open-ended contract, the contract terminates by giving notice in advance

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

The contract must indicate:

- The amount of rent;
- When, where and how the rent shall be paid.

Regarding this last item, usually, the tenant has to pay the rent in advance on a monthly basis. If the contract does not provide information on the due date, the rent is, according to tenancy law, to be paid on the 1st working day of the month immediately preceding that to which it relates. Finally, the contract must contain information on how the rent is to be paid (bank transfer, cash, etc.).

- Repairs, furnishings, and other usual content of importance to the tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

It is up to the landlord to maintain the rented property in a suitable condition, as well as to bear all the costs resulting from necessary maintenance works and repairs.

The tenant may only perform works and repairs when the contract expressly provides it or if the landlord agrees to it by writing. This requirement does not apply to cases of urgent repairs or other expenses; in this case the tenant may pay offset the rent payment against expenses related to the works and repairs, with the obligation to pay the rent. In other words, the tenant has the right to not pay the rent in order to pay those urgent repairs or expenses.

The tenant can also make improvements to the dwelling and be, eventually, compensated for them. Those improvements can be:

- a) Necessary improvements - those that aim to prevent the loss, destruction or deterioration of the thing (always being entitled to be compensated for them);
- b) Useful improvements – those that are not essential for the conservation of the dwelling, but which increase its value (at the end of the contract the tenant can take them with him/her, provided that this can be done without deteriorating the dwelling, if not, the tenant is entitled to be compensated for their value);
- c) Voluptuous improvements - those which are not indispensable to the preservation of the dwelling, nor do they increase its value, but serve only to please the tenant (at the end of the contract the tenant can take them with him/her, provided that this can be done without deteriorating the dwelling, if not, the tenant is not entitled to any compensation). These improvements can only be carried out with the written consent of the landlord.

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

According to the building regulations, a dwelling must have at least one habitable room, one toilet, one bathtub or shower and a kitchen or a kitchenette, i.e. the technical requirements for the installation of a kitchen suffice. Apart from that, it depends on the tenancy agreement whether and which furnishings the landlord has to provide.

- 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)?

As part of the handover of the dwelling, the landlord usually makes a move-in checklist (and in the case of a furnished dwelling also an inventory list) which becomes part of the tenancy contract and documents (i.e. photos) the actual condition of the dwelling as well as existing damage. Based on these documents, the tenant is liable only for future modifications and deteriorations of the dwelling (and its furnishings) provided they exceed the wear and tear on the leased property from use in conformity with the contract.

- Any other usual contractual clauses of relevance to the tenant

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

- clause on the provision of a security deposit;
- clause on the assignment of works, repairs and improvements;
- clause on the right of the landlord to inspect the dwelling;
- clause on the right/prohibition to sublease the dwelling;
- clause on the conservation of the dwelling.

- **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.)?
 - a) Those who live with the tenant in the same household (spouses, civil partners, relatives and persons for whom, by law or legal business that does not comply directly with housing, there is an obligation of cohabitation or maintenance payments) ;
 - b) A maximum of 3 guests (people to whom the tenant provides housing and provide services related to the house, or provides maintenance payments, for consideration), unless there is a clause otherwise;
- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

The tenant is obligated to occupy the dwelling; it is, however, lawful to not use the dwelling:

- a) for a period that cannot exceed 1 year;
- b) in case of force majeure or disease;
- c) if the absence, not lasting for more than two years, is due to the discharge of professional or military duties (applicable to the tenants spouse or civil partner living with the tenant);
- d) if the use is maintained by those who, having the right to use the dwelling, did so for over a year;
- e) if the absence is due to the provision of ongoing support to disabled people with a degree of disability above 60%, including family.

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

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

If agreed, the spouses may opt for the transfer of the contractual position, if only one of them signed the rental contract, or, if both signed it, only one keeps the contractual

position as a tenant while the other one ceases to be a tenant. This agreement is entered into under amicable divorce or divorce without the consent of the other spouse.

In the absence of an agreement, the Court shall decide who will be the tenant, taking into consideration the needs of each spouse and the needs of the children and any other factors which might be relevant to a good decision on the matter.

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

In Portuguese law there are no specific laws regarding the situation where apartments are shared among students. They are treated as any other tenants, therefore, if an apartment is rented by several students, only with the consent of the landlord may there be a replacement of tenants.

- death of tenant;

In case of death of the tenant, the tenancy is continued with the surviving tenants provided that the contract has been entered into with more than one tenant.

If there is no other tenant, specific persons who maintained a joint household together with him/her at the time of demise have a right of succession:

- a) Spouse
- b) Civil partner who lived with the tenant for over a year
- c) Person with whom he/she lived in the same household for over a year.

Having several persons entitled to the transmission, the position of the tenant is transmitted, on equal terms, to the surviving spouse or civil partner who lived with the tenant for over a year, a close relative or, among these, the older or oldest among the remaining persons with whom they resided in the same household.

The right of succession shall not apply if, on the date of death of the tenant, the holder of that right has another house, owned or rented, in the area of the municipalities of Lisbon and Oporto and their adjoining area or, for the rest of the country, having a house, owned or rented, in the corresponding county.

- bankruptcy of the landlord;

If the landlord is bankrupt and the dwelling is sold through a compulsory auction, the new owner enters into existing tenancies and takes over all the rights and duties of the former landlord. If, however, the tenancy contract was signed less than 2 years before the bankruptcy of the landlord, the insolvency administrator, if it is proven that

the tenancy contract was signed in prejudice of the insolvent assets, has the right to terminate the existing tenancy contract.

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

Subletting authorisation must be given in writing. However, if the landlord comes to know about the subletting after it occurred, he/she can always ratify it if he/she recognises the subtenant as such.

The sublease expires with the termination, for any reason, of the tenancy contract, without prejudice to the responsibility of the sublessor with the subtenant, when he/she is liable for the subject of extinction.

If the landlord receives any rent from the subtenant and gives him/her a payment receipt after the termination of the tenancy contract, the subtenant is to be assumed to be a direct tenant.

Since a sublease contract does not cause a contractual relationship between the landlord and the subtenant and is in its existence dependent on the main tenancy, the subtenant does not enjoy legal protection in relation to the landlord. But the latter has to observe the provisions on the protection of tenants nevertheless in relation to the main tenant. Therefore, landlords usually do not offer a sublease contract instead of an ordinary one. If the landlord offers a tenant only a sublease contract although there is no main tenant, the contract is in any case regarded as an ordinary tenancy contract and consequently subject to the tenant protection rules, because the actual purpose of the contract is crucial and not its title.

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

If the dwelling is sold by the landlord, the acquirer of the residential space enters into existing tenancies and takes over all the rights and duties of a landlord. Therefore, the sale of the dwelling does not change the position of the tenant.

- 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 parties agree, in writing, the utilities regime. In the absence of regulation, all utilities and their provision must be taken care of by the tenant. In the case of rental of a building unit, utilities related to the common parts of the building as well as the payment of services of common interest are to be borne by the landlord.

Utilities should be contracted on behalf of those who are responsible for their payment. If the tenant is responsible for a utility contracted on behalf of the landlord, he/she presents, within a month, the proof of payment made. In this case, the obligation of the tenant matures at the end of the month following the notification by the landlord and it must be fulfilled simultaneously with the subsequent rent.

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

The standard practice is that the tenant bears all charges regarding utilities. The parties can agree otherwise, but it's not a common practice. Even the shared parts of the building, lifts, gardens, caretakers, etc, are all at the tenants expense.

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

No, the tenant is not responsible for taxes levied by local municipalities.

The taxes directly associated to tenancy are the Stamp Tax and Property Tax, both under the responsibility of the landlord. The Stamp Tax, as mentioned above is a tax calculated based on monthly rent received. The Property tax is due by whoever is the owner of the dwelling at 31st of December of each year and the payment must be made in April, or April and September if paid in two times.

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

It is lawful to shift condominium costs, such as costs for house cleaning, disinfestations or for a caretaker, onto the tenant, as well as other costs concerning the administration, maintenance or enjoyment of the common parts of the condominium, provided the parties agreed on this and it is established in the contract.

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

It is common practice that the parties agree on a security deposit for the performance of the tenant's duties. The parties usually agree, in written form, on a deposit that cannot exceed the amount of 3 months' rent, payable upon signature of the contract.

So, when the tenant signs the contract, he/she pays the first month of rent and an equal sum as deposit. This deposit is either returned to him/her when the tenant decides to leave the dwelling, and if no damages were suffered by the dwelling, or, it is discounted in his/her last month living in the dwelling (e.g. Tenant notifies the landlord at the beginning of the month that at the end he will leave the dwelling, in that case, the deposit is used as the last months' rent).

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

The landlord can manage the deposit as he/she sees fit, provided he/she has it when the time is due to return it to the tenant, if necessary.

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

Additional guarantees or a personal guarantor are lawful. A surety as a personal guarantor is often required by the landlord if the prospective tenant has only low-income due to education or study. Then, the landlord usually requires that the parents of the tenant stand surety.

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

The security deposit serves as a guarantee for all claims of the landlord arising from the tenancy. It is precisely not supposed to be an advance rent payment, so that the tenant is not entitled to stop paying the rent before the tenancy ends.

3. During the tenancy

3.1. Tenant's rights

- Defects and disturbances
 - Which defects and disturbances are legally relevant (e.g. mold 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)?

Every defect that deprives the tenant of the ability make effective use of the dwelling or is harmful for his/her health is legally relevant. For example, mold and humidity represent two of the defects found on a dwelling, along with cracked walls. Regarding the exposure to noise, Portuguese law regulates the most common noise sources,

such as civil works, construction of buildings, neighbours, etc. There is a limit for noise established by law, which can vary depending on the zone. So, for instance, if there is a building site in front of the dwelling, the noise it can produce is limited and it can't go continue later than 20:00.

- 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)

Principally, all claims and rights of the tenant against the landlord due to defects of the dwelling require that the tenant did not know of the defect when entering into the tenancy contract or at the time of acceptance. If there is a defect on the dwelling and it wasn't caused by negligence of the tenant and if nothing about who makes which repairs is in the contract, the repairs must be made by the landlord. This decision can come from the landlord him/herself or from court. The rental contract may stipulate that the tenant is authorised to make repairs in the dwelling, in that case, he/she makes the necessary repairs and then they claim the costs or a rent reduction from the landlord. If, however, the repairs are urgent, such as if the ceiling is falling down because of heavy rain, the tenant, even if unauthorised, is able to make the necessary and urgent repairs, and then to claim the costs or a rent reduction from the landlord.

If, for some reason, the tenant suffers deprivation or a reduction in the enjoyment of the rented dwelling, he/she is entitled to a rent reduction. In case of deprivation, even if temporarily, the tenant can terminate the contract.

- Repairs of the dwelling

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

It is up to the landlord to perform all maintenance works and repairs, ordinary or extraordinary, required by applicable laws or by order of the contract, unless otherwise agreed. The tenant may only perform maintenance works and repairs when the contract expressly so provides or if the landlord has given his/her consent on that matter. This requirement does not apply to cases of urgent repairs or other expenses, in which case, as previously stated, the tenant may offset the expenses paid in relation to the work with the obligation to pay the rent.

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

The tenant has a statutory right to this effect in so far as he/she is entitled to offset a claim for reimbursement of expenses against the landlord's claim for rent. A claim for reimbursement requires that the tenant had remedied a defect either because the landlord was in default in remedying the defect or because an immediate remedy was necessary to preserve or restore the state of the rented property.

- 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.)

With regard to changes necessary in order to accommodate a handicapped person, the tenant may demand the approval of the landlord for structural changes or other installations required to make the use of the dwelling or access to it fit for the needs of the disabled. In case of approval, these changes will be seen as useful improvements (mentioned above) and all costs are borne by the tenant.

- Affixing antennas and dishes

In general, tenants are not entitled to affix a parabolic antenna without the permission of the landlord. The tenant has to inform the landlord, by registered letter, of his/her intention to affix an antenna or dish. The landlord can oppose this intention only if, in 30 days, he/she affixes an antenna or dish of the same type. Although the landlord has to tolerate the installation of a parabolic antenna, he has nevertheless still the right:

1. to determine the place where the antenna shall be fixed
2. to be indemnified from all costs by the tenant.

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

Without the landlord's permission, the tenant is principally not allowed to carry out physical alterations affecting the structure of the residential building, even if these measures lead to an improvement on the condition of the dwelling. This includes e.g. the refurbishment of bathrooms, the installation of new heating systems as well as the renewal of floors.

It is lawful, for the tenant to perform minor deteriorations in the dwelling, when this is necessary to ensure his/her comfort or convenience.

Those deteriorations, however, must be repaired by the tenant prior to the return of the building, unless otherwise stipulated.

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

It is generally accepted that keeping animals inside the dwelling belongs to the contractual use of the rented dwelling and is also protected by the fundamental right to free development in so far as it concerns non-disturbing pets, which are usually kept in a cage or an aquarium. Therefore; a general prohibition to keep pets of any kind is ineffective. This applies also to a general prohibition of keeping disturbing animals like cats and dogs inside the dwelling. The decision whether to permit the keeping of animals or not must be made instead on a case-by-case basis. It depends especially on the species and number of animals, the size of the dwelling, special needs of the tenant as well as on the conduct of the landlord in comparable cases.

- producing smells

Tenants are subject to the same limitations imposed to owners/landlords, when it comes to neighbourly relations, thus, Portuguese law allows an owner of a building to oppose any emission of smoke, soot, fumes, odours, or any similar facts, from any neighbouring building, whenever such facts import substantial harm to the use of the property or are not resulting from normal use of the building that they emanate from.

- receiving guests over-night

The tenant is entitled to receive guests at any given time of the day and they can stay in the dwelling for weeks. The landlords' authorisation is not needed.

- fixing pamphlets outside

Whether or not the tenant is entitled to fix a pamphlet in the window or at the front of the house depends essentially on its content and presentation. Furthermore, the tenant's freedom of expression has to be weighed against the landlord's property right as well as against the rights of the other tenants.

- small-scale commercial activity

The residential use of the dwelling includes, unless there is a provision to the contrary, the exercise of any domestic commercial activity, provided that it is taxed. The law defines domestic commercial activities as those performed in the dwelling where the tenant is living and which cannot have more than three salaried staff. So, in these cases, the landlord is obligated to permit the tenant to proceed with his/her activity.

3.2. Landlord's rights

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

The parties agree on the amount of rent upon the signature of the rental contract. There are no restrictions on the amount of rent a landlord may charge.

○When is a rent increase legal? In particular:

- Are there restrictions on how many times the rent may be increased in a certain period?

The landlord can increase the rent, at a maximum, once a year. The first increase may be required one year after the effective date of the contract and the following, successively, one year after the previous increase.

- 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 cap or ceiling. The parties are free to establish the amount of rent to be paid.

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

The parties agree, in writing, the possibility of a rent increase and its regime.

If nothing about this matter is established by the parties:

- a) Rent can be updated annually, according to the existing update coefficients;
- b) The first update may be required one year after the effective date of the contract and the following, successively, one year after the previous update;
- c) The landlord communicates in writing at least 30 days in advance, the coefficient update and new income resulting from it.

- Entering the premises and related issues

○ Under what conditions may the landlord enter the premises?

Allowing the landlord to enter the premises in order to examine the dwelling is one of the tenant's obligations; therefore, as long as the landlord has a valid reason to enter the premises, the tenant is obligated to allow him/her to enter.

Reasons which entitle the landlord to enter the dwelling are, for example, the implementation of maintenance or modernisation measures, the reasonable suspicion of a breach of contract by the tenant, the intention to sell the dwelling and to show it to prospective buyers or tenants as well as the inspection in order to avert imminent dangers.

When the landlord declares his/her intention to sell the dwelling, during the 3 months prior to vacating the dwelling, the tenant must show the premises to any interested party, during the hours agreed with the landlord. Failing agreement, the hours are on weekdays, from 17:30 to 19:30, and on Saturdays and Sundays from 15:00 to 19:00 hours.

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

The landlord is allowed to keep a set of keys, unless otherwise established by the parties, although, it is common for a tenant to change the lock of the dwelling, keeping the old lock and keys to return them to the landlord upon the end of the contract or to put the lock the way he/she found it in the first place. All costs (removing the lock and putting it back on) are the responsibility of the tenant.

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

The landlord is not entitled to lock the tenant out of the rented dwelling, even if he could terminate the tenancy due to arrears of rent. If the landlord nevertheless replaces the lock, the tenant is not obliged to pay the rent for as long as he is not able to use the dwelling. Beyond that, the tenant may require possession to be restored. The landlord has to resort to judicial means in order to cease the arrears or evict the tenant.

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

The landlord has always to resort to court in order to get the tenant's personal property seized and sold. After this procedure, the landlord receives the corresponding rents due.

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?

After six months of the effective duration of the contract, the tenant may terminate it, regardless of any justification, upon notice to the landlord with prior notice never less than:

- a) 120 days in advance of the expected termination of the contract if, at the date of communication, it has a year or more of effective duration;
- b) 60 days in advance of the expected termination of the contract if, at the date of communication, it has up to one year of effective duration.

This termination becomes effective at the end of a month of the Gregorian calendar, counting from the notification. If, however, the tenant does not comply with this procedure, the termination will still apply, but he/she is obligated to pay the rents corresponding to the period of notice he/she failed to give.

- 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)?

After a third of the term of the initial contract duration, the tenant may terminate it at any time, upon notice to the landlord with the following minimum advance notice:

- a) 120 days in advance of the expected term of the contract, if this term is equal to or exceeding one year;
- b) 60 days in advance of the expected term of the contract, if this term is less than one year.

The tenant can also terminate the tenancy contract due to breach of contract, when the severity or consequences of the same make it unviable for the tenant to maintain the tenancy contract. If the landlord does not perform the necessary works for which he/she is responsible and that omission compromises the habitability of the dwelling, that is considered a severe breach of the tenancy contract and is a legal reason for the tenant to terminate the contract before the end of the rental term.

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

In the event that the tenant wants to move out prior to the expiry of the statutory notice period, for example due to a new job in another city, he/she can terminate the contract after a third of the term of the initial contract duration, upon notice to the landlord with the following minimum advance notice:

- a) 120 days in advance of the expected term of the contract, if this term is equal to or exceeding one year;
- b) 60 days in advance of the expected term of the contract, if this term is less than one year.

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)?

The landlord may terminate an open-ended contract:

- (i) whenever he/she needs the dwelling for him/herself or for his/her children to live in,
- (ii) for demolition or construction work of renovations or deep restoration requiring the eviction of the dwelling or,
- (iii) Without any reason, by notice to the tenant two years in advance of the date it should terminate.

Any landlord who wishes to terminate the contract due to reasons (i) and (ii), has to notify the tenant at least six months in advance of the date the tenant has to vacate the dwelling and explicitly state, under penalty of ineffectiveness, the reasons for the termination. In cases as per (i) the landlord or his/her descendants must move into the dwelling within three months of the notification and for a period no less than two years; in cases as per (ii) specifically, the communication referred to must be accompanied, under penalty of ineffectiveness of the termination, by proof that the demolition, construction procedures or restoration procedures have initiated and because of them, the dwelling must be evacuated, or by a description of the urban operation in the dwelling, indicating that the urban operation is exempt from prior control and the reasons why the same makes it necessary to vacate the dwelling, in the case of urban operations free of prior control.

Terminating the contract invoking demolition, construction or restoration, the landlord is obligated by agreement and as an alternative, to pay compensation to the tenant corresponding to one year of rent, or guarantee the relocation of the tenant to a dwelling with the same conditions he/she was enjoyed in the previous one (location, amount of rent and expenses).

- Must the landlord resort to court?

There is no need for the landlord to resort to court, provided he/she communicates his/her intention to terminate the contract, by sending a registered letter to the tenant, with at least six months in advance of the intended date of the termination and expressly stating, under penalty of ineffectiveness, the reasons for termination.

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

Whenever the landlord terminates the contract by invoking non-payment of rent, charges or expenses that run on behalf of the tenant, the termination has no effect if the tenant, within one month, pays whatever is due.

The landlord can use, against the tenant, a special procedure for eviction which must be presented at the National Rental Counter (BNA - *Balcão Nacional de Arrendamento*). The tenant is then notified by the BNA about the eviction procedure and has the right to oppose such eviction. When there is an opposition by the tenant, the BNA has to send the landlord's claim and the tenant's opposition to a Judge and the procedure will run in a Court and no longer by the BNA.

There can be several reasons for a tenant to oppose an eviction procedure, such as when the landlord hasn't given prior notice to the tenant about his/her claim to evict or the landlord has no legal or justified reason to demand the tenant's eviction, etc.

Beyond that, the tenant has another chance to avoid or to delay eviction by filing another request. Accordingly, the court may reserve, prohibit or temporarily stay the measure of compulsory enforcement, provided that eviction would entail a hardship that violates principles of good morals.

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

Whenever there is a breach of contract by the tenant, the landlord has a right to terminate a tenancy. Examples of breach of contract are as follows: Lack of rent payment, violation of hygiene rules, quietness rules, good neighbour rules, violation of condominium regulation, use of the dwelling contrary to law, etc.

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

In case of termination before the end of the tenancy period, the tenant may object and demand continuation of the tenancy. The same applies to the possibility to request extension of the period to vacate the dwelling during the court proceedings.

- 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?

When the tenant fails to vacate the dwelling when he/she should and the extension of the tenancy doesn't apply, then the landlord has the right to evict the tenant.

For that, he/she has to initiate the eviction procedure in the BNA and one of two situations can occur:

- (i) The tenant opposes the eviction and the Court will settle this matter or,
- (ii) The tenant doesn't oppose the eviction and has 30 days to vacate 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?

After termination of the tenancy, the landlord has to return the deposit, provided he/she has no claims against the tenant, otherwise, the deposit is used to compensate for those claims.

- 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?

If the property is not in perfect condition by the end of the tenancy, (as it was delivered at time of the contract) the deposit may be used to meet the costs of the repair works and the remainder is returned to the tenant, otherwise the landlord has to return the total amount of the deposit to the tenant.

With regard to furnished dwellings, the landlord may only demand an addition to the rent in return for the furniture, but he is not entitled to make a deduction from the security deposit for damage due to the ordinary use of furniture. Such damage is already satisfied by the rent payment.

4.4. Adjudicating a dispute

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

The competency for litigation regarding private tenancy law belongs to the ordinary jurisdiction, i.e. it is enforced in civil courts. Within the civil jurisdiction, the local court is competent for conflicts arising out of residential tenancies independently of the amount in dispute. The place of jurisdiction is usually where the immovable property is situated.

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

The National Rental Counter (BNA – *Balcão Nacional do Arrendamento*) which has the competence over eviction procedure, made these procedures faster and relieved the courts of these matters, as long as the tenant doesn't oppose it. The landlord files an application emphasising his/her intention to evict the tenant and the reasons leading to it, but if the tenant opposes this intention, within 15 days of the notification of the application for eviction, the BNA submits a copy to the applicant and presents the special eviction procedure for distribution in the court indicated by the landlord. If this happens, the eviction follows its procedures in a civil court.

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

With the exception of eviction procedures, the parties can resort to Justices of the Peace, which is a court where the procedure is simplified. Disputes that enter these courts can be resolved through mediation, conciliation or by sentence.

Mediation takes place only when the parties agree but differ with regard to details, in these situations they can solve the dispute in a friendly manner with the intervention of a mediator, which is an unbiased party and has no power of decision, so he/she does not impose any decision or judgment. As an impartial third party, the mediator guides the parties, helps them to establish the necessary communication so that they can find among themselves the basis of the agreement that will end the conflict. The parties are, thus responsible for the decisions they make with the assistance of the mediator.

If mediation does not result in an agreement, the process follows its course and the Judge tries to reconcile. If conciliation is not reached, evidence will be produced and the court will hear the parties, and finally, the judge of the Justices of Peace will deliver a judgment.

Mediation can also take place in a private matter, instead of resorting to the Justices of Peace; the parties go directly to a mediator and try to resolve the dispute. The difference will be that if the mediation fails, the process stops there, and if they still want to resolve their dispute, they have to resort to court.

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?

Social housing is intended for people with low income who do not meet the conditions for or who manifest difficulties in gaining access to the free housing

market. They can apply for this type of housing by request, by going to their local authorities or on the site: <http://www.mercadosocialarrendamento.msss.pt/> .

Subsidised housing, on the other hand, involves monthly support to protect the economically less favoured tenants, especially the elderly. A person who rents a house is entitled to rent allowance if he/she has a tenancy contract signed before 18th November of 1990 and the rent update occurred until 12th November of 2012 or,

- (i) Is less than 65 years old and the household had, in the previous year, a Fixed Annual Gross Income lower than € 20,370.00 or
- (ii) Is 65 years old or more and his/her household had, in the previous year, a Fixed Annual Gross Income lower than € 33,950.00

This can be requested by going to the Social Security services or local authorities.

- Is any kind of insurance recommendable to a tenant?

It is advisable tenants conclude a household insurance contract covering the furnishing of the dwelling in case of damages caused, for example, by fire or flooding, but in general insurance does not cover the lack of rent payment.

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

To ensure fair and effective access to justice, economically disadvantaged parties, who are unable to pay the costs of litigation, can apply for legal aid (*Apoio Judiciário*). This legal aid is requested from the Social Security Services, which analyse the applicants' financial status and decide whether or not to grant the legal aid.

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

There is no national tenants' association, but there are several local tenants' associations (e.g. *Associação dos Inquilinos Lisbonenses*, *Associação dos Inquilinos do Norte de Portugal*, etc.) that offer comprehensive legal advice and help with tenancy related disputes, provided the tenant is a member of the association.

The Institute for Housing and Urban Renewal (IHRU) has a help line (contact: 808100037) for tenants to clarify any doubts regarding tenancy.

Social Security services, as mentioned before, are responsible for giving legal aid services. Such services can be requested online through the site <http://www4.seg-social.pt/>.