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

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

# **SPAIN**

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# Tenant's Rights Brochure Questionnaire

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### **Guidelines for Authors:**

- Answers may be partly copied from the main questionnaire. However, the brochure should be understandable for non-lawyers.
- Formatting: 12 point Arial font, single space should be used.
- **The answers should be written directly into this file** (by leaving all the headings; only the header of this page from "ZERP" to the date should be replaced by "Country report on...").
- The following Kluwer style guide should be used for quotations etc.:  
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## **1. Introductory information**

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

In Spain, the supply and demand for rental housing was weak during the real estate boom period (1997- 2007), with a rental rate of 10% in 2006, due to the advantages and incentives associated with ownership. However, as of 2007, with the slump in the construction sector, a large excess stock of unsold new homes began to accumulate, which reached the sum of 687,523 homes in 2011. Faced with impossible task of selling this surplus, owners, especially banks and developers began to place these properties on the rental market, resulting in an increase in the number of homes on offer, both on the open market and on the private market.

Moreover, in the current economic climate, the demand for rental properties has risen, not just due to the increase in the number of people who require housing and who cannot afford to buy, but also because of the many potential buyers who, faced with financial uncertainty, have opted for this form of tenure, which does not require loans or a large capital outlay. However, it must be borne in mind that 70% of unsold housing stock does not match the requirements of potential tenants, particularly the market group of young people under the age of 35, given that 65% of youths between the ages of 18 and 35 live with their parents, a figure that is far higher than in other European countries.

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

The main problem is the mismatch between supply and demand for rental housing, because even though there is a proportion of unoccupied homes on the market (13.7%), there is an unmet demand from tenants who are not suitable candidates to occupy the available housing.

The stock of empty homes consists mainly of second homes and primary residence projects in minor towns, which therefore have fewer potential tenants. Moreover, this surplus housing is mostly composed of medium to high quality properties that do not meet the primary needs of the rental market or correspond with its current financial capacity to make rental payments.

Although rent prices have fallen by about 30% since 2007, they are not yet proportional to the income of prospective tenants, which tend to be the people who are in the most precarious financial and social positions. Even if they have a job, a worker who earns the minimum wage will have to allocate more than 85% of his/her income to paying a free market rent, which places them at risk of social exclusion and homelessness.

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

The rental market in Spain makes up about 12 to 16% of the occupied housing market, depending on the source consulted, which is very far from the European

average of around 33.2%. Furthermore, only 2.8% of rental properties are below market price. Perhaps one of the most significant issues is that Spain does not have a professional sector dedicated to the rental market, since most of the properties on offer are owned by private individuals.

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

The volume of social housing available for rent in Spain is very reduced, it barely makes up 2%, whereas the European average is around 9%. Also, social housing is mostly managed by public entities, with access to a very limited and fragmented selection of rental properties that are mostly provided by non-profit organisations that cannot provide sufficient coverage to cater to all the people who are at risk of becoming homeless, a situation that has been on the increase since the start of the economic crisis in 2007; the poverty rate now stands at 21%.

- **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)**

In order to find a rental property, it is important to check the various different sources of information: local newspapers, real estate websites, local real estate agents and to sign on to the Register of Subsidized Housing Applicants, in addition to applying to the various reduced price social housing programmes.

Immigrants need to verify that the dwelling complies with housing regulations and offers suitable living conditions for their family, given that if they are searching for low rents, they may be affected by overcrowding and/or substandard housing. For the purposes of finding affordable housing it is important to concentrate on outlying areas rather than the city centre.

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

- With the approval of the latest amendment to The Law of Urban Leases (hereinafter, also the LAU), applicable to rental agreements signed on or after the 6th of June 2013, the tenant's stability in the home has been reduced: the mandatory minimum term for rental agreements is cut from 5 years to 3 years, rent updates may now be freely negotiated, without an indexing system that limits the maximum amount of rent that can be charged or ensures affordable rental rates, the law also permits the waiving of the right of first refusal.

- In order for the mandatory minimum term to remain in effect, when faced with the possible sale of the property or in the event that the landlord's property rights are terminated, the agreement must be entered into the Property Registry, with the corresponding financial costs that this entails.

- In the event that the landlord loses his/her property rights by virtue of the rental property being the subject of a mortgage foreclosure, the rental agreement will be null and void, given that in most cases, the placement of the mortgage on the Property Register will predate the entry of the rental agreement.

- When regulating the landlord's power to terminate the tenancy prior to the end of the minimum extension period, in the case that he needs the dwelling for himself or a first-degree relative, a three month deadline was established for the owner to occupy the property, however the regulation did not establish how long the owner or his family must remain in the property, something that may give rise to a fraudulent use of this provision, given that he/she may rent out or freely dispose of the property immediately after he or his family have taken up residence there.

- If the landlord fails to fulfill his/her obligation to maintain the dwelling, the tenant is only entitled to carry out repairs and seek reimbursement from the landlord in the case of imminent damage or when the damage causes severe discomfort. In all other cases, when faced with the landlord's neglect, the tenant's only option is to make a legal claim for compliance in the courts. It may take the courts between one and three years to settle his/her claim, so in the majority of cases the tenant is not willing to wait that long, especially considering that the duration of tenancy contracts is of no more than three years. Given the lack of effectiveness in dealing with the problem of landlord neglect, in these cases the tenant usually terminates the tenancy contract and looks for another rental property.

- **Compile a very brief section of “*Important legal terms related to tenancy law*” by quoting their original in the national language (MAX 1 Page; if relevant, e.g. for States using Cyrillic characters, please add a transliterated Latin character version of these terms)**

Spanish legal terms	Translation into English
Actividades molestas, insalubres, nocivas, peligrosas o ilícitas	Annoying, unhealthy, noxious, dangerous or illegal activities
Alquiler social	Social rental
Arras	Earnest money (deposit)
Arrendador	Landlord
Arrendamiento de vivienda	Renting a dwelling
Arrendamiento para uso distinto de vivienda	Rental for a use other than as a place of residence
Arrendamiento urbano	Urban leases
Arrendatario	Tenant
Aval	Surety
Buena fe	Good faith
Certificado de ingresos	Certificate of income

Compensación	Offsetting
Contrato de arrendamiento	Tenancy contract
Crédito refaccionario	Renovations loan
Desistimiento	Withdrawal
Devengo	Accrual
DNI (Documento Nacional de Identidad)	National Identity Document
Efectos <i>erga omnes</i>	<i>Erga omnes</i> effects
Ejecución hipotecaria	Mortgage foreclosure
Enervación	Enervation
Expropiación forzosa	Forceful expropriation
Fianza/depósito	Guarantee/deposit
Gastos de comunidad	Communal expenses
Hipoteca	Mortgage
Impuestos (sobre el inmueble)	Taxes (on the property)
Indemnización (de daños y perjuicios)	Compensation (for damages)
Índice General de Precios al Consumo	General Consumer Price Index
Lanzamiento	Eviction
Mantenimiento	Maintenance
NIE (Número de Identificación de Extranjeros)	Foreign Resident Identity Number
Nulidad	Nullity
Precontrato	Pre-contract
Prorroga obligatoria	Mandatory extension
Renta	Rent
Reparaciones de conservación	Maintenance repairs
Reparaciones de uso	Day-to-day repairs
Reparaciones por culpa del	Repairs due to actions of the tenant

arrendatario	
Retracto convencional	Conventional redemption
Retracto legal	Legal redemption
Salario mínimo interprofesional	Minimum wage
Seguro de caución	Guarantee insurance
Servicios (agua, gas, etc.)	Utilities (water, gas, etc.)
Subarrendamiento	Subletting
Subrogación (legal)	Subrogation (legal)
Tácita reconducción	Tacit renewal
Tanteo	Right of first refusal
Vicios de habitabilidad o conservación de la vivienda	Defects in the habitability or conservation of the dwelling
Vicios ocultos	Hidden defects

## **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?**

In article 14 of the Spanish constitution, Spain recognises the right not to be discriminated against for reasons of birth, race, sex, religion, opinion or any other personal or social condition or circumstance. Also, in compliance with Directive 2000/43/CE, it includes housing among the publicly offered goods that are subject to a prohibition of discrimination. Thus, when it comes to access to housing lists, subsidies and tax benefits, the same rights have been conferred upon the both natives and European citizens and their families, as well as nationals from third party countries that are long term residents in Spain. In addition, the law prohibits discrimination in access to housing when it prevents unmarried or same sex partners from subrogating one another on the tenancy contract.

Differential treatment is only accepted when there is a reasonable and objective justification for it, that is, if it pursues a legitimate objective or if there is reasonable proportionality between the purpose being sought and the means employed to achieve it. In this sense, protection is afforded to certain groups that are considered vulnerable, due to the fact that they suffer the risk of social exclusion: People who have been evicted, the disabled, people over 65, women who are victims of domestic

violence, single parent families or young people between 18 and 35. Positive discrimination policies have been approved in their favour when they have limited financial resources, giving them preference in access to social housing or granting them public subsidies for the payment of rent.

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

The landlord may request whatever financial and personal information he/she deems necessary, to know if the prospective tenant is suitable to rent the property. However, this does not include such intimate areas of people's private lives as their sexual orientation or whether or not they intend to have children. In these cases, the tenant is under no obligation to provide such information, therefore, if he lies about it, he will not suffer any legal repercussions.

- **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)?**

In Spain, an amount is normally paid in advance (deposit or downpayment) to reserve the rental property, not to participate in the selection process. A pre-contract may be signed that should contain the basic provisions of a tenancy contract as well as all the stipulations that the parties must meet at a later time.

Normally, in order to reserve a property you must sign an earnest money contract, the amount paid is usually equivalent to one month's rent. In our legal system, there are three types of deposit: confirmatory (art. 1124 CC), bail and security (art. 1454 CC). The last type are the only ones that allow the parties to terminate or withdraw from the contract by either losing the amount deposited or returning double the amount received, since the others are binding for both parties and the second party may demand compulsory compliance. In the event that no form of deposit is specifically agreed, it is understood that the deposit is confirmatory and the amount paid as a downpayment is an advanced payment on the rental fee.

- **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)?**

Before entering into a private tenancy contract with the tenant, in general terms, it is common to ask for the submission of identity documents for each of the future titleholders (DNI or NIE) as well as documentation that proves they have sufficient financial resources by means of presenting an employment contract together with the most recent pay slips, the latest tax declaration filed, a pension certificate or a document certifying the public subsidy received, as the case may be. This financial and personal information may be requested by the owner or by the real estate agent if they have received authorisation to this effect from the prospective tenant, given that personal information cannot be made available to third parties without prior consent from the tenant.

- **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 services that a real estate agent can offer prospective tenants are: looking for a dwelling that is suited to their needs and financial circumstances, managing the tenancy contract, giving advice on the preparation and conclusion of the contract and providing information concerning the rights and duties assumed by both parties. It is also possible that they may manage the tenancy throughout its duration, overseeing the payment of rent and any other amounts owed by the tenant as well as offering advice on the upkeep and use of the dwelling, the work that needs to be carried out and any other issues that may arise from the legal relationship. The agent may also offer a mediation service, to help resolve any conflicts that may develop between the landlord and the tenant.

Searching for rental properties on internet websites such as, for example, [www.fotocasa.es](http://www.fotocasa.es) or [www.idealista.com](http://www.idealista.com) is also a common practice, as is the use of public agencies or groups who act as intermediaries or manage their own unoccupied housing. An example of this are the brokerage services offered by the universities, homeowner associations, Local Housing Offices, the municipal or regional bodies that manage social housing programmes, the Urban Property Chambers and the banks with regard to their own rental properties.

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

The landlord may verify the tenant's creditworthiness by consulting with one of the companies that check files containing the names of people with recognised delinquency or payment defaults, such as SNEF, EQUIFAX, EXPERIAN, BADEXCUG, RAI, CIRBE and FIJ.

He can also consult the Register of final judgements in cases involving the non-payment of rent in order to verify whether or not the prospective tenant has any convictions for failing to make rental payments recognised by a court ruling or a final decision in an arbitration process. The landlord is only required to submit a contract proposal with the tenants personal details.

## **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)?**

The tenancy contract may be written or verbal, although it is recommended that it should be drawn up in writing. The contract is finalised with the consent of both parties, declaring that an offer was made and accepted relating to the issue that will make up the subject matter of the contract. The legislator has not established entry into the Property Register as a mandatory requirement. Nevertheless, by recognising its access to the registry through the provision of a registration entry, the legislator has sought to protect tenancy law by making it effective before third parties (*erga omnes*). The dwelling should also have a valid occupancy certificate, unless it was

agreed that the dwelling would be restored. In addition, the landlord is obliged to provide the tenant with a copy of the energy efficiency certificate.

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

It is mandatory for the contract to state the following: the identity of the contracting parties, their consent to be bound by the terms of the contract, the identification of the rental property and the initial rent payable. The term is also an essential component of the tenancy contract, however, if this is not declared in the contract, then the duration will be one year.

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

Tenancy contracts must be for a fixed term, therefore, any clause that attaches indefinite extensions to the contract duration is deemed null and void, since it violates the general notion of time limitations and the notion that decisions should be dependant on both parties. In Spain, a minimum contract is extension of three years is established, which is mandatory for the landlord. If neither party provides notification to the contrary, the contract shall be automatically renewed annually for one more year. Subsequently, if the tenant continues to use the dwelling during the fifteen days following the expiry of the final year of extension with the knowledge and acceptance of the landlord, then the tenant may continue to occupy the dwelling for a period equal to the rental periods, be they yearly, monthly or daily (tacit renewal).

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

The contract must set the price of the rent. Concerning the form of payment, the place, the deadline and the updating of the rent price, if the parties do not agree otherwise, the provisions of the LAU will be applied, that is to say, the payment will be made in cash, monthly, within the first seven days of the month and in the rented property. The rent price will be updated in proportion with the increase in the CPI over the previous twelve months.

- **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?**

The tenant is responsible for making minor repairs, of limited scope and cost, arising from the ordinary day to day use of the property, any damage that can be attributed to him or those who live with him; and when the property is destroyed for reasons not attributable to the landlord, since in this case the lease would be terminated. In no case can the landlord pass on to the tenant the costs of the maintenance required to keep the dwelling in the living conditions necessary for the usage stipulated in the contract, including the deterioration caused by the passage of time, natural wear and tear, and its correct usage in accordance with the stipulated conditions.

- **Is the landlord or the tenant expected to provide furnishings**

Normally the tenant expects the dwelling to be equipped with furniture and household appliances, given that rental contracts have a short duration and furnishing the dwelling would be a significant expense for the tenant. Nevertheless, the law is silent on this matter, the parties are free to agree a contract with or without furniture.

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

Yes, this document is not mandatory but it is essential when the landlord wishes to pursue a legal claim against the tenant for any damage and deterioration that has occurred in the dwelling. Also, the tenant can use it to demonstrate the real condition of the furniture and appliances at the time the contract was signed, so that claims cannot be made against him for defects that were already reflected in said inventory. It is important to ensure that a set photographs documenting the state of the property, the furniture and the household appliances is attached to the inventory.

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

The tenancy contract must mention the delivery of a copy of the property's energy efficiency certificate, the number of the occupancy certificate that certifies that the property complies with the legal regulations and the property register reference number that identifies the property. It should state whether or not the tenant is permitted to sublet the property, transfer it to third parties or set up a business on the premises. It must also declare whether it is possible for the tenant to withdraw from the contract before the end of the first six months as established by law and it should provide details of the placement of the security deposit in the corresponding register as is mandatory under the law. If it is stipulated that the tenant must pay taxes or other costs that are not charged individually to each household depending on consumption, it is essential that the annual cost of these expenses be entered into the contract.

- **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.)?**

His/her spouse, non-separated common law wife/husband, legal partner and his/her dependent children may reside at the rented property, also, the tenant will be considered to have his/her permanent residence there so long as these other people are occupying the dwelling, even if the tenant does not live there permanently.

The tenant may live in the dwelling with other people so long as he/she adheres to the rules on maximum occupancy set out in the certificate of occupancy and provided this does not involve subletting the property without consent.

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

There is a requirement for either the tenant, his/her spouse, non-separated common law wife/husband, legal partner or dependent children to permanently live at the rented property, otherwise the landlord is entitled to terminate the contract.

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

Yes, the law recognises a legal right of subrogation for the tenant's spouse or partner when they are granted the right to use the rented property in a separation, annulment or divorce process. Also, following the approval of the new amendment to the LAU, article 15 has been modified, it recognises the non-lease holding spouse as the titleholder of the tenancy contract in the event that he or she is attributed a period of use of the rented property that is greater than the time remaining on the tenancy contract.

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

The LAU does not recognise the right of subrogation for students. Nevertheless, it may be agreed in the tenancy contract, in accordance with the principle of freewill, given that this agreement does not go against the interests of the tenant.

- **death of tenant;**

A legal right of subrogation is recognised in favour of certain relatives if they were living with the tenant at the time of death. Therefore, the contract may be subrogated, with preferential treatment, to: a spouse or 2 year common law partner or the 2nd parent of the tenant's child/children, children under the tenant's tutelage or guardianship, romantic partners, children, parents, siblings, or other people with at least a 65% degree of disability who had lived with the tenant for the previous two years. If within three months the landlord has not received notification from the parties who are interested in subrogating the tenant on the contract, then the contract will be terminated. Also, for contracts with a duration of more than three years, the parties may agree to waive this right in the tenancy contract, the waiver would be applied once the first three years have elapsed.

- **bankruptcy of the landlord;**

When the landlord declares it has entered into an arrangement with creditors and the rented property is the subject of a mortgage, the creditor may foreclose on the mortgage provided that the loss of the property does not negatively affect the business activity of the entity under administration. In this case, if the tenancy contract was not filed in the Property Register, the contract will be terminated. If it is filed, the new proprietor will be subrogated into the agreement and will assume the rights and duties of the previous landlord for the duration of the contract, meaning that it will have to respect the existing contract.

- **Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary**

The sublease must be partial (not complete) and it must have the written consent of the landlord. If this is not the case, he is entitled to terminate the tenancy contract and the sublease contract will be considered invalid. The sublet rent cannot be higher than the amount that the tenant is paying the landlord and the duration of the sublease contract is subject to the length of the main contract.

In order to avoid the application of the rules and protections afforded by the LAU (Title II), it is common for the subtenant to be given a bedroom rental contract, which is subject to the CC, when it is in fact a sublease contract that is covered by Title II of the LAU. This happens when the landlord signs a contract that grants each person the right occupy part of the dwelling, but in reality the householders each have joint access to the entire dwelling, as may happen in the case of a married couple or housemates with a close personal relationship, who do not use the dwelling separately or divide it by rooms, but rather rent the dwelling with the intension of using it together.

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

The new owner is subrogated into the position of landlord when the tenancy contract is entered into the Property Register prior to the sale or when it can be proven that the new owner did not act in good faith because he was aware of the existence of the tenancy. The new proprietor is also obliged to take over any contracts signed prior to the 6th of June 2013 during the first five years of these contracts.

- **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 tenant shall pay any expenses that are charged by means of individual meter apparatus such as water, electricity and gas. However, agreements to the contrary may be reached, so long as they are not detrimental to the interests of the tenant. The contract may establish who is responsible for contracting these services.

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

Regarding the remaining general expenses, such as services, taxes and liabilities that are not charged individually to each household depending on consumption, they are charged to the landlord, unless there is an agreement to the contrary, for example the payment of property tax or the condominium costs. The owner is normally responsible for these expenses, but there are an increasing number of contracts charging these costs to the tenant to compensate for the fall in prices experienced in the rental market since 2007.

- **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, Public Services consider the owner of the property to be the one responsible for making these payments. However, the landlord may pass the cost of these services on to the tenant, provided that the annual cost of these taxes is stated in writing in the tenancy contract.

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

Yes, the recurrent costs charged by the homeowners association (condominium costs) may be passed on to the tenant, including any costs that arise from the proper maintenance of the condominium and that are payable by each homeowner in accordance with their share of ownership: communal area cleaning costs, property management fees, community water and power costs, etc. However, it is compulsory to enter this agreement into the tenancy contract and to include the annual condominium costs.

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

When renting a property, it is compulsory for the tenant to pay a month's rent as a deposit, failure to do so may lead to the termination of the tenancy contract. The landlord may also request any additional guarantees he deems necessary. It is common practice to request two or three months rent as a deposit or the establishment of a joint and several personal surety from a person with an adequate level of solvency or the arrangement of a bank guarantee.

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

The security deposit legislation is handled by each Autonomous Community, which sets its own regulations. In Catalonia for example, it is mandatory for the contractual landlord to deposit it at the *Institut Catala del Sòl*, using the official form, which may be processed at a set group of financial institutions, at the Chamber of Urban Property or at the institute itself. Upon termination of the tenancy contract, the contractual landlord himself will request the return of the security deposit, to be transferred to the bank account number he indicates, where he is the titleholder, within 21 days of the time he requests it. The landlord must refund the security deposit, or whatever amount remains after deducting the corresponding amounts in the event of damages or if outstanding expenses are owed. He will have a month to refund the deposit to the tenant, beginning from the time the keys are returned. From that time on, the amount owed will accrue the legal rate of interest.

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

The parties may agree any type of additional guarantee to ensure the tenant complies with his tenancy duties, apart from the cash deposit, such as a personal or

bank guarantee. The guarantees that the tenant is required to provide in a tenancy contract may be abusive when they are not proportional to the risk taken or when the wording of the clause that imposes them is not clear and simple, with its content being obscure or confusing.

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

The tenancy contract guarantees ensure compliance with the duty to pay the rent and other related expenses, as well the duty to compensate the landlord for any damage or detriment to the rented property or for the failure to comply with the duty to return possession of the property when the contract expires.

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

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

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

A) Hidden defects: The tenant can make claims from the landlord on account of hidden defects that already existed at the time of concluding the contract and which become apparent in the dwelling before six months have elapsed since the handover of the leased dwelling.

B) Conservation and use: During the term of the tenancy contract the landlord is obligated to carry out maintenance repairs as required to keep the dwelling in suitable conditions for habitation that allow it to serve the use established in the contract. Thus, the most important damages that the landlord must answer for are structural damages, which can lead to damp, cracking, mould and other problems. The landlord will also answer for defects in electrical, gas and water installations, and for broken boilers.

C) Occupations: Furthermore the landlord must also ensure tenant's peaceful enjoyment of the dwelling and, thus, must protect the latter from illegal occupation (squatting) of the home. Nonetheless, the tenant is also entitled to take direct action against a third party who disrupts possession of the property (hold and recover action).

D) Activities undertaken in the dwelling: The tenant is not allowed to carry out in the leased home any annoying, unhealthy, noxious, dangerous or illegal activities, the landlord being able to terminate the contract should such activities take place. Consequently, the tenant must avoid emitting excessive noise or odours, and must not carry out activities in the dwelling that are illegal, such as prostitution or the sale of drugs, as well as any activities that are simply annoying or unhealthy for other neighbours in the building.

- **What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)**

A) Hidden defects: the tenant will be able to withdraw from the tenancy contract or request a reduction on the rent. Also if the landlord has acted in bad faith, he could be required to pay compensation for any damages suffered.

B) Defects in the habitability or conservation of the dwelling: the tenant can demand that the dwelling be repaired and, if this is not done, withdraw from the tenancy contract and claim compensation for any damages suffered.

C) Illegal occupation (squatting): the tenant will have a period of one year as of the time when the dwelling is occupied by third parties to claim possession of the leased property through a hold and recover action. Illegal occupation (eviction): the tenant will be able to request the resolution of the lease with the corresponding compensation for damages suffered due to any disturbance in fact or of rights by the landlord affecting the dwelling.

D) Activities in the home: the landlord will be able to request the resolution of the lease, a faculty that will also be available to the homeowners' association when the tenant indulges in annoying, unhealthy, noxious, dangerous or illegal activities.

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

The landlord is obligated to carry out any maintenance repairs that are required to keep the home in a suitable state for habitation in line with the use agreed in the contract, including deterioration due to the passage of time, natural wear and tear and correct usage in accordance with what was agreed. The landlord will also answer for repairs deriving from normal use that would have an excessively high cost for the tenant. On the other hand, he will not be liable for damage that is attributable to the tenant or anybody living with the tenant, or when the dwelling is destroyed for causes that are not attributable to the landlord, in which case the lease will be rescinded.

- **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 may only carry out on his/her own account urgent maintenance repairs that are necessary to prevent imminent damage or serious discomfort, with prior notice to landlord. The tenant will be able to demand the cost of such repairs immediately from the landlord. In all other cases, the tenant may only resort to court when faced with passivity or opposition to the works from the landlord, being able to choose either the termination of the lease and compensation for the damages suffered or, alternatively, the mandatory execution of the necessary repairs that the landlord is obligated to make, at the expense of the latter, as well as compensation for damages caused by the landlord's negligent behaviour.

- **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.)**

The tenant may, following written notice to the landlord, carry out any works or actions inside the dwelling that are necessary for it to be used appropriately and in keeping with a physical disability or with being of an advanced age, specifically over seventy years old, in the case of either the tenant or his/her spouse or partner, or any relative living with them on a regular basis, provided that such works or activities do not affect communal parts or services of the building or lead to its reduced stability or security. Nonetheless, the tenant is obligated, at the end of the term of the contract, to return the dwelling to the state it was previously in, if so required by the landlord.

- **Affixing antennas and dishes**

The tenant will be able to install an antenna on his home without the need to obtain the owner's approval, given that this does not imply a modification of the home's configuration. However, if the antenna is placed on the facade, it will be necessary to obtain the approval of the homeowners' association, as this is a communal part of the building.

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

The tenant will be able to carry out works on his own account, without the need to obtain the landlord's approval, provided that these do not alter the dwelling's configuration (he must not redistribute the structure, change its initial appearance, or perform fixed and attached works on the dwelling or its accessories), nor must he alter the stability or security of the same. Thus, the tenant will be able to paint the dwelling, hang paintings on the walls and install anything that is movable and which can later be returned to its original state.

However, at the end of the lease the dwelling must be returned in the state it was in when handed over, not taking into account deterioration due to the passage of time and natural wear and tear. Thus, if the home was handed over by the landlord correctly painted, it must be returned in the same condition. The tenant cannot be required to return the home in the very same colour, but it must belong to a similar colour range and not have any eccentric colours, if none were present when handed over by the owner, given that removing such colours has a higher cost than would otherwise be involved in getting the property ready for the next tenancy. As regards holes in the walls, if these were not present when the home was handed over by the landlord, they must be filled in to return the property in a suitable condition, and the tenant must refrain from drilling holes into tiles or other materials that would be impossible to return to their previous state.

- **Uses of the dwelling**
  - **Are the following uses allowed or prohibited?**

The landlord is granted the faculty to resolve the contract by law whenever any annoying, unhealthy, noxious, dangerous or illegal activities take place in the dwelling.

- **keeping domestic animals**

Consequently, it is not forbidden to keep animals in rented homes, although if these prove to be a source of annoyance or lack of hygiene in the home, the landlord could request the termination of the tenancy contract.

- **producing smells**

Smells in the home are banned if they are strong enough to be a source of annoyance to neighbours or if they might lead to a lack of hygiene. It is possible to request the intervention of the Public Administration in order to verify if there is really a danger of unhygienic conditions on the property; if so, the tenancy contract could be terminated.

- **receiving guests over night**

It is not forbidden to receive visitors at night, nor for the tenant to cohabit with other persons, provided that there is no danger of overcrowding or lack of space, and that no annoyance is caused to neighbours.

- **fixing pamphlets outside**

There is no legal prohibition in this regard. However, the homeowners' association may establish a ban on this matter by voting on the same at an owners' assembly meeting and incorporating the decision into the communal bylaws.

- **small-scale commercial activity**

It is necessary to have generic authorisation to use the home for other purposes besides the main one, as otherwise there would be a sublease or an unauthorised assignment of part of the property. Also, the commercial activity must have a secondary, accessory and subordinate nature with regard to the main purpose, which is to use the dwelling as the permanent residence of the tenant; otherwise, the tenancy contract could be terminated due to not using the dwelling for its principal purpose of serving as a home.

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

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

There is no rent control system in Spain. The parties are free to set the initial rent and to update the same.

- **Rent and the implementation of rent increases**

- **When is a rent increase legal? In particular:**

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

The rent can only be updated on an annual basis, on the same date as the tenancy contract was signed (art. 18.1 LAU 1994).

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

There is no maximum limit on the rent price. Furthermore, it is established that the rent update can be freely agreed between the parties (art. 18.1 LAU 1994).

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

The rent update can be agreed between the parties. In the event that there is no express agreement, the rent can be updated on an annual basis, on the same date as the tenancy contract was signed. In the event that there is no express agreement, the rent can be updated on an annual basis, on the same date as the tenancy contract was signed, applying to the rent in place for the previous year the percentage variation in the National General Index of the System of Consumer Price Indices (IPC) in the twelve-month period immediately prior to the date of each update, taking as the reference month for the first update the month corresponding to the last index published on the date of the signing of the contract, and for successive ones that which corresponds to the last one applied.

The updated rent will be due from the tenant as of the month following that when the interested party notifies the other party in writing, expressing the percentage variation applied and attaching, if the tenant requires it, the corresponding certification of the National Institute of Statistics, or providing reference to the Official State Gazette in which it is published.

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

As of the moment when the landlord delivers the keys to the tenant, the landlord shall not be able to enter into the dwelling unless he has the tenant's permission or a court order, even if the tenant is residing unduly. The entry into the dwelling by the landlord may imply a crime of housebreaking specifically punishable under article 202 CP by an imprisonment of six months to two years.

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

It is not prohibited in Spain for the landlord to have a set of keys to the rented dwelling. However, he shall not make use of them unilaterally to enter into the rented dwelling, since this would require the tenant's consent or a judicial warrant.

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

No, he cannot do it unilaterally. In the event that the lease contract is terminated, there must be evidence that the tenant has abandoned the dwelling, for example by

signing a contract termination agreement and by handing over the keys. Otherwise, the landlord shall request of the court the tenant's eviction and wait for the actual expulsion to occur, so as to proceed to enter the dwelling.

If these conditions are not met and the landlord decides to change the lock of the rented dwelling without the proper legal cover and with the intention of preventing access to the dwelling, he may be guilty of coercion, either as a crime, or as a misdemeanour, depending on the seriousness of the facts and the violence used. It is also possible for the landlord to commit a crime of housebreaking; in fact, a forced entry is a qualified variety of coercion under the Spanish system.

- **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 special legislation on tenancies does not recognise any legal and specific right of the landlord to seize the tenant's movable property in the event that the latter should have a debt with the former, although the parties could agree to establish this faculty in the contract.

#### **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 Spain it is not possible to establish an open-ended lease.

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

The parties can agree to terminate the lease at any time. Furthermore, the tenant may withdraw from the contract at the end of each yearly extension, notifying the landlord at least thirty days in advance, also being able to withdraw unilaterally when at least six months have elapsed since the signing of the tenancy contract, notifying the landlord at least thirty days in advance, and compensating him with one month's rent for every year left to run on the contract, if so agreed in the tenancy contract. The tenant will also be able to withdraw from the contract when the leased dwelling becomes unfit for habitation or when improvement works are performed that significantly affect the leased dwelling. The tenant may terminate the contract due to breach of the landlord's obligations: any disturbance on the part of the landlord affecting the use of the dwelling, or when the landlord is in breach of the duty to maintain the dwelling.

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

The tenant may only transfer his right of tenancy to a third party when he has the landlord's consent.

#### **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)?**

In Spain it is not possible to establish an open-ended lease.

- **Must the landlord resort to court?**
- **Are there any defences available for the tenant against an eviction?**
- **Under what circumstances may the landlord terminate a tenancy before the end of the rental term?**

The landlord may terminate the tenancy contract once the first year of the term of the same has elapsed, provided that he notifies the tenant of this intention two months in advance, the latter needing the leased dwelling to serve as his/her permanent place of residence or that of first degree relatives or adopted dependants, or for his/her spouse in those cases where there is a final ruling of separation, divorce or marriage annulment. The contract will also be rescinded when the lease is not registered in the Property Registry prior to the sale of the dwelling or the termination of the landlord's right. The landlord may terminate the tenancy contract due to breach of the tenant's obligations: failure to pay the rent or assimilated amounts, the amount of the deposit or the update of the same, unauthorised subletting or assignment, negligent damage to the leased dwelling or the performance of works not approved by the landlord in cases where such consent is required, cases where the dwelling is used for annoying, unhealthy, noxious, dangerous or illegal activities, or when the home is no longer used primarily to satisfy the tenant's or his/her family's need for a place of residence.

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

If the leased dwelling, once recovered due to need, is not occupied by the landlord or a member of his family within three months of the eviction of the tenant, except in cases of force majeure, the landlord will have to reinstate the tenant in the possession of the dwelling for a term of three years or compensate him with one month's rent for every year left to run on the contract.

In cases of the sale of the leased dwelling or the resolution of the landlord's right, the tenant will be able to try to show that the new owner has not acted in good faith, as he was aware of the existence of the tenancy, or that the landlord had consented to a sublease, transfer or the performance of works on the dwelling.

In the event of non-payment of the rent or other amounts the tenant will be able to oppose the demand for payment on the grounds that he had already made payment previously, or because he prefers to make the payment in Court when required to do so (enervation), if he has not previously availed of this possibility.

- **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 will have to file a lawsuit claiming the end of the contractual period if he is unable to recover possession of the property himself, both in the case that the tenant does not leave the property and also if he/she leaves without returning the keys to the dwelling and does not sign any contract termination document.

#### **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 landlord will have a period of one month to return the deposit, or the amount of the same left after deducting the cost of any repairs for damages or unpaid expenses. As regards the accrual of any interests on the deposit lodged in cash with the corresponding Administration, the LAU establishes that no interest will accrue on the amount deposited while the tenancy contract is in force. However, if after one month of the termination of the contract and the corresponding communication to the Administration, the deposit amount has not been returned, it will accrue interest at the legal rate for money.

- **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 can use the deposit to satisfy the following obligations, in cases where these have not been satisfied by the tenant when the contract was resolved:

- The obligation to pay the rent and any amounts whose payment was assumed by or corresponds to the tenant, such as those for water, electricity, gas and IBI (property tax) if so agreed.
- The obligation to compensate the landlord for any damages to the leased property, due to inappropriate or non-diligent use by the tenant or by people that he answers for, including damage to furniture.
- The compensation due because of breach of the obligation to return possession of the property on the termination of the contract (art. 1561 CC).

#### **4.4. Adjudicating a dispute**

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

The resolution of tenancy disputes corresponds to Courts of First Instance of the place where the property is located. In 2008, ten Courts of First Instance were created that specialise in expediting eviction processes. These courts are not exclusively dedicated to these matters, but can give preference to resolving the same.

However, it must be borne in mind that there is also an administrative procedure for evictions for VPO homes, although it is barely used. Also, as of 2013 there is the possibility of resolving tenancy contracts before notary publics when the breach is due to a failure to pay rent, this has been provided for in the contract and the same is

registered in the Property Registry.

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

In civil law legislators have regulated a simpler and more agile procedure for processing evictions due to lack of payment or expiration of the contractual term. Once the suit has been lodged and compliance with the formal requirements has been verified, the clerk of the court issues a Decree accepting the suit, indicating the time and date for the hearing in the event that the tenant should oppose the suit, as well as for the actual eviction. If the tenant does not oppose the suit (by paying or opting for enervation) the court will proceed directly with the eviction.

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

Efforts have been made to promote arbitration, acknowledging the importance of including a clause submitting to arbitration in tenancy contracts. Nonetheless, Arbitration Tribunals hear a much lower number of cases than Courts of Law, and, for example, in 2012 the Courts in Barcelona Province handed down 3,619 Eviction Rulings and 7,764 Eviction Decrees in tenancy matters, while the Arbitration Tribunal of Barcelona only processed 71 cases, of which only 3% dealt with tenancy matters.

As of 2013 there are also regulations on mediation as a voluntary process before resorting 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?**

First of all, he/she will have to register in the Registry of Applicants for Social Housing of his/her Autonomous Community and/or municipality. Once registered, he/she will be included in the public draws for social housing that he/she is eligible for. Also once registered he/she will be able to approach social housing developers directly, which may be private companies, Town Councils, foundations, associations or financial entities.

Whenever there is a risk of residential exclusion applicants should also approach the social services in the place where they live, as well as any non-profit organisations that have social housing or reserved flats to respond to the most urgent cases of housing needs.

- **Is any kind of insurance recommendable to a tenant?**

It is increasingly common for landlord's to take out insurance policies to cover the expenses incurred in managing tenancies. The prices of these policies can vary between 80 and 200€ per annum, approximately and depending on the coverage provided. It is possible for such policies to only include legal defence expenses, or for them to also cover part or all of the cost of rents due, and even acts of vandalism that

might be committed by the tenant in the dwelling.

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

To obtain legal aid it is necessary to go to a private lawyer or to the Legal Advice Service of the municipality or province, which is usually available at the headquarters of the Courts of Justice. The tenant can request prior advice and consultation before the judicial process, as well as defence and representation by a lawyer and court representative at the hearing, provide the requirements for obtaining free legal aid in court are met. These requirements establish a maximum income of between 2 and 3 times the IPREM (Public Income Indicator), depending on the number of members in the cohabitation.

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

- Chamber of Urban Property: For obtaining general information on tenancy and, above all, advice for owners. There are different municipal offices. There is also the Confederation of Chambers of Urban Property, a State entity. C. Princesa, 1-3, Via Laietana, 22, 08003 Barcelona, [cambra@cambrapropbcn.com](mailto:cambra@cambrapropbcn.com), Tel. 933.192.877.
- Office of Consumers and Users: For obtaining information on the contractual rights and obligations of consumers and for lodging complaints against companies that breach consumer rules. Although there are different municipal and provincial offices, the headquarters are at: C. de Albarracín, 21, Polígono Julián Camarillo 28037 Madrid. They can be contacted at [www.ocu.org/contacto](http://www.ocu.org/contacto), Tel. 913 000 045.
- Agència de l'Habitatge de Catalunya [Catalonian Housing Agency]: Each Autonomous Community has an entity that provides information on housing issues. The Agència de l'Habitatge de Catalunya is the body that manages social housing in Catalonia, and it also has provincial offices: C. de la Diputació, 92, 08015 Barcelona, [agenciahabitatge@gencat.cat](mailto:agenciahabitatge@gencat.cat), Tel. 932 28 71 00.
- Local Housing Offices: The local corporations also have entities that provide information on social housing at Town and County Councils. For example, in Barcelona there are 10 such offices, like the Consorci de l'Habitatge de Barcelona [Barcelona Housing Consortium]: C. de Bolívia, 105 1ª planta 08018 Barcelona, which can be contacted at [www.bcn.cat/habitatge](http://www.bcn.cat/habitatge), Tel. 010.