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

Tenant's Rights Brochure for

SWEDEN

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Summary of Contents

1. Introductory information

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

The shortage of rental dwellings is a big problem in Sweden, especially in Stockholm, Gothenburg and Malmö and in the university towns.[1] Overall, there is a net shortage of 92 000 to 156 000 dwellings in the whole country, depending on which economic model is used. This means that the supply

[1] National Housing Credit Guarantee Board, "Samband mellan bostadsmarknad, arbetskraftens rörlighet och tillväxt" (2008) pp. 16-17

needs to increase by between 102 000 and 163 000 homes where there are shortages, and reduced by 7 000 to 10 000 homes in the regions where there is a surplus.[2] Almost half of the municipalities in Sweden (43 %) indicate that they have a shortage of housing.[3]

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

It is quite difficult to find a rental apartment without years and years in a housing queue in most bigger cities in Sweden, at least in the inner-city areas. This has created problems with swindlers advertising apartments and asking for deposit or rent in advance, as well as a black market of tenacies being sold although it is illegal to do so.

Tenants must also be aware that there are rogue landlords who will try to circumvent the legal rules and offer the tenant a sublease contract only. This is often arranged by the use of a front man, such as a separate company or a relative, which in turn will sublet to the tenant.

The tenancy legislation in Sweden is quite difficult to interpret, even for lawyers, and it is difficult to understand the legal rules on protected tenancy, period of notice etc., especially for people without legal knowledge.

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

In Sweden, rental tenures with and without a public task are not distinguished. Sweden has by definition no social housing. But about half of the rental sector is owned by municipally owned housing companies, whose goal is to provide housing for all, regardless of gender, age, origin or incomes. After time on a waiting list, the dwellings are allocated. There is no upper income limit for potential tenants to avoid stigmatisation, and as long as tenants afford the rent, no lower income limit. Some tenants will need a housing allowance to be able to pay the rent.

- 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)

How to find a rental home differs from municipality to municipality, since some have house allocation boards and some do not. Some allocation boards supplies dwellings from both private and municipal landlords, such as Boplats Syd in Malmö and the Housing Authority of Stockholm (Stockholm stads bostadsförmedling). It costs around 25 € per year to be a part of the waiting list. Many private landlords have their own queues, which one can sign up for on their webpages or by calling them.

In areas where there is a severe housing shortage, as in Stockholm, it might not be possible to find an rental apartment to rent for oneself to start with.

[2] http://www.boverket.se/Om-Boverket/Nyhetsarkiv/Vad-ar-bostadsbrist/
[3] http://www.dn.se/ekonomi/stor-bostadsbrist-i-sverige/

Some alternatives might be subletting, renting a room or living with others in these cases.

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

1. Look out for swindlers, especially on "Blocket" (www.blocket.se)

2. Make sure that the tenant who is subletting his or her apartment has a permission from the landlord or from the board of the co-operative housing association - otherwise the tenant runs the risk of forfeiting the tenancy or the co-operative apartment and then the subtenant must move, too

3. Try to check if a landlord is on the Union of Tenants black list of landlords - then it might be a good idea to stay away

4. Always ask for a tenancy agreement in writing, even though an oral contract is binding it is much easier to have everything agreed in writing in case of a conflict

5. Be aware that even a quite short delay of rent might forfeit the tenancy - pay the rent in time. (The tenant has a chance of recovering the tenancy by paying the rent within three weeks. This period of time starts when he is served with a notice explaining how he may recover it and a notice is sent to the social welfare committe in the munipality where the apartment is located. If the tenant does not pay on time, he will be evicted.)

- 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)

Important legal terms related to tenancy law

hyresgäst	tenant
hyresvärd	landlord
hyresrätt	tenancy
hyra	rent
besittningsskydd	protected tenancy
inneboende	lodger/live-in
förhandlingsklausul	bargaining clause
uppsägningstid	period of notice
hyresnämnden	rent tribunal
hyresgästföreningen	Swedish Union of Tenants
Kronofogdemyndigheten	Enforcement Authority
fullmakt	power of attorney

andrahandsuthyrning	sub-letting
bostadsrätt	co-operative apartment
tingsrätt	district court
tvistemål	civil case
deposition	deposit
stämningsansökan	application for a summons

2. Looking for a place to live

2.1. Rights of the prospective tenant

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

A landlord is free to choose whomever he wants as a tenant as long as it can not be considered discriminatory in any way. However, if a landlord exposes for example a prospective tenant for discriminatory behavior in conflict with the Discrimination Act (diskrimineringslagen)[4], the tenant can report it to the Equality Ombudsman (Diskrimineringsombudsmannen).[5]

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

Questions on sexual orientation etc. are not prohibited per se but can be considered as evidence towards a discriminatory act if the prospective tenant does not get the contract.

- 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)?

No, such fees are not usual and not 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)?

Most landlords will do a credit report before entering into a contract, ask for a birth certificate, a certificate of employment and references from previous accommodations. If a tenant does not have a fixed income, many landlords will require a guarantor or charge a deposit. It is usual and legal.

- What is the role of estate agents in assisting the tenant in the search

[4] SFS 2008:567

[5] The Equality Ombudsman (DO) is a government agency that seeks to combat discrimination and promote equal rights and opportunities for everyone, and primarily concerned with ensuring compliances with the Discrimination Act

for housing? Are there other bodies or institutions assisting the tenant in the search for housing?

Estate agents work mainly with purchase and sale of property, but might in rare cases help a property owner letting his item if he's having problems getting it sold.[6] Estate agents are generally not necessary for rented accommodation because of the housing shortage - a landlord setting legal rents will have a series of potential tenants to choose from.

In some municipalities there are allocation boards which may help tenants in the search for housing. If the tenant is in Sweden to study, he or she might be able to get help from the university or the student union.

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

A tenant can check the blacklist of landlords which is developed by the Swedish Union of Tenants and published in their magazine. All landlords who receives a decision on an remedial injunction or compulsory management as provided in the Housing Management Act against them ends up on the list.

Many landlords most likely have some sort of list of tenants quilty of misconduct but it must be in writing and shared from person to person in order not to be in conflict with the Personal Data Act.

No, there is no such ranking system.

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)?

Written form is not necessary, a contract may also be oral. No registration is necessary and no fees apply.

- What is the mandatory content of a contract?
    - Which data and information must be contained in a contract?
    - Duration: open-ended vs. time limited contracts (if legal, under what conditions?)
    - Which indications regarding the rent payment must be contained in the contract?

None of the above are mandatory contents of a contract, since it also can be oral. If the parties do not agree on a period of notice for example, the statutory provision of three months will apply. If they do not agree on a duration of the contract, it will be counted as an open-ended contract according to the Tenancy Act.

[6] An estate agent will either have a real estate license or a housing allocation license. I know of no instance where an agent have both.

- 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?

No, it is the landlord who handles the repairs and furnishings. The above said does not apply, however, if an agreement has been made to the contrary and the tenancy agreement refers to a single-family dwelling or a holiday cottage, or the tenancy agreement includes a bargaining clause and the derogatory provisions have been included in a bargained agreement.[7]

If the rented property is a single family home or a holiday cottage, the parties may agree that the tenant will be responsible for maintenance. Through a collective bargaining agreement it can be determined that the mandatory rule of the landlord's obligation to do customary repair shall not apply. The idea is that a residential tenant who is being offered repair is able to abstain it, and in return be able to get lower rent or a rebate. This is called tenant-controlled apartment maintenance and is quite common among the municipal housing companies.[8]

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

The landlord is expected and required to provide major appliances. The tenant provide furnishings unless the contract says otherwise (which is not uncommon).

    - 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, it is a good idea.

    - Any other usual contractual clauses of relevance to the tenant
- Parties to the contract
    - Which persons, though not mentioned in the contact, are allowed to move into the apartment together with the tenant (partner, children etc.)?

According to the Tenancy Act, anyone can move into the apartment together with the tenant, as long as it does not entail detriment to the landlord.[9] Situations that can entail detriment to the landlord are for example when a tenant has too many lodgers and it causes damage to the apartment or it is disturbing to other tenants.

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

A tenant who does not use the apartment as his primary residence runs the risk of getting a notice of termination from the landlord. The landlord may

[7] Section 15
[8] Nils Larsson et al, *Bostadshyresavtal i praktiken,* 2010, pp. 87-88
[9] Section 41.

claim that the tenant has a lack of need of the dwelling, which makes it easy to find a grount that breaks the protected tenancy according to section 46 paragraph 10 in the Tenancy Act. In such a court matter the rent tribunal must do a weighing of interests between the landlord and the tenant. If the tribunal finds that the tenant uses the apartmants as his or her home he will remain in his apartment. The tenant may argue e.g. that the apartment is a necessary complement to his usual residence and show that he uses the complementary apartment at least 2 - 3 times a week. But if the tenant never has lived in the apartment and he only wants to keep it to eventually be able to switch it to another apartment, or to use it for his children's housing needs in the future, he has no interest worthy of protection.[10]

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

Yes. A divorce can under certain conditions entitle a spouse to be assigned the tenancy. It must be the case of an apartment that is intended to be used as the couple's joint housing, one of the spouses is in most need of the dwelling and it is otherwise reasonable for that spouse to be assigned the dwelling. Who will be assigned the dwelling is not not a question for the tenancy legislation, it is regulated in Chapter 11 section 8-10 in the Marriage Code (äktenskapsbalken).[11] A dispute between the spouses is tried by the district court. If a tenancy has been awarded to one spouse through an estate division or a distribution of an estate, the spouse enters into the stead of the tenant or of the estate of the deceased. This also applies for a surviving spouse who is the sole heir. These types of change of parties does not require consent from either the landlord or from any authority. According to the Tenancy Act[12], the landlord must accept the spouse as a sole tenant without any examination of the spouse's suitability.

In this matter a registered partnership has the same legal effect as a marriage. However, the Marriage Code became gender neutral on 1st of May 2009, which means that same-sex couples now can marry. And registered partnerships were converted to marriage, thus they do not exist anymore.

Similar rules apply to what in Sweden is called a "sambo", which means a cohabitant. Two people who live together on a permanent basis as a couple and who have a joint household are cohabitants. To count as a cohabitant some criteria must be fulfilled; the cohabitant must live with his/her partner on a permanent basis, it can not be a relationship of short duration.[13] The cohabitant and his/her partner must live together as a couple, in a partnership normally including sexual relations. The cohabitant must share a

[10] Nils Larsson et al, *Bostadshyresavtal i praktiken,* 2010, pp. 206-207. If the tenant has no need of the apartment, the landlord need only the weakest of justifications to break the tenancy. Still the landlord need a justification. If both parties have the same interest (zero interest) the the tenant shall win.
[11] SFS 1987:230
[12] Section 33.
[13] The relationship must have lasted at least six months.

household with his/her partner, which means sharing chores and expenses. Whether the cohabitants are of the same sex is of no importance.

There are two possibilities for a cohabitant to take over the tenancy according to the Cohabitees Act. If the dwelling has been acquired for joint use, it can be assigned one of the cohabitants through an estate division.[14] If the dwelling has not been acquired for joint use, it can be assigned one of the cohabitants under section 22 in the Cohabitees Act (sambolagen).[15] This section says that one cohabitant may be entitled to take over the apartment, if he is in most need of the dwelling and such a takeover can be considered reasonable when taking the circumstances in general into account. If the cohabitees do not have or have had children together, this applies only if there are extraordinary reasons for doing so.

If the cohabitants can not agree, the dispute is tried in the district court. When the dwelling has been assigned one of the cohabitants, he or she may enter into the stead of the tenant or of the estate of the deceased.

If a cohabitant can not be assigned the dwelling according to the rules in the Cohabitees Act, he or she may be entitled to the tenancy under section 34 in the Tenancy Act. Section 34 gives a tenant who is not intending to use his dwelling unit the right to transfer it to a person closely connected to the tenant ("närstående" in Swedish). According to the preparatory work this can be a spouse, a child, a parent, a grandparent, a cohabitant, a cousin or another relative. Two friends can never be considered as "närstående".

The person who the dwelling can be transferred to must also permanently live together with the tenant and the rent tribunal must grant permission for the transfer. Such permission shall be granted if the landlord can reasonably be satisfied with the change. The permission can be made conditional. This also applies if the tenant dies during the term of the tenancy and his estate wishes to transfer the tenancy to a relative or some other "closely connected to the tenant who was permanently cohabiting with him.

A spouse or a cohabitant who does not have a share in the tenancy, can have an independent right of prolongation of the agreement if the tenant gives a notice of termination or takes any other measure to bring it to an end or if he or she is otherwise not entitled to prolongation of the agreement. The spouse or the cohabitant, if he or she has his or her home in the unit, is entitled to take over the tenancy and to have the tenancy agreement prolonged for his or her own part, insofar as the landlord can be reasonably satisfied with him or her as a tenant. The aforesaid also applies when the landlord has given notice of cancellation of the tenancy agreement on grounds of forfeiture. If the tenant is deceased, his or her surviving spouse or cohabitee will have the same right if the estate of the deceased is not entitled to prolongation and this has not been occasioned by the surviving spouse or cohabitee.[16]

If the landlord does not wish to consent to a prolongation of the tenancy agreement he shall request the spouse or cohabitee to move no later than

[14] Under section 3-21 in the Cohabitees Act
[15] SFS 2003:376
[16] Under section 47 in the Tenancy Act

one month after the tenancy relation with the tenant ended. Any such request is of no effect unless the landlord, within a month thereafter, refers the dispute to the regional rent tribunal or the person requested moves in any case before the period for referral has expired. If, however, the request has been made more than one month before the expiry of the term of the tenancy, referral can be made until the expiry of the term of the tenancy.

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

It is possible to conclude a contract with several persons. These persons then have a joint responsibility to the landlord. However, it is important to note that if either of the persons on the contract gives the landlord a notice of termination the contract becomes void, also in relation to the co-tenants. However, the co-tenants are entitled to have the tenancy agreement prolonged for their own part if the landlord can reasonably be satisfied with them as tenants.[17]

- death of tenant;

If a tenant is deceased all right and obligations are taken over by the tenant's estate. The estate is entitled to terminate the contract with one month's notice.[18] This also applies for a surviving spouse, cohabitant or a "närstående". If the landlord wants to give the estate a notice of termination, the regular rules on the period of notice apply which usually means three months.

- bankruptcy of the landlord;

If a property is brought to an executive auction on a forced sale, the tenancies shall be notified so that they become included in the list of parties concerned. The property is offered up for bids, first without a proviso concerning the grant and then with the proviso. If the price offered is lower for the property with a proviso and that damages creditors with superior rights, the property is sold without the proviso.[19] But the new owner must give notice of termination of the tenancy agreement within one month of the access. Otherwise, the agreements are valid against the new owner.[20] The landlord must give the tenants a period of notice of three months and then apply to the rent tribunal. In this situation, the trustee is in no better position if he tries to evict the the residential tenants than the original landlord was. The bankruptcy does not make it easier for the trustee. Hence, a tenant with a protected tenancy remains in his apartment. The provisions on terminating agreements are however important with regard to commercial contracts.

If the property is sold with the proviso, the tenancy agreements are valid against the new owner. If, however, the property is assessed as a rental housing unit, residential tenancies for an indefinite period of time which are

[17] Section 47 of the Tenancy Act
[18] Under section 5 in the Tenancy Act
[19] Chapter 12 section 39 of the Enforcement Code (utsökningsbalken, SFS 1981:774)
[20] Chapter 12 section 46 of the Enforcement Code

based on a written document are always valid against the new owner if the tenant took possession of the dwelling before the executive sale.[21]

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

A tenant is normally not allowed to sublet his or hers apartment without prior consent from the landlord.[22] If the tenant still sublets without a permission, and does not take corrective action after being given a reprimand or ask for permission to the sublet without delay, he or she risks to forfeit the tenancy.

If the landlord does not give permission for the subletting the tenant can apply to the rent tribunal. The rent tribunal can give permission under the conditions specified in section 40 in the Tenancy Act. The section states that the tenant must have notable reasons (beaktansvärda skäl) for the grant; age, illness, temporary employment in another locality, special family circumstances or comparable circumstances and the landlord does not have any justifiable reasons to refuse consent.

By special family circumstances means for example when a couple is moving in together as cohabitants and one of them wants to keep his or hers apartment for a period of time to see how it goes. Temporary employment in another locality is equated with temporary studies elsewhere. A tenant can also receive a permission for a longer trip abroad (usually a trip of at least three months). An elderly person who moves to a retirement home has the right to sublet, even if it is unclear whether or not the person will be able to return home.

The permission from the rent tribunal shall be limited to a fixed term and may be combined with provisions.[23] For example, a tenant usually receives permission for one year when he or she wants to try the life as a cohabitant. When the permission has expired, the tenant can reapply for a new permission from the rent tribunal. Permission is normally given for one year at a time and seldom for more than a total of three years.[24] If the subtenant can reasonably be accepted as as a tenant the landlord usually do not have any justifiable reasons to refuse a permission. The subtenant's solvency normally lack significance because it is the primary tenant that remains liable for the payment of the rent. The decisions from the rent tribunal in these matters can not be appealed.

There are rogue landlords who will try to circumvent the legal rules and offer the tenant a sublet contract only. This is often arranged by the use of a front man, such as a separate company or a relative, which in turn will sublet to the tenant. In these situations the subtenant can have the same right as a primary tenant under certain conditions.[25]

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[21] Chapter 7 section 16

[22] A general exception to this rule is found in section 39, which applies when a tenancy leased by a municipality. Such an apartment may be sublet without requiring the consent of the landlord. The landlord shall nevertheless immediately be notified of the sublease.

[23] Nils Larsson et al, *Bostadshyresavtal i praktiken,* 2010, pp. 168-169

[24] Charlotte Andersson, *Lägenhetsbyten och andrahandsuthyrning,* 2008, pp. 51-52

[25] Under Chapter 7 section 31 in the Land Code

The first condition is that there is a community of interest between the property owner and the grantor. It may also be presumed that the legal relation is being used in order to evade a statutory provision which favours a usufructuary when this community of interest is considered along with the circumstances generally. If these conditions are fulfilled, the lessee and the tenant have the same right in relation to the property owner as they would have had if the property owner had granted their right of user. In other words, the subtenant is entitled to a prolongation of the agreement.[26]

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

If a property is transferred to a new owner it will generally not affect the validity of the tenancy agreements concluded between the former owner and tenants of the transferred property. The new owner will in most cases be bound by the agreements and will become the new landlord. If a written tenancy agreement exists and the tenant has acceded the apartment, the new owner is bound by the agreement according to Chapter 7 section 13 in the Tenancy Act. If there is no written contract or if there is a written contract but the tenant has not acceded the apartment the new owner is bound in the following situations:

- if the transferor has made a proviso concerning the grant (Chapter 7 section 11)
- if the new owner had or should have had knowledge of the grant at the time of the transfer. (Chapter 7 section 14)
- if the grant does not apply against the new owner under sections 11-13, the grant shall nontheless remain in force against him if he does not give notice of cancelling the agreement within three months of the transfer.[27] However, the notice of termination must be examined by the rent tribunal and can only be approved if sections 49 and 46 in the Tenancy Act are fulfilled. Hence, it is quite difficult to terminate a tenancy agreement in these cases.

If the transferor has not made a proviso as referred to in section 11 and, consequently, the grant of a right of user will not apply against the new owner, the transferor shall compensate the holder of a right for the damage he suffers.[28]

When it comes to a forced sale of the property on an executive auction, the tenancy shall be notified so that it becomes included in the list of parties concerned. Then the property is offered up for bids, first without a proviso concerning the grant and then with the proviso. If the price offered is lower for the property with a proviso and that damages creditors with superior

[26] In NJA 1992 p. 598 a landlord had let an entire floor to her daughter. The daughter divided the floor into two apartments and sublet one of them. When the agreement between the landlord and the daughter expired, the landlord tried to evict the subtenant. The Supreme Court found that the subtenant had a protected tenancy and that he was entitled to a prolongation of the agreement. The landlord and her daughter had a community of interest, they had both tried to make the subtenant move and the landlord had said that she intended to let the apartment to one of her grandchildren.

[27] Chapter 7 section 14 in the Land Code

[28] Chapter 7 section 18 in the Land Code

rights, the property is sold without the proviso.[29] But the new owner must give notice of termination of the tenancy agreement within one month of the access. Otherwise, the agreements are valid against the new owner.[30] The landlord must give the tenants a period of notice of three months and then apply to the rent tribunal.

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

The amount of rent shall be determined in the tenancy agreement, or if the agreement contains a bargaining clause, in the bargaining agreement. However, this does not apply to compensation for expenses relating to the supply of heat, hot water or electric current or charges for water and sewerage, if if the tenancy agreement includes a bargaining clause and the basis of payment computation has been established through a bargained agreement or through a decision from the rent tribunal. Or if the unit is situated in a single- or two-family dwelling, or if the cost of the utility is charged to the tenant by individual metering.[31]

Usually, regarding apartments in an apartment building, most tenancy agreements have a total rent where the heat and water supply are included in the rent, as well as waste collection. The household electricity is usually charged separately by a separate contract between an electricity supplier and the tenant. The cost of broadband is usually supplied by an external provider and is in addition to the rent. When individuals rent one or two dwelling houses from other individuals they usually conclude contracts directly with the supplier.

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

Please see above.

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

No.

- Deposits and additional guarantees
    - What is the usual and lawful amount of a deposit?
    - How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?
    - Are additional guarantees or a personal guarantor usual and lawful?

[29] Chapter 12 section 39 of the Enforcement Code (utsökningsbalken, SFS 1981:774)
[30] Chapter 12 section 46 of the Enforcement Code
[31] Section 19 of the Tenancy Act

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

There are no rules regarding deposits in the Tenancy Act besides section 28a. This section states that the tenant is entitled to get his deposit back after two years from the date the commitment entered into force (a period of notice of nine months applies). This right can not derogated from by agreement.

The use of deposits is increasing but are not common, usually a deposit is used as a guarantee for future claims due to damage to the apartment or unpaid rents. It is therefore important that the parties agree on what should apply for the deposit. The deposit will usually be paid back when the contract period is over. The rent tribunal can only mediate about a claim for a deposit which has not been repaid, if the tenant wants a decision on the matter he has to apply to the district court.

If a tenant has a requirement of a security in his tenancy agreement, it is possible to get the fairness of the clause tried. If the clause is considered unreasonable, it will be repealed. If a collateralisation deteriorates, it does not give the landlord the right to terminate the contract - the tenant still has a protected tenancy.[32]

As stated above, there is no lawful amount mentioned in the tenancy legislation but the most common amount of deposit is one to three months rent. There are no rules on how the landlord has to manage the deposit as to special accounts etc., and neither on how the landlord is allowed to use to deposit.

3. <u>During the tenancy</u>

3.1. <u>Tenant's rights</u>

- 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)?

There is no general definiton of what a defect is under the Swedish tenancy legislation. There is a defect in an apartment when the apartment not is in the condition that the tenant is entitled to claim or if there are impediments in the tenancy. For example, if the apartment is not ready when possession is to be taken, if the apartment is not vacated in time by the party who is to move, or if any of the situations mentioned in section 16 has occured during the rental period. Section 16 states that if the unit is damaged during the term of the tenancy without the tenant being liable for the damage, or if the landlord defaults on his duty of maintenance (regarding wallpapering and painting etc.) or if an impediment or detriment otherwise occurs in the tenancy without any negligence from the tenant, the apartment has a defect.

[32] Nils Larsson et al, *Bostadshyresavtal i praktiken,* 2010, p. 79

Defects in an apartment are usually related to physical defects, such as a stove that does not work. However, a tenant can also suffer inconveniences for many other reasons. There may be a case of lack of water supply or heating supply, poor cleaning of the stairs or disruptive behavior from another tenant. But even impediments and detriments that the landlord has no control over such as noise from a neighboring property principally falls in under the rules of impediments in the tenancy. However, traffic disruptions are normally not considered as impediments.[33]

- 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)

The sanctions that may be considered by the tenant when a defect occurs in the apartment at the handover or during the rental period are the right to self-help, an advance notice of cancellation, rent reduction, damages or a remedial injunction.

If the apartment is not in the condition that the tenant may claim he may remedy the defect at the landlord's expense. A prerequisite is that the landlord neglects to take action as within a reasonable amount of time after he has been told about it. It is enough that the tenant sends a registered letter to the landlord, in order to fulfill his obligation to tell the landlord about the defect. If there is a right to self-help the landlord is required to pay what it cost to remedy the defect. The right to self-help is rarely used nowadays, as an remedial injunction often is more effective.

Has the defect a substantial importance for the tenancy, may the tenant be entitled to an advance notice of cancellation. This applies if the defect cannot be remedied without delay or if the landlord does to take action as soon as possible. A notice of cancellation of the agreement may not be given after the defect has been remedied by the landlord.

Besides the sanctions already mentioned, a tenant can make a reasonable reduction of rent for the time the apartment has defects or there are impediments in the tenancy. The landlord's liability is strict, i.e. the tenant is entitled to an equitable reduction of the rent regardless of who or what caused the defect or if it occurred by accident. The right to a reduction of rent applies even if the landlord has made every effort to eliminate the defect or impediment. However, the defect must be fairly durable. An important exception from this rule is that the parties may agree that the tenant shall not be entitled to a reduced rent for the impediments that can arise when the landlord performs work to put the apartment in the agreed condition, regular maintenance or other work specified in the tenancy agreement. Such a clause is usually a standard term in residential tenancys.

A tenant may also claim compensation for the damage he suffers because of the defect or impediment. The prerequisites for damages is that the landlord through negligence or misconduct caused the tenant damage. The landlord

[33] Nils Larsson et al, *Bostadshyresavtal i praktiken,* 2010, p. 91

can escape liability if he proves that the defect is not due to his negligence or misconduct. Damages include not only personal injuries and damage to property, but also economic loss.

If a defect occurs in a residential apartment, the tenant can apply to the rent trubunal for a remedial injunction. A remedial injunction may be considered when the apartment is damaged, when the landlord fails to do the periodic maintenance or for other reasons which create impediments in the tenancy. It may also be considered when the landlord does not maintain the common areas. When the rent tribunal submits a landlord to remedy a defect the tribunal shall also determine a specific date when action must be taken at the latest. A remedial injunction may be combined with a fine, often when there is reason to assume that the landlord will not follow the injunction. A decision from the rent tribunal on a remedial injunction can be appealed to the Svea Court of Appeal.[34]

- Repairs of the dwelling
    - Which kinds of repairs is the landlord obliged to carry out?
    - Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

The landlord is responsible for all maintenace works and repairs and for keeping the dwelling in such condition that, according to the general view in the locality, it is fully serviceable for the purpose intended.[35] The landlord shall, at reasonable intervals of time, arrange for papering, painting and other customary repair in the dwelling because of the deterioration of the unit from age and use. What a reasonable interval of time is varies depending on the size of the apartment and how many tenants living there. When it comes to painting and wallpapering the interval has become wider and is now about twelve to fourteen years. It is important to note that the landlord's obligation to repair does not occur simply because a certain amount of time has elapsed since the previous repair, it is also required that the apartment is in need of maintenance.

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- Alterations of the dwelling
    - Is the tenant allowed to make other changes to the dwelling?
        - In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)
        - Affixing antennas and dishes

[34] Nils Larsson et al, *Bostadshyresavtal i praktiken,* 2010, pp. 92-98
[35] Section 15 in combination with section 9

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

Yes, a residential tenants are entitled to carry out painting, wallpapering and comparable measures in the dwelling at their own expense. Some examples of comparable measures are installation of blinds, tiling of kitchen and bathrooms, replacement of baseboards, laying of carpeting on a linoleum floor, replacement of interior doors and knobs and set of wooden paneling in the hall and rooms. A residential tenant is also entitled to drill the walls in order to hang pictures etc. In this way, the Swedish tenancy legislation gives a tenant far-reaching possibilities to customize his home to fit his personal taste.

But if the utility value of the apartment is reduced due to the changes made by the tenant, the landlord is entitled to compensation for the damage. However, if the tenancy agreement refers to a single-family dwelling which is not intended to be let permanently or to a cooperative apartment, the parties may agree that this rule shall not apply.[36]

If a person is disabled he might be entitled to a home adaptation allowance for adaptation of the solid features in the dwelling. The landlord must approve of the measures and is free to say no to such adaptations. The tenant is only entitled to make the changes in the apartment that is stated in section 24a, installing a handle to make it easier to get in and out of a bathtube for instance. Landlords may refuse to agree to an adaptation even when a tenant has gotten an allowance and a promise of compensation for removal of the installations. There is no preferential treatment for a disabled person within these rules in the Tenancy Act.

Normally the landlord must approve before a tenant installs an antenna or a dish, since the landlord is responsible for the safety of the property and there is a risk that the antenna or dish will fall down. But the European Court of Human Rights concluded that the eviction of a family with three children from an apartment simply because they would not comply with the landlord's rules on antennas, was not a proportionate measure and therefore was a violation of Article 10 in the ECHR.[37] However, in this case the family had followed the landlord's rules to a certain extent, because they had moved the dish from the outside of the balcony onto the balcony, and fastened it carefully. There is no reason to believe that the rent tribunal and the Svea Court of Appeal would not follow this ruling in future cases.

- Uses of the dwelling
    - Are the following uses allowed or prohibited?
        - keeping domestic animals
        - producing smells
        - receiving guests over night
        - fixing pamphlets outside
        - small-scale commercial activity

[36] Section 24a
[37] Case of Khurshid Mustafa and Tarzibachi v. Sweden, application no. 23883/06

Keeping pets, producing smells and receiving guests over night is allowed if it is not disturbing the neighbours or damaging the apartment in any way. A tenant may not fix pamphlets on the message board of the apartment building unless it is allowed by the landlord.

According to section 23 in the Tenancy Act the tenant may not use the apartment for a purpose other than that intended to avoid the risk of forfeiting the tenancy. The landlord, however, may not adduce deviations of no importance to him.[38] Usually it is stated in the tenancy agreement what the apartment is to be used for; in agreements for residential premises it is stated that the apartment must be used as a dwelling. The tenant is then basically bound by this, if he does not get the the landlord's consent to use the apartment for another purpose. The landlord is responsible that the apartment are not used in a way that causes any inconvenience for the other tenants.

3.2. Landlord's rights

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

Yes, there are restricitions. Rents are set based on the utility value of the apartment and not based on demand.

- 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?

A rent increase must be negotiated with the Union of Tenants or, if the tenancy agreement lacks a bargaining clause, with the tenants individually. If the parties can not agree, the rent increase must be examined by the rent tribunal.

Six months must have elapsed since the last increase.[39]

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

The Tenancy Act states that the rent shall be established at a reasonable amount. The rent can not be considered to be reasonable if it is palpably higher than the rent for units of equivalent utility value.[40] (The meaning of the term "palpably" will vary depending on the circumstances, but approximately 2-5 percent).

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[38] There very are few cases regarding this matter in terms of dwellings. In NJA 1920 p. 581 a lawyer leased a dwelling consisting of six rooms and a kitchen. In two of the rooms he pursued his business and he got about ten visits from clients a day. The landlord argued that the tenancy was forfeited because the tenant did not have permission to manage his business in the apartment, and that there were disadvantages due to the many client visits. But the tenant was not considered to have used the apartment for any other purpose than for residential purposes, and the tenancy was not forfeited.

[39] Section 55 d in the Tenancy Act

[40] Section 55

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

All rent increases are carried out in the same way and it depends on whether or not the landlord has a principal bargaining agreement with the Swedish Union of tenants and the tenants have a bargaining clause in their tenancy agreements, or if the landlord lacks such an agreement and then has to negotiate the rents with the tenants individually.

A principal bargaining agreement requires the landlord to negotiate rents, terms and conditions of housing with the union. If the landlord is bound by this type of agreement he must send the union a written notice about what new terms he requests. Then the landlord and the union negotiate what conditions that should apply. If they do not agree, an application to the rent tribunal must be made. A tenant is bound by the new negotiated rent or term if there is a bargaining clause in the tenancy agreement regarding this matter, but can apply to the rent tribunal for an amendment of the agreement.

A landlord without an agreement with the union must negotiate the rent with each tenant individually. He shall start by informing the opposite party of what new terms and conditions he requests. If an agreement cannot be reached, he must refer the dispute for a decision by the rent tribunal. The application to the rent tribunal may be made one month after the opposite party has been informed at the earliest (section 54 in the Tenancy Bargaining Act).[41]

The tenant may object to the rent increase but it is the rent tribunal which makes the decision.

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

A tenant disposes the dwelling himself, and the landlord has no right to enter the apartment without the tenant's consent. However, the landlord is entitled to gain access to the unit without respite in order to exercise necessary supervision or carry out improvements which cannot be deferred without damage. The landlord may also have less urgent improvements carried out in the unit which do not cause substantial impediment or detriment in the right of user, if he gives the tenant a notice at least one month in advance. Such works, however, may not be carried out during the last month of the tenancy without the tenant's consent. If the landlord wishes to carry out other work in the unit, such as work which may cause substantial impediment to the right of user, the tenant may give notice of cancellation of the agreement within a week of receiving a notice. When the unit is to let, it is the duty of the tenant to allow it to be shown at a suitable time.[42]

It is for the landlord to prove that the tenant has received a notice of the planned improvements. To simply send a registered letter to the tenant is not appropriate in this case.

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

[41] SFS 1978:304
[42] Section 26 in the Tenancy Act

Yes, but only if the right to keep extra keys is included in the tenancy agreement. And the keys do not entitle the landlord to enter the premises whenever he likes, he may only enter in the situations mentioned above to avoid the risk of damages.[43]

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

No, a landlord can never lawfully lock a tenant out for not paying rent, it would make him guilty of arbitrary conduct. If he locks the tenant out the tenant can turn to the Enforcement Authority which will help the tenant to enter the apartment.

The exception is if the apartment is abandoned, because it entitles the landlord to take it back.[44] If the apartment is abandoned and the landlord does not know where the tenant is, the tenant can not be served with a message on how to recover the tenancy.

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

No.

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?

A tenant can always give the landlord a notice of termination, even if they have a fixed term agreement. The period of notice is usually three months and the agreement will then expire from the turn of the month occurring immediately after three months from the notice.[45] This applies provided that no other period has been agreed upon. If a period of notice of e.g. one month has been agreed the tenant may choose between the statutory and the agreed period. If the parties have agreed on a period of notice of more than three months, that period applies for the landlord but not for the tenant - he may choose the statutory period of three months instead.[46]

- 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)?

Please see above.

- May the tenant leave before the end of the rental term if he or she finds

[43] Holmqvist & Thomsson, *Hyreslagen en kommentar,* 2013, the commentary to section 26 in the Tenancy Act.
[44] Section 27 in the Tenancy Act
[45] Section 5 in the Tenancy Act
[46] Section 3 in the Tenancy Act

a suitable replacement tenant?

A tenant can always give a notice of termination, even if the parties have a fixed term agreement.

4.2. Termination by the landlord

- Open ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?
    - Must the landlord resort to court?
    - Are there any defences available for the tenant against an eviction?

A landlord may only terminate the contract when any of the situations mentioned in section 42 or 46 in the Tenancy Act has occured.

A landlord must always give a notice of termination in writing and then resort to the rent tribunal (when a notice of termination under section 46 has been given) or to the district court (when termination under section 42 has been given). This means that a tenant can not be evicted before the rent tribunal or the district court has made a decision.

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?
    - Are there any defences available for the tenant in that case?

The only way for a landlord to terminate a tenancy before the end of the rental term is if the tenant is guilty of misconduct under section 42.

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

If the tenant does not leave the Enforcement Authority can evict him. If he does not hand in all the keys the landlord will probably change the locks and send the bill to the tenant.

4.3. Return of the deposit

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

Please see above.

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
    - Are there specialized courts for adjudication of tenancy disputes?
    - Is an accelerated form of procedure used for the adjudication of tenancy cases?
    - Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?

Tenancy cases are adjudicated in the rent tribunal and in the district court. No, there is no accelerated form of procedure used.

Yes, the rent tribunal as well as the district court will always try to mediate between the parties first.

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?

There is no social housing in Sweden.

It is the Swedish Social Insurance Agency (Försäkringskassan) that administers the subsidies. The Agency makes a schematic trial after it receives an application. Families with children and young people aged between 18 and 29 with a low income might be entitled to housing allowance (bostadsbidrag). The amount depends on the income, how much the housing cost and how many children there is in the family. A person who has activity or sickness compensation can be entitled to housing supplement (bostadstillägg), and the same applies for pensioners. The amount received is based on income and the housing costs. The right of huousing allowance or supplement applies whether you are a tenant or a home owner.[47] A tenant with little or no income can also get a rent guarantee from the municipality, which makes it easier to obtain a tenancy.

- Is any kind of insurance recommendable to a tenant?

Yes, a home insurance to ensure he is insured if anything would happen to the apartment or to his belongings.

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

[47] www.forsakringskassan.se

Most individuals have a insurance against legal costs as a part of their home insurance, or as a part of their villa or holiday home insurance. It can also be included in boat or car insurances. This legal protection will cover a percentage of the legal costs up to a maximum amount. If a person does not have insurance, he can sometimes have a right to legal aid under the Legal Aid Act.[48] But the legal aid does not cover the whole cost; the individual still needs to pay a legal aid fee which is a percentage of the total cost of his legal representation. It is a person's financial circumstances and the total cost of his legal representative that determines how much he should pay.

Legal aid includes a part of the cost for a lawyer or a legal practitioner for up to 100 hours, but it can be increased if there are special reasons. The whole cost can be covered in the case of a person under the age of 18 who is lacking income or wealth. It also includes the cost of evidence in a general court, the Market Court and the Labour Court, investigation costs up to 10 000 SEK (approximately 1100 Euro andexcluding VAT), costs for interpretation and translation, the court application fee, copies of documents from authorities and documents that have been served etc., and the cost of a mediator.[49] It is the court that decides whether or not a person is entitled to legal aid, but is is the Legal Aid Authority that is handling the payment.

The insurance against legal costs usually does not apply in the rent tribunal and legal aid is generally not granted. But legal representation is usually not needed for matters in the rent tribunal. The chairman uses direction of proceedings and asks questions in order to sort out the circumstances that are relevant to the dispute.

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

The Swedish Union of Tenants (Hyresgästföreningen)

Address: The union has several offices throughout Sweden, please see their website www.hyresgastforeningen.se for the closest one.
Phone number: 0771-443 443
E-mail adress: it is possible to send e-mail to the union through their webpage.

The Equality Ombudsman (Diskrimineringsombudsmannen)

Address: Diskrimineringsombudsmannen (DO), Box 3686, 103 59 Stockholm
Phone number: +46(8)120 20 700
E-mail address: international@do.se (Please note that it is not possible to file a complaint regarding discrimination by using this e-mail address. Please use do@do.se instead)

[48] Rättshjälpslag (SFS 1996:1619)
[49] http://www.rattshjalp.se/In-English/In-English/

The municipal consumer counseling (kommunens konsumentrådgivning)

Every municipality has a consumer counseling where anyone can get free and impartial advice. In many municipalities there is a special section, a rental counseling, that will help persons who risk eviction due to unpaid rents.