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

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

Tenant's Rights Brochure for

SWITZERLAND

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

In 2012 there were almost 4.2 million dwellings in Switzerland, most of them owned by private persons. About 3.5 million dwellings are permanently inhabited and 2 million of these are occupied by rental tenants, which, at 37.2%, makes Switzerland the country with the lowest share of owner-occupied dwellings in Europe (EU-average ca. 71%).

The average monthly rent for a dwelling, excluding accessory charges and heating costs, was CHF 1,318 in 2012, whereas there were significant differences between the different cantons and municipalities. A one-room apartment cost in average CHF 744 and a three room apartment CHF 1,252.

The vacancy rate of dwellings is very low, at below one percent of the whole housing stock in Switzerland. There are differences according to the cantons, whose vacancy rates range between 2.01% (Jura) and 0.33% (Basel-Stadt). Also, there are considerable differences in the vacancy rates between rural and urban areas. Especially in bigger cities, such as Zurich and Geneva, it is difficult to find vacant affordable dwellings.

- Significance of different forms of rental tenure
    - Private renting

Most of the rental dwellings in Switzerland were owned by private persons (57.4% of the total rental stock in 2000) and by institutional investors (22.2%).

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

Cooperatives, foundations, associations and the state together owned about 13.8% of all rental dwellings in Switzerland in 2000. The rate differs according to cantons and municipalities and is very high for example for the city of Zurich, where it currently covers one fourth of all rental dwellings.

State owned dwellings make only a little share at 3.4%. They are owned mostly by cantons and municipalities and therefore subject to diverse regulations. Contracts concluded about other non-profit dwellings follow the same regulations as dwellings on the private rental market. The rent however is set on a non-profit level, only to cover the costs of the dwelling. Most of these non-profit dwellings are cooperative dwellings and most of the cooperatives subject the choice of their tenants to certain conditions through self-regulation. These conditions mainly concern the income level of the possible tenants and the relation between the number of people living in a dwelling compared to the number of rooms.

- 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)

The main problem on the Swiss housing market is the low vacancy rate, which concerns Swiss as well as foreigners. It is advisable to check advertisements of dwellings on the internet to get a picture of the usual prices in a region.

Where the initial rent is abusive, the tenant has the possibility to request a reduction of the rent within thirty days of the handover of the dwelling. If he does not do so, also an abusive rent is considered accepted. It is however not advisable to sign a contract over a rent which cannot be afforded with the intention to challenge the initial rent. In case the rent is suspected to be abusive, the contract may be checked by the Swiss Tenant’s Association before signing, against payment of a fee (for members of the association this service is free).

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

- Demarcation between defects the tenant has to repair himself and defects the landlord has to take care of: Some landlords couple the threshold of reparation costs for which a defect is still considered as ‘minor’ and therefore to be taken care of by the tenant to the annual net rent (e.g. one or two percent). This is problematic where this amount exceeds the admissible amount of about CHF 150 (depending on local custom).
- A contractual obligation in which the tenant has to make a service subscription which exceeds the maintenance obligation of the tenant is inadmissible. Without reducing the rent adequately, this obligation of the landlord cannot be transferred to the tenant.
- The payment on account for accessory charges requested by the landlord is often much lower than the actual costs. The tenant then has high additional charges at the end of the year.
- Although the landlord may transfer cost increases to the tenant, he may not do so with a fixed fee (of for example one percent of the yearly net rent) for general cost increase (*allgemeine Kostensteigerungspauschale*) independently from actual cost increases.

- At the return of the dwelling, the demarcation between normal wear (to be paid by the landlord) and excessive wear (to be paid by the tenant) often causes problems.

- 'Important legal terms related to tenancy law'

German / French / Italian	English
Ordentliche Kündigung Congé ordinaire Disdetta ordinaria	Ordinary notice (Termination of a contract unlimited in time for any reason. The tenant may challenge the termination successfully if the reason for termination contravenes the principle of good faith).
Ausserordentliche Kündigung Congé extraordinaire Disdetta straordinaria	Extraordinary notice (Termination of a contract [time-limited or unlimited] for reasons stated in the law)
Nebenkosten Frais accessoires Spese accessorie	Accessory charges (actual outlays made by the landlord for services connected with the use of the property)
Missbräuchlicher Mietzins Loyer abusive Pigione abusiva	Unfair rent
Mietzinserhöhung Augmentation (majoration) du loyer Aumento della pigione	Rent increase
Anfechtung des Mietzinses (Mietzinsanfechtung) Contestation du loyer Contestazione della pigione	Challenge to rent
Anfechtbarkeit der Kündigung Annulabilité du congé Contestabilità della disdetta	Notice open to challenge
Erstreckung des Mietverhältnisses Prolongation du bail Protrazione della locazione	Extension of the lease
Mängel Défauts Difetti	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 general, the landlord is free to choose the tenant. He is however not allowed to ask certain questions before the conclusion of the contract (see next question). If these (forbidden) questions are asked nonetheless, the tenant is allowed to lie.

Where statutory purposes of the property administration or other special reasons exist, the landlord may set additional requirements for possible tenants (and ask the respective questions), for example where student's apartments or apartments of religious communities are concerned.

Discriminating a candidate on the grounds of race, ethnic origin or religion is a criminal offence. However, even if a landlord is sentenced for discriminating a candidate, this does not give the latter a right to move into the apartment. Discriminating a candidate on other grounds, such as gender, age or sexual orientation may be considered an infringement of the personal rights of the potential tenant.

- 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 only require information from the tenant relevant to the selection of suitable tenants. If an inadmissible question is asked, the potential tenant has the right to give incorrect information if the real answer or leaving the question unanswered could decrease the chances to being chosen as tenant.

Always permitted are questions about name, address, date of birth, profession, employer of the person who signs the contract; whether the possible tenant is Swiss or not and if not, the kind of residence status and its expiry date; other persons wanting to live in the apartment (number of children, their age and sex; number of adults and whether and how they are related to each other and to the tenant); existing or intended sublease contract; whether the apartment will be used as the family residence; income brackets (steps of CHF 10,000 up to CHF 100,000) or questions about the relation of income to rent (e.g. whether the rent exceeds one fourth of the income); debt enforcements within the last two years and certificates of loss issued within the last five years; number of cars; pets; atypical sources of noise; if the last rental contract was terminated by the landlord and if yes, why; what is required from the apartment (desired premises). And, if explicitly marked as optional, the following questions are also allowed: place of work, name and address of the current landlord and references.

The questions the landlord is entitled to ask can differ depending on the type of the dwelling. For example where a catholic parish rents out an apartment, they may ask about the confession or the marital status of the potential tenants. Or, for example where a cooperative rents out apartments, detailed questions about income and financial circumstances may be allowed if there is an income limit for potential tenants in the statutes of the cooperative.

Under no circumstances, the following questions are permitted: How the potential tenant assesses the price-quality ratio of the apartment; questions about a possible

membership in a tenant protection organization; whether the potential tenant would be interested in certain tie-in arrangements, namely with an insurance policy; questions about pre-existing chronic illness; specific aspects of the financial situation exceeding the generally permitted questions, for example concerning hire-purchase agreements (*Abzahlungsverträge*) and leasing agreements (*Leasingverträge*), residual debts on furniture (*Restschuld auf Mobiliar*) and wage assignments (*Lohnzessionen*) and whether the potential tenant is forced to conclude the contract because of the situation on the housing market.

A detailed list of questions which are generally allowed or allowed under certain circumstances is available in German, French and Italian on the website of the Federal Data Protection Commissioner (http://www.edoeb.admin.ch/datenschutz/00628/00653/00659/index.html?lang=de).

- 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)?

As far as known, no reservation fees are usual.

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

The landlord may request the tenant to produce an excerpt from the debt enforcement register to prove the data about debt enforcements within the last two years and certificates of loss issued within the last five years.

Information from third persons may only be asked from the persons the potential tenant cited as references and to confirm information given by the tenant. Further questions may only be asked after informing and with the consent of the tenant. References may only be checked from persons who seriously come into question as tenant.

The landlord may request in the contract that the tenant pays a deposit before the beginning of the tenancy and in case of non-payment refuse to deliver the dwelling to 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 search for housing?

Dwellings are often advertised on the internet and/or in newspapers without real estate agents.

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

As far as known, there are no 'blacklists' of tenants or of landlords.

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)?

In general, a rental contract can be concluded without observing any formal requirements. It can also be concluded orally or even by implication. However, written form is common practice.

In some cantons (Currently Nidwalden, Zug, Zurich, Fribourg, Vaud, Neuchatel and Geneva) there is an obligation to inform the new tenant of the amount of the rent of the previous tenancy, using a form approved by the canton. Where the landlord does not comply with this obligation, the contract itself is still valid, only the agreement on the amount of rent is void. The list of cantons which have such an obligation is available on the website of the Federal Office for Housing: 'Verzeichnis / Formularpflicht für den Anfangsmietzins gemäss Artikel 270 Absatz 2 OR').

No registration of the tenancy contract is necessary. Landlord and tenant can agree to enter the lease in the land register under priority notice to (slightly) enhance the protection of the tenant in case of alienation of the property by the landlord. However, also without entering the lease in the land register, a new owner of the property has to continue the lease with the existing tenant.

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

In a tenancy contract these essential terms concern the parties of the contract, the object of the tenancy (the dwelling), the use of the dwelling (for residential purposes) and the obligation in return (the amount of rent must be determined or determinable). If the parties reach an agreement on these essential terms, the contract is valid. It is however advisable (and often done in general terms and conditions) to agree on further details.

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

Tenancy contracts can be concluded for a limited or unlimited period of time. There is no minimum duration required and also tenancy contracts concluded for a very long time (e.g. the lifetime of one of the parties) are possible. A contract concluded for eternity on the other hand would be considered to excessively restricting the landlord and would therefore be unlawful.

Whether so called 'chain contracts', a series of consecutive time-limited contracts, are generally lawful, is controversial. However, where this model is chosen in order to circumvent mandatory provisions preventing abuse, it is certainly unlawful. Where, on the other hand, a series of consecutive time-limited contracts is concluded because of legitimate interests (for example if a tenant was repeatedly in arrears of payments), it is certainly admissible.

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

The parties need to agree that the apartment is at disposal of the tenant against payment of rent (or a substitute, such as for example the caretaking of a multi-dwelling building). The amount of rent must be determined or determinable according to the circumstances.

If not otherwise agreed or required by local custom, the rent and accessory charges are considered due at the end of each month. In most cases however, the parties agree on an obligation for advance performance of the tenant.

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

In general, the landlord is responsible for keeping the dwelling fit for its designated use. However, where defects are attributable to the tenant or where only minor defects are concerned, the tenant has to remedy them himself. A defect is considered being 'minor', where its remedy is possible without specialized knowledge/expertise or tools which are usually not present in an average household. Additionally, repairing the defect has to cost less than approximately CHF 150 (according to local custom). If one of these conditions is not fulfilled, the defect is not 'minor'.

A minor defect which the tenant has to remedy himself would for example be a light bulb, a fuse or also a broken shower hose that needs to be changed or a siphon or a drain which is clogged.

Landlord and tenant can agree on transferring other maintenance costs to the tenant under the condition that these costs are considered when calculating the rent.

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

What the landlord has to provide depends on the rental contract. However, the landlord always has to provide a dwelling with certain minimum standards functioning and not hazardous for the health. Where, for example a dwelling is rented out without central heating and with old windows, the tenant may still expect that the heatable rooms can be kept warm enough to be used without warm clothing.

Whether the landlord has to provide furnishings or not also depends on the tenancy agreement. Note: Where only a *furnished room* is rented out, the termination dates and periods are different (shorter) than for furnished and non-furnished dwellings and non-furnished rooms.

- 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)?

For some cantons (Geneva, Vaud, Neuchatel, Fribourg, Jura and the French-speaking municipalities of Wallis), a frame-lease agreement makes it obligatory to establish a move-in checklist including an inventory list in written form which becomes part of the tenancy contract. In the other cantons this is not obligatory but nevertheless common practice.

The tenant is advised to check that the list is correct and complete, and that defects are listed precisely and detailed before signing it. If the landlord refuses to establish a complete record of the defects, the tenant is advised to refuse signing the list or only signing it under reserve. Where the tenant takes over installations from the previous tenant (for example a washing machine), it is advisable to mention if at the end of the tenancy these installations shall remain in the dwelling or not. Where fixed installations (for example a fitted carpet [*Spannteppich*]) are taken over from the previous tenant, it is also advisable to discuss and record how to proceed with this at the end of the tenancy.

Also at the end of the tenancy it is usual to establish a check-list of defects. If the landlord later intends to hold the tenant responsible for damages, he bases them on

this check-list. This however does not count for 'hidden' defects which are visible only later and which are not usually detected in a routine inspection.

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

Presently, there are two generally applicable frame-lease agreements, one for the canton of Vaud and one for the cantons Geneva, Vaud, Neuchatel, Fribourg, Jura and the seven French-speaking municipalities of Wallis. These agreements have to be followed where dwellings in the respective areas are concerned. The provisions of these frame-lease agreements are semi-mandatory for the benefit of the tenant.

- 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)?

If nothing is specified in the contract, family and relatives of the tenant are allowed to move in to a dwelling with the tenant. However, this is only possible where it would not lead to an overcrowding of the dwelling.

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

If not otherwise stipulated, there is no obligation for the tenant to live in the dwelling himself.

Concerning the conditions for subletting the dwelling, see below.

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

A court may transfer the rights and obligations under the tenancy contract to the spouse or the registered partner of the tenant if the spouse or registered partner needs the family residence because of the children or other compelling reasons.

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

If nothing is specified about this in the contract, the tenants may not replace a party to the contract without the consent of the landlord.

Where one tenant is the main tenant and the others are subtenants, the landlord may only refuse the consent to this sublease for certain specific reasons (see below).

  - Death of tenant;

Where a tenant dies, the tenancy is transferred to his heirs. The heirs (but not the landlord) have an extraordinary right to terminate the contract.

  - Bankruptcy of the landlord

Where the landlord has been declared bankrupt or where rent payments or the rental premises are seized or in forced liquidation, the tenant will be notified by the competent enforcement office or by publication of the bankruptcy that he has to pay the rent and accessory charges to them instead of the landlord.

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

The tenant is allowed to sublet his apartment or parts of it to a third party with the landlord's consent. The landlord cannot exclude or restrict the tenant's right to sublet the dwelling by contract. He can only refuse his consent for the following reasons:

- The tenant refuses to inform the landlord of the terms of the sublease (for example of the amount of rent, who the subtenant is, the duration of the contract or whether the whole apartment or only some rooms are sublet).
- The terms and conditions of the sublease are unfair in comparison with those of the principal lease. The tenant especially has no right to make excessive profit of the sublease.
- The sublease gives rise to major disadvantages for the landlord (for example if the apartment would be overcrowded or used for a considerably different purpose than agreed on in the principal contract).

The tenant who sublets his dwelling is responsible towards the landlord that the subtenant uses the dwelling only in the manner permitted to himself.

Where the tenant sublets the dwelling without consent of the landlord and the landlord would have had reason to refuse his consent, he may give notice of termination to the tenant. Whether an ordinary notice would also be justified if no reasons to refuse his consent existed, is controversial.

The same provisions which apply to a normal lease also apply to a sublease. The provisions about protection against termination of leases of residential and commercial premises however, are only applicable to the sublease if the principal lease has not been terminated. Also, an extension of the lease can only be granted within the duration of the principal lease. Despite this restriction, the subtenant may invoke the provisions of protection against termination without regard to the principal lease where the sublease was concluded mainly to circumvent these provisions.

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

Where the rental premises are transferred to a new owner (through purchase, exchange, donation etc. as well as dispossession in debt collection or bankruptcy proceedings), the tenancy contract continues with the new owner who has an extraordinary right to terminate the contract if he claims an urgent need of the premises for himself, close relatives or in-laws.

Where the new landlord makes use of his extraordinary right to terminate the contract (and the contract therefore ends sooner than would have been possible under the lease with the old owner), the old landlord may be held liable for the economic consequences of the premature termination of the contract (this also includes removal expenses).

- 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?

All actual outlays made by the landlord for services connected with the use of the property, such as for example heating, hot water and common-area electricity, can be charged as accessory charges. The landlord can pass these costs on to the tenant but must not make profit out of them.

The costs for keeping the dwelling fit for its designated use have to be borne by the landlord and are therefore covered by the rent. The parties can however agree to consider these costs as accessory charges if they reduce the rent adequately.

The so called 'Verbraucherkosten', costs which arise exclusively from the consumption of the tenant, are usually not considered accessory charges. The tenant has to pay the costs for these services directly to the provider. Such services are for example electricity for inside of the apartment (but not for example electricity for the lights in the stairwell) or telephone charges.

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

If nothing about accessory charges is stipulated in the contract, the charges are considered covered by the rent. The landlord has to specify all accessory charges which he wants to pass on to the tenant. A reference to general terms and conditions or a clause referring to 'all accessory charges' is not sufficient to transfer the costs of services to the tenant; the items have to be designated individually and explicitly (however, this does not have to be done in writing, but can also be communicated orally or by implication).

The parties are free in agreeing on the method of payment. Usually, payment on account (*Akontozahlung*) is agreed on. Where, in the contract, there is an amount fixed as accessory charges, and nothing further specified, this amount is also considered to be payment on account. The landlord has to submit an overview of the actual charges to the tenant at least annually. The tenant cannot rely on the payments on account to approximately covering the actual accessory charges. He has to pay the difference between the actual costs and the payments on account, even if they are set significantly too low.

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

Public taxes arising from the use of the property, such as for example basic fees for water, waste water and waste collection are considered accessory charges and can be charged from the tenant. Not considered as accessory charges are for example real estate taxes, mortgage interests or building insurance premiums. Also not as accessory charges are considered for example general maintenance costs and general administrative expenses.

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

Condominium costs concerning for example stairwell cleaning or garden maintenance are considered accessory charges and can be passed on to the tenant.

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

Concerning the deposit of a security in form of cash or negotiable securities, the maximum amount the landlord is allowed to ask from the future tenant is three month´s rent including accessory charges. There are considerable differences in the practice of demanding a deposit and about the amount of deposit according to the cantons.

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

The landlord must deposit the security in a bank savings or deposit account in the tenant's name. The landlord has a lien on these assets. The interests of the deposit are owed to the tenant. Whether the tenant has the right to claim the interests already during the time of the tenancy or whether they also become part of the security and the bank therefore is not allowed to distribute them, is controversial.

For further information about the deposit, see 4.3 Return of the deposit.

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

Apart from agreeing on a deposit, the parties to a tenancy contract can also agree on other securities, such as for example joint and several liability or other liabilities of a third person (e.g. contract of surety or guarantee of performance by third party). The cantons are free to enact further provisions about the deposit or about other forms of security (restrictions or exclude some forms of securities, e.g. exclude the guarantee of performance by third party from the possible means of security).

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

If nothing else is agreed on, the security deposit covers all claims of the landlord towards the tenant arising from the tenancy. This includes especially arrears in rent and accessory charges and possible claims for damages when the rented property is returned. It is not possible to set-off the deposit with rent payments during the tenancy.

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 dwelling has a defect if characteristics are lacking which are contractually agreed or result from the contractual purpose. Not only material damages, but also ideological nuisances (*ideelle Immissionen*) can be qualified as a defect of the dwelling.

Whether emissions result in a defect of the dwelling depends on the intensity of the emissions. Where they exceed a reasonable level, also noise and disturbances of neighbours and third persons constitute a defect. Also construction sites and strongly increased aircraft noise can constitute defects.

    - 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)

Where a defect is attributable to the tenant or persons he is responsible for, he has no claims against the landlord. Concerning the defects not attributable to the tenant, there are three categories of defects which lead to different consequences:

- Minor defects: A defect is considered being 'minor', where its remedy is possible without specialized knowledge/expertise or tools which are usually not present in an average household. Additionally, repairing the defect has to cost less than (according to local custom) approximately CHF 150 (see above).
- Major defects: A defect is considered being 'major' if it is neither minor nor serious. A major defect could for example be defective household appliances such as the washing machine or the refrigerator, where the heating system fails for a short period of time or if the tenant cannot use important rooms of the dwelling (kitchen, bathroom, etc.) for a short period of time.
- Serious defects: A defect is serious if it renders the leased property unfit or significantly less fit for its designated use and it is objectively unreasonable for the tenant to use the leased premises. Also, a serious defect occurs if the health of the tenant or his family is endangered. However, where a defect can be remedied easily and without high expenses, it is generally not considered a serious defect. A serious defect could for example be where it is not possible for the tenant to use important rooms of the dwelling for more than just a short period of time, where the heating is constantly insufficient or in case of dampness and standing water. Also ideological nuisances can lead to serious defects, for example where a massage parlour is operated in the same building.

The tenant has to remedy minor defects himself and at his own expense. For major and serious defects generally the landlord is obliged to do the remedy. The tenant has to inform the landlord about defects (already existing or about to occur) which he does not have to remedy himself. If the tenant fails to do so, he is liable towards the landlord for any loss or damage incurred as a result of the failure or delay of notification. The tenant however does not lose his defect rights towards the landlord. The tenant may demand that the landlord remedies the defect within a reasonable time. If he fails to do so, the tenant has the following options:

- Self-help: Where a *major* defect occurs, the tenant may arrange for the defect to be remedied at the landlord's expense. Where a *serious* defect occurs the tenant is not entitled to self-help, however, he may obtain judicial authority to do so.
- In case of *serious* defect, the tenant has the right to terminate the lease with immediate effect and claim damages.

In case of major defects as well as in case of serious defects, the tenant also has the following options:

- Proportionate reduction of the rent: The tenant has to inform the landlord of his intention to reduce the rent and of the extent of the demanded reduction. If the landlord does not accept the reduction, the tenant may request it before the conciliation authority. It is not advisable to simply pay less rent without acknowledgement by the landlord or court decision, since, if the reduction turns out to be unjustified or too extensive, the landlord may terminate the contract because of arrears of payment. Where the tenant pays the full rent until

acknowledgment of the landlord or court order, he may reclaim the amount paid too much.

- Damages: The landlord is liable for damages the defect has caused to the tenant, unless he can prove that he was not at fault.
- Deposition of the rent: If the landlord does not remedy a defect, the deposition of the rent can be used as leverage. The rent has to be deposited with an office designated by the canton, after the tenant had set the landlord an appropriate time limit to remedy the defect in writing and warned him about the deposition of the rent. The deposition then has to be notified to the landlord, also in writing. Once the rent is paid to the depository, it is deemed duly paid. The tenant has to bring claims against the landlord (i.e. the remedy of the defect) before the conciliation authority within thirty days of the due date for the first rent payment paid into deposit.
- Assumption of litigation: If a third party claims a right over the object that is incompatible with the rights of the tenant, the landlord is obliged to assume responsibility for litigation on notification of the tenant.

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

All defects which are not attributable to the tenant (or persons he is responsible for) and which are not 'minor' defects (see above).

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

If the landlord is informed about the damage but fails to remedy it, in case of major defects the tenant has the right to self-help (see above). However, since the tenant is not allowed to self-help in case of serious defects, it is advisable not to do so in case of high costs and where it is unclear whether the defect is major or serious.

- 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)

In general, the tenant has to return the apartment at the end of the lease in a condition as it was at the beginning of the lease, taking into account the normal wear and tear. The tenant is allowed to make changes which do not intervene in the substance of the dwelling and can be reversed at the end of the lease without the consent of the landlord. Where changes to the dwelling intervene in the substance of the building, written consent of the landlord is needed. Once this consent is given and unless otherwise stipulated, the landlord may not request the restoration of the object to its previous condition.

    - Affixing antennas and dishes

This is controversial. In any case, where intervening in the substance of the building is necessary (for example when fixing an antenna or dish at the house front) these installations are subject to approval by the landlord. Where, on the other hand, antennas or dishes are installed on a balcony, without intervening with the substance of the building and without towering above the balcony railing, no consent of the landlord is needed.

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

Since repainting does not intervene with the substance of the building and can be restored at the end of the lease without damaging the dwelling, no approval of the landlord is needed.

Normal wear and tear does not have to be remedied by the tenant. Marks of pictures on a wall, but not yellowed walls because of smoking are normal wear and tear. Dowel holes can be made without consent of the landlord but have to be filled by the tenant at the end of the lease.

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

If nothing is stipulated in the tenancy contract, the tenant is generally allowed to keep animals in the dwelling, within reasonable limits (for example dogs, cats and the like and not in an unreasonable number). Whether a landlord can lawfully prohibit keeping animals in the contract, without significant reasons, is controversial. The landlord may however not prohibit small animals held in cages (such as guinea pigs, hamsters, budgerigars and canary birds), as long as they are not held in large numbers and give no reason to complain.

  - Producing smells

The tenant is expected to avoid unnecessary emissions, depending on the specific circumstances. The tenant generally has to use the dwelling with due care and show due consideration for others who share the building and for neighbours. Otherwise the landlord may terminate the contract extraordinarily.

The landlord cannot generally prohibit smoking inside of the dwelling, however, it is inadmissible to the intensity where the smoke changes the colour of the walls or where other tenants are affected by the smell.

  - Receiving guests over night

The landlord cannot prohibit the tenant to receiving guests.

  - Fixing pamphlets outside

As part of the freedom of expression, a tenant may fix pamphlets outside on the dwelling. The content and the form however have to comply with the building regulations and other rules of public law (such as for example the protection of peace and order).

  - Small-scale commercial activity

If the dwelling is rented out as residential premises and the tenant changes the use of the dwelling, this constitutes a breach of contract which allows the landlord to terminate the tenancy extraordinarily. However, under the following circumstances it is possible that a person living in an apartment uses for example one room as an office: where no changes of the apartment have to be made, where there are no additional emissions such as additional noise or customers frequenting the dwelling and where the apartment is not used excessively.

3.2. Landlord's rights

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

In general, the parties are free to agree on any amount of rent. However, the initial rent (and also rent increases, see below) are reviewable on initiative of the tenant. The tenant may challenge the initial rent as unfair and request a reduction of the rent, if one of the following two situations is given:

- Emergency situation (*Notlage*): The tenant felt compelled to conclude the contract on account of personal or family hardship (such as for example a tenant who needs a new apartment because his family grows or because the previous tenancy contract was terminated by the landlord) or by reason of the conditions prevailing on the local market for residential premises (such conditions are considered given where the vacancy rate of residential premises is less than 1.5% of the rental stock).
- The current rent is significantly higher than the one the last tenant paid: A rent increase is considered significant where it is at least ten percent higher than the previous rent. In some cantons, the rent of the previous tenancy must be indicated by the landlord on a special form. In other cantons, the landlord has to give this information on request of the tenant.

Where one of these conditions is given, the tenant has the right to challenge the rent within thirty days of taking possession of the property before the conciliation authority (if he does not act within these thirty days, he is considered to having accepted the rent).

Whether indeed a reduction of the rent is granted or not, now depends on whether the rent is considered being 'unfair'. A rent is unfair where it grants an excessive income for the landlord: The rate of return is considered reasonable (and not yet excessive) where the net return exceeds the reference mortgage rate by up to 0.5%. Where the calculation of the net return of a property is based on a clearly excessive sale price, a rent not resulting in an excessive income may still be unfair. The law states situations in which rents are in general not held to be unfair (although these presumptions are rebuttable): A rent is in general not unfair, where it falls within the range of rents customary in the locality or district or, in case of a recently constructed property, where rents do not exceed the range of gross pre-tax yield required to cover costs.

- Rent and the implementation of rent increases
    - When is a rent increase legal and what is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?
    - When is a rent increase legal? In particular:
        - Are there restrictions on how many times the rent may be increased in a certain period?
        - Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charges lawfully?
    - What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?

The landlord is generally free to increase the rent as of the next possible date for giving notice, using a form approved by the canton and giving reasons for the rent increase. Where the landlord does not comply with these formal requirements, the rent increase is void. The rent-increase is also void where it is accompanied by notice of termination or threat of termination. A rent increase is not possible in time-limited contracts. The landlord has to notify the rent increase to the tenant at least ten days before the beginning of the notice period for termination, in order to give the tenant time to consider whether he wants to terminate the lease rather than accepting the higher rent (or challenge the rent increase).

If the rent increase is formally valid, the tenant may challenge it as unfair within thirty days of receiving notice of it. If the tenant does not challenge the rent increase, it is considered accepted.

A rent increase is not considered unfair:

- Where it is justified by increases in costs, especially increases of the reference mortgage rate (independently form the actual level of debt financing) or other costs, such as fees, taxes, insurance premiums, maintenance costs, etc.
- Where it is justified by additional services provided by the landlord, as for example value-adding investments as well as enlargements of the rented property and additional accessory charges. This can for example be an upgrading of the energy performance of the dwelling, the employment of a caretaker or renovation measures exceeding the costs for restoration or maintenance work for keeping the dwelling in its original state.
- Where it serves to balance out a rent decrease previously granted, set out in a payment plan and made known to the tenant in advance.
- Where it serves merely to balance out the inflation on the risk capital. Independently from the actual percentage of the risk capital in the total investment costs, the landlord can increase the rent to the extent of up to forty percent of the increase of the Swiss Consumer Price Index.

A rent increase that is not unfair according to these criteria, might still be considered unfair and therefore unlawful, where it grants an excessive income for the landlord or where it exceeds the range of rents customary in the locality or district or, in case of a recently constructed property, where rents exceed the range of gross pre-tax yield required to cover costs (see above).

- Entering the premises and related issues
    - Under what conditions may the landlord enter the premises?
    - Is the landlord allowed to keep a set of keys to the rented apartment?

In general, the tenant has an exclusive right to use of the dwelling and the landlord is not allowed to enter the premises or keep a set of keys without consent of the tenant. If the landlord enters the premises without consent of the tenant, this can be a criminal offence, same as it is for other, third people (unlawful entry).

The tenant must however tolerate works intended to remedy defects or to repair or prevent damage, such as maintenance work which is usually considered as necessary to prevent deterioration of the condition of the property. The maintenance work does not have to be urgent. The tenant also has to permit the landlord to inspect the object for maintenance, sale or future renting. The landlord has to inform the tenant of works and inspections in good time (in general, the less urgent and the more considerable the maintenance work – the longer the notification period). If the tenant refuses without justification to accept works and inspections the landlord is entitled to, the landlord has to take legal action. He is only entitled to self-help in emergency situations and when assistance of the authorities could not have been obtained in good time. The tenant is liable in case of damages because of unjustified refusal of tolerating works or inspections and according to the circumstances this could also give the landlord a right to give extraordinary notice of termination.

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

The exclusive right to use the dwelling of the tenant ends only with the vacation of the property. The landlord is therefore not allowed to lock a tenant out of the rented premises. If the tenant will not leave the dwelling at the end of the lease, the landlord needs to take legal proceedings to achieve an eviction.

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

Where the lease of residential premises is concerned, the landlord has no such right. The landlord only has this possibility where commercial premises are concerned.

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?

The tenant may terminate a rental contract of indefinite duration by observing formal requirements and the notice periods and termination dates. He does not have to give reason for the termination.

Formal requirements: The tenant must give the notice to terminate the rental contract in writing. Where the leased property serves as the family residence, one spouse (or registered partner) may only terminate the lease with the express consent of the other, even if the spouse (or registered partner) is not a party to the contract. If the formal requirements are not met, the notice of termination is void.

Notice periods and termination dates: The legally prescribed notice period for residential premises is three months. This provision may only be derogated only towards a longer notice period. The termination dates can be chosen by the parties

to the contract. If no dates are fixed in the contract, they are determined either by local custom or, in absence of local custom, exist always at the end of a three-month period of the lease. Termination dates according to local custom are quite different within Switzerland: In some cantons and municipalities, only few dates are customary (e.g. in Zurich end of March and end of September, in the city of Berne end of April and end of October), in some cantons no customary dates exist (e.g. in the canton Geneva) and in some cantons customary dates of termination exist at the end of every month except end of December (Termination dates of different localities are available at http://www.mieterverband.ch/be_schlicht_behoerde.0.html). The notice period starts from the moment the landlord receives the notice of termination. Where a notice period or termination date is not observed, the termination will be effective as of the next termination date.

For *furnished rooms* the lease can be terminated by giving two weeks' notice expiring at the end of a one-month period of the 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 tenant may terminate a time-limited or open ended rental contract extraordinarily, before the agreed date, under certain circumstances. The same formal requirements as for an ordinary termination also have to be respected for an extraordinary termination (written form and specificities concerning a family residence, see above).

The tenant may give extraordinary termination for the following reasons and under the following circumstances:

- Where the performance of the contract during the time until an ordinary notice of termination would come into effect becomes unconscionable for the tenant for *good cause*. In this case the tenant may terminate the contract with observance of the legally prescribed notice expiring (three months or two weeks for furnished rooms) at any time (without respecting termination dates). A good cause would for example be: lack of money through no fault of the tenant because of non-payment of alimonies by the ex-husband, a medical condition like anxiety after a burglary or personal differences between the parties. In practice, in times of housing shortage this possibility is rarely used, since it is also possible to end the contract prematurely by providing a new tenant (see below).
- Where the *tenant dies*, the rental contract is transferred to his heirs. These have the possibility to give notice of termination on the next statutory termination date with the statutory notice period (see above).
- Where the *landlord fails to remedy a serious defect* (a defect which renders the rented property unfit or significantly less fit for its designated use, see above) within a reasonable time after getting to know about the defect. In this case, the tenant may terminate the contract with immediate effect, without respecting termination dates and notice periods.

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

Yes. The suitable replacement tenant has to be willing to take over the contract under the same terms and conditions as the current tenant and has to be solvent and acceptable to the landlord. Where the proposed tenant is solvent and willing to take

over the contract to the same conditions, there are only few reasons why the landlord could refuse to release the current tenant from his obligations, in particular were the landlord would suffer major disadvantages (for example if the proposed tenant has a considerably larger family or if there is animosity between the landlord and the proposed tenant). The landlord is not obliged to contract with a suitable proposed new tenant, but has to release the previous tenant from the contractual obligations. The tenant has to give the landlord enough time to check on the proposed tenant (especially concerning the solvency) before being released from the contract. For the French-speaking part of Switzerland, the frame lease agreement 'Contrat Cadre Romand' specifies the modalities for presenting a new tenant to the landlord.

The tenant only has to present one suitable new tenant. Also in the tenancy contract it cannot be prescribed that the tenant has to present more than one suitable tenant. It is however advisable to present more than one potential tenant, in case one of them does not fulfil the criteria of solvency or is not acceptable to the landlord.

4.2. Termination by the landlord

- Open ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (=eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?

The landlord of an open ended lease has the possibility to give ordinary or extraordinary notice of termination. The landlord of a time-limited lease only has the possibility to give extraordinary termination.

Formal requirements: The landlord must give notice of termination using a form approved by the canton which informs the tenant of his right to request from the landlord to state the reasons for the termination and gives information on how the tenant must proceed if he wishes to challenge the termination or apply for an extension of the lease. The notice of termination has to be sent to the tenant as well as his spouse or registered partner where the premises serve as family residence. Where the landlord gives extraordinary notice, he has to make clear that it is not an ordinary notice and indicate the circumstances which led to the extraordinary notice. If the formal requirements are not met, the notice of termination is void.

<u>Ordinary termination</u>

The landlord can terminate the lease of indefinite duration by observing formal requirements and the contractual or statutory notice periods and termination dates (see above – Termination by the tenant). The tenant has the possibility to challenge a wrongful termination (see below).

In principle, the landlord can terminate the lease without explanation. If the formal requirements are met, the termination of the lease comes into effect, unless the tenant challenges it within thirty days of receiving the notice. Unchallenged, the termination of the lease even comes into effect if it contravenes the principle prohibiting the abuse of rights (*Rechtsmissbrauchsverbot*).The notice is open to challenge if it contravenes the principle of good faith (see below). In order to being able to judge whether he should challenge the notice or not, the tenant can request the landlord to state the reasons for giving notice.

The landlord may give ordinary notice of termination where he needs the dwelling for himself or wants to renovate and use it differently in the future.

Extraordinary termination

In the following cases, the landlord has the possibility to give extraordinary notice of termination:

- Where the performance of the contract during the time until an ordinary notice of termination would come into effect, becomes unconscionable for the landlord for *good cause,* he may terminate the contract extraordinarily with observance of the legally prescribed notice period (three months or two weeks for furnished rooms) at any time (without respecting termination dates). A good cause would for example be: severe economic crisis, sickness or invalidity of the landlord, financial ruin or changes in family circumstances. Also the conduct of the tenant can give reason for the landlord to terminate the contract for good cause, such as for example where the tenant issues death threats against the landlord or in case of repeated reprimanded breaches of the contract by the tenant, whereas each breach by itself does not justify another type of extraordinary termination of the contract.
- Where the *tenant becomes bankrupt*, the landlord may call for security for future rent payments in the amount of the rent and accessory charges until the next possible date of termination of an open ended contract or until the end of a time-limited contract. If the tenant does not furnish security within an appropriate time-limit set by the landlord, the landlord may terminate the contract with immediate effect.
- Where the *tenant is in arrears* with payments of rent or accessory charges, the landlord has the right to terminate the contract extraordinarily, after complying with the following two requirements: First, he has to set the tenant a time limit for payment of at least thirty days and threaten with giving notice in case of non-payment. Second, if the tenant does not pay within this time limit, the landlord may terminate the contract with notice period of at least thirty days on the last day of a calendar month. If the arrears are only marginal (*Bagatellbeträge*), a termination can be disproportionate and entitle to challenge the notice.
- The tenant (and his subtenants, family members, ancillary staff and other occupants) must use the dwelling with all due *care* and must show due *consideration* for others who share the building and for neighbours. If the tenant does not act according to these principles and the breach of duty reaches a certain degree of seriousness, the landlord may send him a written warning. If the tenant then continues to act in breach of his duty of care and consideration such that continuation of the lease becomes unconscionable for the landlord or other persons sharing the building, he may terminate the contract with a notice of at least thirty days ending on the last day of a calendar month. The obligation to use the dwelling with all due care also includes the obligation to use the dwelling in accordance with the contract in general. Residential premises for example cannot be converted into business premises without the consent of the landlord. Other reasons allowing the landlord to terminate the contract would for example be: the dwelling is overcrowded, the tenant sublets the apartment although the landlord did not consent and would have had the right to refuse his consent (see 2.2 – Subletting), the tenant threatens other tenants, in case of repeated night disturbances or where the tenant refuses to tolerate works and renovations the landlord is entitled to do. A termination without warning and with immediate effect is possible if the tenant intentionally causes serious damage to the property or intentionally causes serious physical harm to the landlord or neighbours.

- Where the ownership of a property changes, the lease passes to the acquirer together with the ownership of the object. A change of ownership in the sense of the law includes purchase, exchange, donation, etc. as well as dispossession in debt collection or bankruptcy proceedings. Also, where a limited right in rem tantamount to a change of ownership is granted to a third party (for example a right of usufruct of the property or a building right) the same provisions are applicable. The new owner of the property has the possibility to terminate the contract extraordinarily if he claims an urgent need of the premises for himself, close relatives or in-laws. He can terminate the lease as of the next legally admissible termination date with the legal notice period. If the new landlord does not make use of this next legally admissible termination date, he loses the right to extraordinary termination. An urgent need is given if it is not reasonable for economic or other reasons to renounce the use of the apartment rented out. If the new landlord terminates the lease sooner than was permitted under the old contract, the old landlord is liable toward the tenant for the economic consequences of the premature termination of the contract (for example rent-difference for an equivalent alternative to the previously rented apartment until the end or possible end of the previous contract, and also removal expenses). These provisions are not applicable in case of change of ownership through inheritance and compulsory purchase, which are subject to other regulations.

    - Must the landlord resort to court?

No. Where the tenant accepts the notice, the landlord does not have to resort to court. Where the tenant challenges the notice or requests an extension of the lease, the *tenant* has to act and bring the matter before the conciliation authority.

Where the tenant refuses to leave the apartment after valid termination and after an eventual period of extension however, the landlord has to start an eviction procedure before the court.

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

The notice of termination by the landlord is open to challenge if it contravenes the principle of good faith. The tenant must bring the matter before the conciliation authority within thirty days of receiving the notice of termination. Where an ordinary notice of termination was given by the landlord and the tenant did not challenge it within this time-limit, the notice is valid even if it contravenes the principle of good faith fundamentally. Where an extraordinary termination of the lease was made by the landlord, where actually no reason was given, the notice is ineffective and not only challengeable.

<u>The principle of good faith</u>

The termination of a tenancy contract by the landlord is wrongful where there is no objective, serious and legitimate interest and the reasons stated are an obvious pretext, where the termination is purely vexatious or where it is contrary to the former conduct of the landlord. Wrongful termination can also be claimed where purpose and effect of the termination are in clear disproportion, for example in case of a termination because of construction works planned by the landlord, which are anyways not possible because of public law. Or where tenancy contracts were terminated because of renovation works which would not be considerably complicated or delayed with the tenant staying in the apartment.

The law states exemplary reasons of wrongful termination:

- Termination because the tenant is asserting claims arising under the lease in good faith, such as the right to sublet the apartment or claims arising from defects of the dwelling.
- Termination because the landlord wishes to impose a unilateral amendment of the lease to the tenant's detriment or to change the rent. This should give the tenant the possibility to negotiate with the landlord without pressure. Nevertheless, the landlord is allowed to terminate a tenancy contract for the purpose to rent the apartment out to a new tenant for a higher rent, provided this new rent cannot be achieved by rent increases in the existing tenancy but still is not unfair (see 3.2 Landlord's rights).
- Termination for the sole purpose of inducing the tenant to purchase the leased premises.
- Termination because of changes in the tenant's family circumstances, such as death, marriage, divorce or separation (also registered partnership), adding children, etc., which do not give rise to any significant disadvantage to the landlord, such as for example overcrowding.

The law also states restriction on giving notice for certain periods of time. If the notice is given during these periods of time, the tenant may challenge the notice: During conciliation or court proceedings in connection with the lease, unless the tenant initiated such proceedings in bad faith or within three years of the conclusion of conciliation or court proceedings in connection with the lease in which the landlord was either largely unsuccessful, or withdrew or considerably reduced his claim or action, or declined to bring the matter before the court, or reached a settlement or some other compromise with the tenant. This time-barrier is however not applicable if the notice of termination is given because the landlord urgently needs the property for his own use or that of family members or in-laws, because the tenant is in default on his payments, because the tenant is in serious breach of his duty of care and consideration, as a result of alienation of the leased premises, for good cause or because the tenant is bankrupt.

Extension of the lease

Where the termination of the lease would cause a degree of hardship for the tenant or his family that cannot be justified by the interests of the landlord, he may request an extension of the lease. An extension can be requested for open ended as well as for fixed-term contracts. The purpose of the extension of the lease is to give the tenant more time to find a new apartment.

The tenant must submit his request for an extension of the lease to the conciliation authority within thirty days of receiving the notice of termination. However, where the tenant challenged the termination and the competent authority rejects this request, the conciliation authority automatically examines whether an extension of the lease can be granted.

Up to two extensions can be granted, whereas the overall extension limit is four years. The parties are free to set an extension period by mutual agreement, whereby they are not bound by this maximum duration and the tenant may waive his right to request a second extension. The tenant may also waive his right to extension of the lease in general once the notice of termination has been given (but not before that).

During the extension period the tenant may terminate the lease by giving one month's notice at the end of a calendar month or, where the extension exceeds one year, by giving three months notice on a statutorily valid termination date.

No extension is granted, where ordinary or extraordinary notice of termination is given because the tenant is in default on his payments, because the tenant is in serious breach of his duty of care and consideration, because the tenant is bankrupt and fails to furnish security and where the lease is expressly concluded for a limited period until refurbishment or demolition works begin or the requisite planning permission is obtained. Generally, also no extension is granted where the landlord offers the tenant equivalent premises.

Deciding on an extension of the contract and about the duration of the extension, the conciliation authorities (and the courts) weigh the interests of landlord and tenant, especially according to the following criteria:

- Circumstances in which the lease was concluded and the terms of the lease (for example if already at the conclusion of the contract the tenant was aware of a possible need of the landlord to use the dwelling for himself or about a possible renovation of the building).
- Duration of the lease. A very long, but also a very short duration of the lease can lead to hardship for the tenant.
- Personal, family and financial circumstances of the parties and their conduct. A low income family is likely to have more difficulties in finding a new apartment which is affordable to them than a single person with high income. Also the age, health, situations such as forthcoming birth or divorce, the professional situation and also the nationality of the tenant have to be considered. Also breaches of contracts by the tenant (e.g. repeatedly delayed rent payments) have to be taken into account.
- Possible need of the landlord (and its urgency) to use the dwelling for himself, his family members or his in-laws.
- Conditions prevailing on the local market for residential premises. A low vacancy rate of dwellings is an indication for hardship.
- Upcoming renovation projects are to be taken into account on the side of the landlord. Only little weight is however given to purely economic interests of the landlord.

An important aspect that has to be considered is the effort of the tenant to find a new dwelling, since the purpose of the extension of the lease is to give the tenant more time to find a new apartment.

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

A contract can be terminated by the landlord before the expiry of a time-limited contract – and, where open ended contracts are concerned, with a shorter notice period – *extraordinarily*, for the reasons stated above.

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

See above, the notice of termination is challengeable where it contravenes the principle of good faith. Where an extraordinary termination of the lease was made by

the landlord, where in fact no reason was given, the notice is ineffective and not only challengeable.

- 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?

In this case the landlord needs to take legal proceedings to achieve an eviction, he is not entitled to self-help. In clear cases the landlord can address the court directly, in all other cases, an attempt at conciliation is needed (see 4.4 Adjudicating a dispute).

4.3. Return of the deposit

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

For one year following the end of the lease, the bank may release the security (to the tenant or the landlord) only with the consent of both parties or in compliance with a final payment order or final decision of the court. If, after this one-year period, no claim has been brought against the tenant by the landlord, the tenant may request that the security be returned to him without consent of the landlord or final payment order/decision of the court.

In general, the landlord has to allow the bank to refunding the deposit to the tenant immediately after the end of the tenancy if no rent arrears exist or damages are caused to the dwelling. If he does not do so and the tenant does not want to or cannot wait the expiry of the one-year period, the tenant is advised to demand the consent of the landlord by registered letter before bringing the matter before the conciliation authority in order to reach a court decision.

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

If nothing else is agreed on, the security deposit covers all claims of the landlord towards the tenant arising from the tenancy. It is not possible to set-off the deposit with rent payments during the tenancy.

The ordinary use of furniture is considered to be included in the rent and no additional deduction can be made at the end of the tenancy.

For further information about the deposit, see 2.2 – Deposits and additional guarantees.

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?

As a first step, the parties to a tenancy contract have to bring their cause before the conciliation authority which consists of representatives of tenants and landlords. The proceedings before the conciliation authority are free of court costs and no party

costs are awarded. Also, the conciliation authority provides legal advice to the parties.

The conciliation authority may end the process with either an agreement between the parties, the authorisation to proceed or in some cases with a proposed judgment or a decision. The litigation proceedings are either submit to the ordinary court or, depending on the canton, to a specialized rental court.

In general, also for actions for eviction an attempt at conciliation is needed. No attempt at conciliation is however needed where the legal situation is clear and the facts are undisputed or immediately provable. This might for example be the case where the occupant of the apartment has no contract (squatters) or where the tenant did not challenge an ordinary notice nor demand an extension of the lease. Also, where an extraordinary termination because of arrears of payments or because of bankruptcy of the tenant is concerned the facts concerning the admissibility of the termination are immediately provable and an extension of the lease is not possible.

The parties are free to replace the conciliation proceedings by mediation; the costs for the mediation however are borne by the parties. Also, the parties are free to agree on an arbitration clause, under the condition that the conciliation authority is appointed as arbitral tribunal.

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?

State owned dwellings are subject to criteria set by the specific owner, which differs from municipality to municipality.

Cooperative dwellings are usually offered on the private rental market and tenants also become members. Some cooperatives have waiting lists. Tenants that are already members of a cooperative are usually preferred for other dwellings of the same cooperative.

- Is any kind of insurance recommendable to a tenant?

In general (not only concerning the tenancy) it is advisable to conclude personal liability insurance, which covers personal injuries and material damages of third parties (for example also damages of the dwelling, which is owned by a third person, i.e. the landlord). A household insurance, covering for example damages and thefts of household furnishings, is also advisable.

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

Conciliation proceedings are free of court costs and no party costs are awarded. Part of the tasks of the conciliation authorities is to give legal advice to the parties.

The different sections of the Swiss Tenants' Association made a lot of information available on their websites. Also, there is a possibility to get legal advice for a fee (or without additional costs for members).

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

Where the tenant intends to challenge the initial rent, rent increases or a notice of termination or where he intends to request an extension of the lease, he may apply to the conciliation authority of their canton.

The main organization protecting tenant's rights in Switzerland are the different (cantonal and regional) sections of the Swiss Tenant's Association (Schweizerischer Mieterinnen- und Mieterverband MV / Association Suisse des locataires ASLOCA / Associazione Svizera Inquilini). These associations offer legal advice and often legal protection is included for members, covering court- and legal fees with a small deductible after a waiting period (between one to three months). Also, the tenant's associations offer assistance to their members for returning the apartment and in case of defects for an additional fee. The membership fee differs according to the section and rage from about CHF 50 to 100. In some sections an additional, non-recurring entrance fee of about CHF 15 to 30 is requested.

The tenant's associations also offer legal advice to non-members for a fee, also differing from section to section. Many sections have the fees published on their websites. Also, there is a Hotline for CHF 3.70/min (about 3.10 Euros, exchange rate as of March 2014) for non-members.

Annex: Regional associations of the Swiss Tenant's Association.

Regional associations of the Swiss Tenant's Association

Aargau

http://www.mieterverband.ch/ag_top.0.html
info@mvag.ch

Tel: 062 888 10 38

Basel-Land

http://www.mieterverband.ch/bl_top1.0.html
info@mv-baselland.ch

Pfluggässlein 1
4001 Basel
Tel: 061 555 56 50

Basel-Stadt

http://www.mieterverband.ch/bs_top.0.html?&no_cache=1

Berne

http://www.mieterverband.ch/start02.0.html
mv@mvbern.ch

Monbijoustrasse 61
3007 Bern
Tel: 0848 844 844

Fribourg (German-speaking part)

http://www.mieterverband.ch/start06.0.html
mieterverband.deutschfreiburg@gmx.ch

Postfach 41
3185 Schmitten
Tel: 0848 023 023

Fribourg (French-speaking part)

http://www.asloca.ch/asloca-fribourg

Case postale 18
1774 Cousset
Tel: 0848 818 800

Geneva

http://www.asloca.ch/?q=node/57
asloca.geneve@asloca.ch

Rue du Lac 12
Case postale 6150
1211 Genève 6
Tel : 022 716 18 00

Glarus

http://www.mieterverband.ch/start04.0.html
info@gl.mieterverband.ch

Yvonne Hutzli
Postfach 245
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