

## **Swedish Legislation of Residential Tenancies: An Interaction between Collective Bargaining and Mandatory Regulation**

**O regime jurídico sueco do arrendamento para habitação: a interacção  
entre a negociação coletiva e as regras imperativas**

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**ABSTRACT:** The Swedish landlord and tenant law legislation is an interaction between the collective bargaining system and the mandatory provisions in the Land Code of 1970. Almost the entire rental housing stock is included in the collective bargaining system. The most powerful player in the collective bargaining system is the Tenants' Union. Its role is historically rooted in its close connection to the Social Democratic Party. The provisions in the Land Code are mandatory on the tenant's behalf. Additionally, the regional Rent Tribunals play an important role in guarding the rights of the tenants. Tenants enjoy direct tenure security. A tenant who wants to remain in the tenancy agreement is generally entitled to prolongation despite the landlord's termination of the agreement. Tenure security is guaranteed by the rent setting regulation. Therefore, tenants in Sweden enjoy extensive social protection. The legislations' dependency on the collective bargaining system appears to have caused a weaker protection to tenants who have opted out of the system.

**KEY WORDS:** Swedish landlord-tenant legislation; collective bargaining system; integrated market; Rent Tribunals; rent control; tenure security.

**RESUMO:** O direito do arrendamento sueco resulta da interação de um sistema de negociação coletiva e de normas imperativas previstas no Código Imobiliário de 1970. A grande maioria dos imóveis disponíveis para o arrendamento habitacional incluem-se no sistema de negociação coletiva. Este sistema tem como protagonista a Associação de Arrendatários, cujo posição se baseia historicamente na sua proximidade com o Partido Social Democrata. As normas do Código Imobiliário têm caráter imperativo em favor do arrendatário; e os Tribunais do Arrendamento, de âmbito regional, desempenham um importante papel na defesa dos direitos dos arrendatários. Os arrendatários habitacionais gozam de forte proteção na manutenção do gozo do imóvel, porquanto têm direito à prorrogação do contrato, mesmo contra a vontade do locador, e beneficiam de um sistema de controlo de rendas. Na Suécia, os arrendatários habitacionais têm, assim, uma ampla proteção social. Todavia, dada a relevância do sistema de negociação coletiva ao nível legislativo, os arrendatários que optam por ficar fora deste sistema parecem ter uma posição mais fraca.

**PALAVRAS-CHAVE:** Direito do arrendamento sueco; sistema de negociação coletiva; mercado integrado; Tribunais do Arrendamento; controlo de rendas; proteção social.

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### \* Abbreviations

Ch. Chapter  
 Land Code Land Code (SFS 1970:994)  
 Sec. Section  
 Para. Paragraph

- c) Agreement on Collective Bargaining Procedure
- d) Collective Bargaining Agreement
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## 1. Historic Evolution of the Landlord and Tenant Law Legislation<sup>1</sup>

### 1.1. The Birth of Swedish Landlord and Tenant Law

Industrialization and urbanization characterize the societal development in the last turn of the century. Migration to the cities in connection to the shift from agricultural to industrial society in the mid to the second half of the 19<sup>th</sup> century, caused severe housing shortages and high rents. The King initiated an overall review of the Land Code in January 1903 – probably the first recognition of housing as a state matter.<sup>2</sup> The housing shortage was not limited to the rapidly growing industrial cities.<sup>3</sup>

In 1907, Sweden adopted its first landlord and tenant law legislation.<sup>4</sup> Prior to its implementation, tenancy agreements were unregulated with the exception of a few general provisions on hire in the Civil Code of 1734.<sup>5</sup> Legal scholars have regarded the Act of 1907 as not only the birth of landlord and tenant law legislation, but also a breakthrough for liberal ideas of land and ownership in real property law in general.<sup>6</sup> Departing from the principle of freedom of contract, the Act of 1907 did not prescribe any provisions on rent setting or tenure security.

### 1.2. Crisis and Movement Shaped Development of Swedish Landlord and Tenant Law

#### a) Crisis Driven Landlord and Tenant Regulation<sup>7</sup>

The second legislation wave that shaped the development of the Swedish landlord and tenant legislation was caused by wars: the Act of 1917 on rent control and the Act of 1942 on Rent Control.<sup>8 9 10</sup> In addition to crisis caused by wars, an important factor to the housing

<sup>1</sup> This account has the ambition to provide a brief overview of introduced legislation throughout the 20<sup>th</sup> century. The landlord and tenant law legislations were in many instances accompanied by acts on responsibility for housing, subsidies for constructions etc.

<sup>2</sup> BENGSSON, p. 125.

<sup>3</sup> To combat the housing shortage on the countryside and the increased migration abroad, the *Riksdag* (parliament) of 1904 established the state's own home loan fund (*egnahemslånefonden*). Through mortgage loans with subsidized interests, the objectives of the fund was to make it possible for workers who had their main income from manual labor in the countryside to acquire own homes. (SOU 1928:10, p. 52).

<sup>4</sup> The Act of June 14 1907 (no 36 p. 1) on User Rights to Immovable Property (SFS 1907:36).

<sup>5</sup> In contrast to the social context of the Act of 1907, farmers and their families and households constituted almost the entire population at the time of the adaptation of the Civil Code of 1734 (Bäärhielm, p. 18).

<sup>6</sup> See NUMHAUSER-HENNING, p. 31 and 151.

<sup>7</sup> Cf. LEJMAN, p. 483 f.

<sup>8</sup> Act (SFS 1917:219) Against Unfair Rent Increase.

<sup>9</sup> Act SFS 1942:97 on Rent Control and etc.

<sup>10</sup> Although Sweden was not directly involved in the wars, the wars had a negative impact on the economy.

shortage and rapidly accelerating rents is the growth of the Swedish population. The population grew rapidly from 3.5 to 7 million inhabitants between 1850 and 1950.<sup>11</sup>

Upon implementation, the Act of 1917 was not unique in the global context. Following the start of the First World War, several countries had already taken rent control measures.<sup>12</sup> The financial crises that followed WW1 led to severe housing shortage, rapidly increasing rents and in some instances, housing crisis.<sup>13</sup> The Act of 1917 aimed to establish reasonable general rent levels during times of crises and a reduced housing construction period.<sup>14</sup> It was applicable in locations with more than 5 000 inhabitants or in less populated locations after royal designation (Sec. 1). The Act prescribed limitations on rent increases in unfurnished rentals (Sec. 6–8). Rental units in newly constructed buildings were exempted from rent control (Sec. 9).<sup>15</sup>

The second rent control act was introduced in connection to the Second World War. It was applicable in locations with more than 2 000 inhabitants or in densely populated locations after designation by the King (Sec. 1).<sup>16</sup> The Act of 1942 froze all individual rents to the prevailing rent on 1 January 1942 (Sec. 3). Studies of history of rent control have indicated that once such controls have been imposed – they are difficult to remove.<sup>17</sup> This is true in the Swedish case. The Act of 1917 was prolonged four times before being abolished in September 1923.<sup>18</sup> Although the rent control Act of 1942 had been adopted as a temporary measure, it was disbanded step-by-step starting from the 1950s. The exclusion of public housing companies from the rent control regulation under the Act of 1942 was a key step in the dissolution. From 1956, the rents in public housing companies were set after negotiations with the Tenants' Union.<sup>19</sup> It was finally abolished in October 1975.<sup>20</sup> Transitional provisions made the Act of 1942 applicable on certain buildings in areas with housing shortage until 1978. See under 1.3 below.

The rent control legislations introduced tenure security that survived the abolishment of the rent control acts. The Act of 1917 had introduced protection for tenants against rent usury. In its revision in 1919, rent usury was criminalized.<sup>21</sup> After the adaptation of the Act of 1939, which reinstated the liberal principles of 1907, profiteering, usury or otherwise improper terms became grounds for contractual adjustments (SFS 1907:36 Ch. 3 Sec. 43).<sup>22</sup>

The legislator's decision to dismantle the rent freeze system that the Act of 1942 had introduced gradually is highly connected to the preservation of tenure security that had been

<sup>11</sup> Statistics Sweden. <http://www.scb.se/hitta-statistik/sverige-i-siffror/manniskorna-i-sverige/befolkningsutveckling/>, (visited 2017-10-02).

<sup>12</sup> See WILLIS, p. 67f.

<sup>13</sup> BENGSSON, 2013, p. 126.

<sup>14</sup> Prop. 1917:254 p. 16.

<sup>15</sup> The exception was abolished through act SFS 1919:331, but reinstated a year later through SFS 1920:361.

<sup>16</sup> In this context, *location* is closely tied to municipal division.

<sup>17</sup> WILLIS, p. 71.

<sup>18</sup> It was prolonged through the acts SFS 1918:380, 1919:331, 1920:361 and 1921:309. The final act prescribed a final expiration date.

<sup>19</sup> Act (SFS 1956:567) Containing Provisions that are still in Effect After the Abolishment of Rent Control.

<sup>20</sup> Act (SFS 1974:1080) regarding Deregulation of Rent Control.

<sup>21</sup> SOU 1942:14 p. 17.

<sup>22</sup> SFS 1939:364.

introduced by the emergency legislations.<sup>23</sup> Previously, starting from its version of 1918, tenants who did not have short term contract enjoyed tenure security according to the rent control Act of 1917.<sup>24</sup> In the final version of the Act of 1917, landlords' grounds for terminating the lease in other cases than forfeiture was delimited.<sup>25</sup>

## **b) Tenants' Movements and Its Impact on the Legislation**

The influence of tenants' movements on landlord and tenant legislation is undisputable. The Swedish Union of tenants was founded in 1923, but had been preceded by several short lived organizational attempts. The movement was a popular struggle against prevailing poor living conditions, mass evictions and increasing rental costs.<sup>26 27</sup>

In the 1920's and 1930's, the Tenants' Union arranged massive rental strikes and blockades. These so called "rental conflicts" were inspired by the conflicts on the labor market. The labor unions assisted the Tenants' Union in its boycotting of businesses owned by property owners. These conflicts were resolved by the establishment of temporary negotiation agreements.<sup>28</sup> The influence of the Tenants' Union grew in line with the establishment of the modern welfare state in the 1930's. One of the goals of the People's Home, (*Folkhemmet* – the political term coined by the Social Democratic Party for the welfare state), was to not let more than 20 percent of a family's disposable income be spent on housing.<sup>29 30</sup>

The Act of 1942 was a big success for the Tenants' Union as a movement as it entitled tenants to tenure security – a goal of the tenants' movements for decades. The Act of 1942 also established correlation between tenure security and rental costs.<sup>31</sup> Following the reform of 1968, the influence of the Tenants' Union has gradually increased.<sup>32</sup> In 1978, the Act on Collective Bargaining on Tenancy Issues introduced (Collective Bargaining Act).<sup>33</sup> The act essentially confirmed already established practices on the housing market on voluntary basis.<sup>34</sup> See also section 4 below.

<sup>23</sup> See *inter alia* Prop. 1956:168 p. 70 f. and 122.

<sup>24</sup> SOU 1942:14 p. 15.

<sup>25</sup> SFS 1921:309.

<sup>26</sup> In contrast, property owners in the capital of Stockholm got organized in the 1870's. The National Federation of Property Owners was formed through congresses between 1914 and 1916. (VICTORIN, p. 4.)

<sup>27</sup> VICTORIN, p. 4.

<sup>28</sup> *Ibid.*, p. 7 f.

<sup>29</sup> CARLSON, p. 132.

<sup>30</sup> The close connection between the Swedish Tenants' Union and the Social Democrats has been studied elsewhere. E.g. LIND AND ELSINGA, Ch. 3.

<sup>31</sup> VICTORIN, p. 12.

<sup>32</sup> See section 1.3.

<sup>33</sup> SFS 1978:304.

<sup>34</sup> VICTORIN, p. 112 f.

### 1.3. Modern Landlord and Tenant Law: The Development Post the Reform of 1968

#### a) The Reform of 1968: Introduction of the Use Value System

The reform of 1968 was a paradigm shift in several aspects. The Act of 1968 was the first act since 1907 that was legislated with intended permanency. The legislation passed in the parliament in 1968 on its second trial. The Social Democratic Party decided to suddenly withdraw the first proposal in 1967 (Prop. 1967:141) following unexpected objections from the opposition. The second proposal (Prop. 1968:91) was passed after some minor changes had been made.<sup>35</sup>

Some important reforms of the Act of 1968 were: (i) the implementation of the use value system and the (ii) granting of direct tenure security to tenants.<sup>36 37</sup> These two reforms are interconnected: tenure security is merely a formal right if an unfair rent increase demand by the landlord causes the tenant to vacate the dwelling.<sup>38</sup>

The use value system of 1968 was intended as a replication of market rent setting where unfair rent increases could be avoided by the implementation of judicial review. When determining the unfairness of one specific rent, the courts were to use the rents in comparable dwellings in the same area as a point of reference. The dwellings' comparability was determined by the use value a fictional tenant would appraise the dwellings. The use value system has however been revised on several occasions thereafter.<sup>39</sup>

In 1974, a connection was made between the use value system and the general rent levels in the legislator's preparatory works. In order to "guarantee fair rent levels", the courts were to compare with the rents in comparable dwellings – seen to the use value – in the public housing stock.<sup>40</sup> This reform gave the municipal housing companies a rent-normative role. The municipal housing companies were owned by each municipality. Therefore, they operated according to the *prime cost principle*, i.e., operating costs.<sup>41</sup> The rents were set in two part procedure: (i) the municipal housing companies negotiated the total rent out-take for the entire housing stock with the Tenants' Union. This step was unregulated except for the price limit that the prime cost principle set. (ii) The rents for the individual apartments were decided after negotiations between the municipal housing company and the Tenants' Union.

<sup>35</sup> LJUNGKVIST 2015, p. 15 f.

<sup>36</sup> MIKAEL VON KOCH, p. 344.

<sup>37</sup> The reform was comprehensive for both residential and non-residential tenancies overall. A further presentation will however not be made in this context.

<sup>38</sup> See the overview of the regulation on tenure security regulation under 5.1.

<sup>39</sup> See 5.2.C for application of the use value system.

<sup>40</sup> Prop. 1974:150 p. 470. Ljungkvist has referred to this reform as a "shift" from the legislator's intentions in 1968, (LJUNGKVIST 2015, p. 20).

<sup>41</sup> SFS 1991:900, Ch. 8 Sec. 3c. The principle meant that municipalities could not charge higher rents than the municipality's costs for municipal housing. Any surplus generated had to remain in the business.



Transitional provisions in the act abolishing the rent control Act of 1942 made the Act of 1942 applicable on certain buildings in areas with housing shortage until 1978.<sup>42</sup> As a consequence, between 1969 and 1978, on some streets in the municipalities of the three largest cities in Sweden (Stockholm, Gothenburg and Malmö), there could be three different acts governing the rents depending on which year the building was constructed and by whom.

The rent-normative role of the municipal housing companies lasted between 1974 and 2011. During this time, the rents in private housing stock were set according to the use value system. These rents became tied to the rents set in the municipal housing stock. Rents in the private housing stock that exceeded the rents of comparable dwellings, seen to their use value, in the same area with more than five percent would be considered unfair upon judicial review. In 1999, a limitation was set on the norm-setting role of the municipal housing companies by Svea Court of Appeal: in order for rents in the municipal housing companies to be used as a comparative reference, they also have to be “accurate”.<sup>43</sup> Here, accurate meant that the rent had to at least cover the operating costs. The criteria for accuracy ought to still be valid post the reform of 2011.

## **b) The Reform of 2011: The Prominent Role of Collective Bargaining**

The Reform of 2011 was preceded by a joint complaint from 2005 by the Swedish Property Owners’ Federation and the European Property Federation to the European Commission arguing that the Swedish housing policy broke EU-laws concerning state subsidies and competition.<sup>44</sup> <sup>45</sup> The complaint was based on a new interpretation of “subsidy” provided by Ernst & Young in a research report wherein the term also included “cases where the owner did not demand a market based rate of return on the market value of the assets in the company.”<sup>46</sup> Cases when a company did not try to maximize profits and did not charge the price that would lead to maximum profits, could under this definition fall under subsidies.<sup>47</sup> They argued that during 2002, the subsidies to the municipal public housings amounted to 12 billion SEK.<sup>48</sup> Following the filing of the complaint, the Swedish government started a

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<sup>42</sup> SFS 1974:1080.

<sup>43</sup> RH 1999:44.

<sup>44</sup> LJUNGKVIST 2015, p. 60 f.

<sup>45</sup> Lind and Elsinga has argued that “The “real” reason for the complaint was that the “Three-party agreement” wasn’t implemented in Stockholm. The local Tenant Union in Stockholm, dominated by tenants living in central areas, refused to follow the agreement and the Property Owners Federation therefore needed some new leverage against the Tenant’s Union”. (LIND and ELSINGA, under 3.2). The three-party agreement they reference to was an unsuccessfully concluded project to negotiate on a yearly rent increase in the Stockholm Area, mainly based on proximity to the city center, called “Stockholmsmodellen”. It was a three party negotiation between the Tenants’ Union, Swedish Property Federation and the Swedish Association of Public Housing Companies. Ljungkvist gives a thorough account for the project in LJUNGKVIST 2015.

<sup>46</sup> LIND and ELSINGA under 3.2.

<sup>47</sup> Ernst & Young Real Estate, 2004.

<sup>48</sup> LJUNGKVIST 2015, p. 60 f.

legislative review that was presented in 2008.<sup>49</sup> Following the legislative changes in 2011, the Federation of Property Owners withdrew their complaint.

The changes in 2011 meant that the norm-setting role of the municipal housing companies was abolished. Instead, in the fairness assessment that is conducted under the use value system, reference is made to collectively bargained rents. The changes led to municipalities owning the municipal housing companies as either limited companies or foundations. When run as limited companies, they have to be managed in a businesslike manner, (SFS 2010:879 Sec. 1 Para. 1). This change has made the Swedish rental market even more integrated as both public and private housing companies are treated as equal, competing parties.<sup>50</sup>

According to new legislation that will enter into force on the 1 January 2018, subsidies to municipal housing companies will be allowed (i) when the subsidy has been approved by the European Commission; or (ii) when it has been granted in regulations from European Commission pursuant to Article 108 (4) of the Treaty on the Functioning of the European Union; or (iii) when it has been granted under terms that are set by the European Commission and are considered compatible with the common market and is exempted from the notification requirement under Article 108 (3) of the Treaty on the Functioning of the European Union.<sup>51</sup> The impact it will have on the generally applicable nature of the legislation is unclear.

## **2. The Generally Applicable Nature of the Legislation**

### **2.1. Introduction**

The Swedish landlord and tenant law legislation is mainly found in Chapter Twelve of the Land Code (SFS 1970:994), hereinafter referred to as Chapter Twelve. The chapter is generally applicable on all tenancy situations: it does not make a distinction between different types of landlords. It regulates both residential and non-residential tenancies but provides a weaker social protection for tenants of non-residential units in many respects. Provisions in Chapter Twelve are mandatory in the tenant's favor (Ch. 12 Sec. 1 Para. 5). The obligations and rights of the tenants and the landlords is governed by Chapter Twelve.

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<sup>49</sup> SOU 2008:38.

<sup>50</sup> See 5.2.C for application of the Use value system.

<sup>51</sup> SFS 2017:725.

## 2.2. Definition of a Residential Unit

A residential unit is defined as a unit in which a grant of rights is made to use the premise entirely or to a not insignificant extent as housing accommodation. A non-residential unit is defined *e contrario* (Ch. 12, Sec. 1, para. 3). The purpose of the granted right is therefore decisive for the classification of the premises. In most cases, the classification can be done easily. When a distinction needs to be made, especially considering the social protection residential tenants enjoy, the intention of the parties upon entering the tenancy contract is decisive. Therefore, the title of the tenancy agreement or its construction is superseded by the parties' intent upon entering the contract.<sup>52</sup>

## 2.3. Two Categories of Landlords

Swedish landlord and tenant law in general does not make a distinction between private and public landlords. The rights and obligations of both categories of landlords in a tenancy relation is governed by Chapter Twelve of the Land Code. Both categories of landlords act as competitors in a housing market that Kemeny characterize as integrated.<sup>53</sup>

The public landlords are municipal housing companies. Under the Housing Provision Act (SFS 2000:1383), municipalities have the responsibility to meet the housing needs of the residents of the municipalities.

## 2.4. Two Categories of Tenants

Chapter Twelve of the Land Code is generally applicable to all tenants, whether they are private- or legal persons. Chapter Twelve of the Land Code also regulates subtenures of residential tenancies. Subtenures of privately owned residential units from other private persons is regulated both by Chapter 12 of the Land Code and the special act of 2012 on Subleasing of owned accommodation (SFS 2012:978) (Cit. Owned Accommodations Act). If the Owned Accommodations Act does not prescribe otherwise on a particular matter, the provisions in Chapter Twelve of the Land Code apply.

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<sup>52</sup> See e.g. decision from Svea Court of Appeal in Case ÖH 3796-02 (2002.05.29).

<sup>53</sup> See KEMENY, KERSLOOT and THALMANN, p. 856.

## a) Block-Leasing Agreements: Tenancy to Sublet

One form of tenancy agreements that are usually entered by legal persons are *block-leasing agreements*. At least three residential units are let to a tenant who intends to sublet or convey them in co-operative tenancy (Ch. 12 Sec. 1 Para. 6). When entering this type of tenancy agreement, the parties may agree to provisions in conflict with the provisions governing residential units as long as they are not in conflict with the provisions governing non-residential units (Ch. 12 Sec. 1 para. 6). Therefore, the provisions governing tenancy agreements for non-residential units act as minimum protection for the tenants here. Moreover, the parties may not dispose on the right of renewal of the contract or the basis for determining the tenancy terms in connection with such renewal.<sup>54</sup>

An example of tenants who enter block-leasing agreements are employers in order to find accommodation for their employees or student organizations for student housing.<sup>55</sup> Municipalities enter these contracts in order to use the residential units as accommodations for elderly or people with special needs.<sup>56</sup> A block leasing agreement has to be approved by a regional Rent Tribunal unless the tenant is a municipality, a County Administrative Board or a municipal association.<sup>57</sup> After entering a block leasing agreement, the tenant takes the position of a landlord towards the subtenant.

## 3. The Tenancy Agreement

### 3.1. General Requirements

#### a) Is It a Tenancy Agreement?

The question of whether an arrangement is a tenancy agreement is of interest when determining the applicability of the legislation. Chapter Twelve of the Land Code regulates a tenancy agreement that meets the following four criteria: (i) an agreement between the parties (ii) concerning the use of (iii) a building or parts of a building (iv) in exchange for compensation (Land Code Ch. 12, Sec. 1, Para. 1). The agreement may be oral or in writing, unless either party requests that the lease is to be in writing (Ch. 12, Sec. 2 Para. 1). The four criteria are discussed below.

<sup>54</sup> In the case RH 2004:67, the appeal's court concluded that the parties could dispose on the right to terminate an ongoing contract for modification of terms and rent.

<sup>55</sup> Prop. 1993/94:199, p. 80.

<sup>56</sup> LJUNGKVIST 2001, p. 6.

<sup>57</sup> There are eight regional Rent Tribunals in Sweden. They are located in Stockholm, Västerås, Linköping, Jönköping, Malmö, Gothenburg, Sundsvall and Umeå. A Regional Rent Tribunal consists of three members: a legally trained chair and two *interest members*. The interest members are appointed experts from the landlords' and tenants' interest organizations. The Rent Tribunal acts as mediators and conducts legal reviews in disputes between landlords and tenants. Certain decisions from the Rent Tribunals can be appealed to Svea Court of Appeal, which is also the final instance in many cases brought to the Rent Tribunals. See Ch. 12, Sec. 69–72. A brief introduction in English can be found here: <http://www.hyresnamnden.se/Funktioner/English/Matters/Land/Tenancy/> (visited 2017.10.05).

## b) The Agreement

The first criteria in the definition in Chapter Twelve is an agreement. The validity of an agreement is determined by general principles of contract. There is no form requirement. Both parties are however entitled to request the agreement to be put in writing (Ch. 12 Sec. 2). The parties' classification of the agreement is irrelevant. The same applies to the parties' intention.<sup>58</sup> The parties enjoy freedom of contract to the extent it grants the tenant better rights than is required by law.

The legislation departs from the situation in which the parties, i.e. landlord and tenant, agree upon the terms of the agreement. This is usually not the case. The use of standardized contracts is extensive.<sup>59</sup> It is fair to assume that in the Swedish system where the collectively bargaining system is well established and comprehensive, most tenants sign a standardized contract the landlord provides.<sup>60</sup> Whether the future tenant is a member of the Tenants' Union or not is irrelevant. Considering the long history of collective bargaining on terms in tenancy agreements, there are even established norms of common practice.<sup>61</sup> The common practice affects the understanding of the terms in the standardized contracts.<sup>62</sup> The terms in the standardized contracts ought to be interpreted restrictively in general. This is especially true in cases when the standardized contract deviated from a standard that is specified in Chapter Twelve of the Land Code.<sup>63</sup>

The latest standardized tenancy agreement on the housing market, called "*Bostadshyresavtal 10A*" (meaning "The Residential Tenancy Agreement No 10A), is the product of a multiparty negotiation on terms between the Federation of Property Owners, the Tenant's Union, the Swedish Association of Public Housing Companies (SABO) and the Swedish Consumer Agency.<sup>64</sup> These multiparty negotiations on terms are unregulated. The Collective Bargaining Act does not apply since the organizations cannot solitarily be parties to an Agreement on Collective Bargaining Procedure.<sup>65</sup>

## c) The Use of a Building or Parts of Building

The second and third criteria could be critical in cases where the premises include use of land. Here, in order for the agreement to qualify as a tenancy agreement, the use of the building has to be a dominating element. Otherwise, the agreement could qualify as a

<sup>58</sup> Example of cases where the courts have disregarded the parties' classifications or intentions: RBD 1975:4 (agricultural land lease or tenancy agreement), RBD 1982:21 (Site leasehold or tenancy agreement) and RH 1999:10 (tenancy agreement or service agreement (group home)).

<sup>59</sup> BJÖRKDAHL, p. 46.

<sup>60</sup> Ibid, p. 46.

<sup>61</sup> See 2.2.b above

<sup>62</sup> See NJA 2002 p. 378.

<sup>63</sup> BJÖRKDAHL, p. 46, note 80.

<sup>64</sup> Fastdoc.se, (<http://www.fastdok.se/om-fastighetsagarna-dokument/nyheter/uppdaterade-bostadshyresavtalet-10-a-lanserat/>), (Visited 2017.10.08).

<sup>65</sup> See 4.2.C.

leasehold. Tenancy of a part of a building is sufficient, making the act applicable in cases where the tenant only subleases a room. It is however of importance that the tenant has an unshared right to his or her room.

#### **d) Compensation for Use**

The fourth criteria, compensation, is usually understood as payment of rent. The legislation does however enable compensation by other means, such as work, performance of services on the premises etc. In order for performance of services on the unit to count as compensation, the services need to be more far reaching than the tenant's general responsibilities to care for the premises.<sup>66</sup>

The Act of 2012 on Subleasing of Owned Accommodation departs from the definition above. One important difference should be observed: in addition to the criteria stated above, the landlord has to own the premises, SFS 2012:978, Sec. 1 Para. 1. Ownership in this context includes both owner-occupations and tenant-ownership.<sup>67</sup>

### **3.2. Duration**

Unless a tenancy agreement has not been concluded for a fixed term, it is valid for an indefinite period, (Land Code Ch. 12 Sec. 3). An indefinite term may however be maximum 50 years in planned areas and 25 years elsewhere, Land Code Ch. 7 Sec. 5. It is also possible to enter a tenancy agreement on lifetime, in which case it equates a fixed term contract.<sup>68</sup>

If the tenancy has lasted for more than nine consecutive months, notice of cancellation is always required for the agreement to cease to apply, (Land Code Ch. 12 Sec. 3 Para. 2 and Sec. 4, Para 1 Item 1). Otherwise, it is considered extended indefinitely, (Land Code Ch. 12 Sec. 3 Para. 3). Such notice of cancellation has to be given three months prior to the end of the agreement. It is possible for the party to agree upon a longer cancellation period. Chapter Twelve of the Land Code prescribes shorter cancellation periods for fixed term agreements that are shorter than nine months:

<sup>66</sup> BJÖRKDAHL 2013, p. 31. See also RH 1983:80.

<sup>67</sup> There are three main groups of housing in Sweden: *owner-occupation*, *tenant-ownership* and *tenancy*. The first category refers to land ownership and condominium (owner occupied apartments). The latter was introduced in Sweden in 2009. Each condominium is one three-dimensional real property. The definition in the Land Code of a condominium is "a three-dimensional property that is not intended to accommodate more than one single dwelling", (Land Code Ch. 1 Sec. 1a Para. 1 Item 3). In the second category, tenant-ownership, the tenant becomes a member of a private-housing association by purchasing shares. By acquiring the shares, the association grants the tenant the right of tenure. The tenant is thus the owner of shares in the association, which owns the property in which the dwelling is located. The tenant's right is unlimited in time and dependent on shares in the association. The Private-housing associations are legally mutual co-operative associations (SFS 1991:614 Ch. 1 Sec. 1).

<sup>68</sup> NJA 1983 p. 228.

- (i) one day, if the term of the tenancy is not more than two weeks;
- (ii) one week, if the term of the tenancy is more than two weeks but shorter than three months; and
- (iii) three months, if the term of the tenancy is more than three months but shorter than nine months, (Land Code Ch. 12 Sec. 4 Para. 2).

The cancellation period is considered to be in the tenant's interest. It is therefore possible for the parties to agree on longer cancellation periods than the minimum period the Land Code prescribes. Tenants who continue to use the premises more than a month after the expiry of a fixed term contract that is shorter than nine months without being asked to vacate by the landlord, gets a renewed agreement for an indefinite term, (Land Code Ch. 12 Sec. 3 Para. 3).

## 4. The Collective Bargaining System

### 4.1. The Negotiating Parties

Negotiations on terms for tenancy agreements occur between an organization for tenants on one hand, and different categories of landlords on the other hand. Although the legislation departs from the idea of several tenant unions, there is in reality only one dominating union: the Swedish Tenants' Union (Tenants' Union). Currently, the Tenants' Union negotiate the rents for 90 percent of all residential units through the collective bargaining system.<sup>69</sup> Therefore, here and elsewhere when the Swedish tenancy regulation is studied, the organization Swedish Tenants' Union are treated as a sole negotiator on behalf of tenants. In 2016, 528,000 households were members of the Swedish Tenants' Union.<sup>70</sup> The members elect representatives to the four organizational levels: (i) residential area (also called "local chapters", 1,438 in 2016), (ii) district level (152 chapters in 2016), (iii) regional level (9 chapters in 2016) and (iv) national level.

A sectoral division of landlords can be made into two main ownership groups: (1) municipal housing companies, predominantly organized through the Swedish Association of Municipal Housing Companies (SABO) and (2) private landlords, organized through the National Federation of Property Owners.<sup>71</sup>

<sup>69</sup> Statistics from the Tenants' Union, <https://www.hyresgastforeningen.se/var-verksamhet/vad-vi-gor/forhandlar-hyror/> (visited 2017.10.05).

<sup>70</sup> Hyresgästföreningen.se, [https://www.hyresgastforeningen.se/globalassets/globalt-innehall/andra-sprak/omoss\\_eng24jan.pdf](https://www.hyresgastforeningen.se/globalassets/globalt-innehall/andra-sprak/omoss_eng24jan.pdf), (visited 2017.10.08).

<sup>71</sup> It should be observed that some municipal housing companies are members of the National Federation of Property Owners. In 2017, three municipal housing companies were not members of SABO. (SOU 2017:65).

The collective bargaining regarding tenancy terms between the Tenants' Union and landlords occur at the district level.<sup>72</sup> A district is usually a municipality. There are however several districts in the bigger municipalities.

Almost all buildings with more than two residential units are included in the collective bargaining system.<sup>73</sup> The impact of the collective bargaining system on the tenancy housing market is therefore extensive.

## 4.2. The Construction of the Collective Bargaining System

### a) Regulation and Instruments

The Collective Bargaining system is regulated by both Chapter Twelve of the Land Code and the Collective Bargaining Act. The latter functions as a pragmatically attached annex to the provisions in Chapter Twelve of the Land Code on change of terms in the tenancy agreement. The construction is as follows: (i) Willingness and entitlement to enter an agreement on collective bargaining, (ii) agreement on collective bargaining procedure (legal instrument) and (iii) collective bargaining agreement (agreement).

Collective bargaining is conducted by the Tenants' Union on behalf of the tenants and the landlord or an organization representing the landlord. Individual tenants therefore need to be organized in order to enter an agreement on collective bargaining with the landlord. Similarly, an organization of property owners cannot enter an agreement on collective bargaining procedure with a Tenants' Union without representing the concerned landlord.<sup>74</sup>

### b) Willingness and Entitlement to Enter an Agreement on Collective Bargaining

If sufficient number of tenants in a multi-dwelling building want to form a tenants' union that represents their interest in relation to the landlord, they are entitled to do so. After forming a union – usually by joining or becoming a local chapter of the Swedish Tenants' Union – the landlord is approached with a written proposal to enter an agreement on collective bargaining procedure. The Rent Tribunal has the power to try the matter should the landlord refuse, (Collective Bargaining Act Sec. 9). The Tenants' Union and landlords have the right to enter an agreement on collective bargaining respectively if, taking the competence of the union, the tenants' opinions and other circumstances, it is not unreasonable towards the

<sup>72</sup> Hyresgästföreningen.se, [https://www.hyresgastforeningen.se/globalassets/globalt-innehall/andra-sprak/omoss\\_eng24jan.pdf](https://www.hyresgastforeningen.se/globalassets/globalt-innehall/andra-sprak/omoss_eng24jan.pdf), (visited 2017.10.08).

<sup>73</sup> LJUNGKVIST 2015, p. 26.

<sup>74</sup> Prop. 1977/78:175 p. 1.



landlord or the concerned tenants, than an agreement is put in place (Collective Bargaining Act Sec. 10). The Rent Tribunal may order that an agreement to be put in place if the majority of the tenants are in favor of entering the system.<sup>75</sup> <sup>76</sup> There are agreements on collective bargaining procedure in nearly all multi-dwelling buildings consisting of more than two rental units.<sup>77</sup>

### **c) Agreement on Collective Bargaining Procedure<sup>78</sup>**

#### *An Instrument*

The Collective Bargaining Act regulates only negotiates that take place following an agreement on Collective Bargaining Procedure.<sup>79</sup> The agreement is therefore an instrument that unlocks the closed system of collective bargaining.<sup>80</sup> The agreement has to be in writing and dated (Collective Bargaining Act Sec. 6). The agreement also has to specify which buildings are subject to the agreement.<sup>81</sup> An agreement on collective bargaining procedure is binding towards a new landlord.<sup>82</sup>

#### *Scope of the Agreement*

All residential apartments in the appointed buildings – whether they are existing, planned or in construction – are covered by the agreement unless they are not explicitly excluded, (Collective Bargaining Act Sec. 3 Para. 1). Since the agreement covers the residential building, the right for the Tenants' Union to negotiate with the landlord is not contingent on the tenants' membership in the union. All residential dwellings, except those explicitly excluded are subject to collective bargaining on terms – whether the tenants who reside in them are members or not.

Tenants may opt out of the agreement on collective bargaining procedure by entering individual agreements with landlords to exclude concerned apartments. Such agreements may be entered when the tenancy relationship has lasted three consecutive months. They need to be signed by both parties. An agreement that does not comply with these requirements is invalid, (Collective Bargaining Act Sec. 3 Para. 2). A decision of exclusion from the Rent Tribunal has the same affect. The Rent Tribunal may issue such decision at the

<sup>75</sup> Prop. 1977/78:175 p. 111.

<sup>76</sup> The Tenants' Union usually present results from survey amongst concerned tenants to support their case. If 30 percent of the respondents are in favor of joining the collective bargaining procedure, the courts have usually ruled that an agreement should be put in place. (LJUNGKVIST 2015, p. 25).

In RH 1997:68, the request for an agreement was put forward by the landlord. The tenants' union in this case was small and argued – undisputedly – that it could not be deemed representative for the residents. Svea Court of Appeal agreed with the tenants' union and found it unreasonable to enforce an agreement on the tenants.

<sup>77</sup> LJUNGKVIST 2015, p. 26.

<sup>78</sup> Sw: Förhandlingsordning.

<sup>79</sup> VICTORIN 1980 p. 131 ff.

<sup>80</sup> BENGSSON, HAGER and VICTORIN 2013, p. 130.

<sup>81</sup> It does however not need to specify which apartments are included though.

<sup>82</sup> Prop. 1977/78:175 p. 156; VICTORIN 1980, p. 183 ff.

earliest when the lease has lasted three consecutive months, (Collective Bargaining Act Sec. 3 Para. 2). The period of three months is effectively a protection for tenants: an individual tenant may not be excluded from the collective bargaining system as a precondition for entering a tenancy agreement.

#### *Landlords' Primary Obligation to Negotiate*

Once an agreement on collective bargaining procedure is in place, it obliges the landlord to take initiatives for negotiations with the Tenants' Union regarding issues such as rent increase for a residential dwelling or determining the rent for a new tenant if the rent the landlord requests exceeds the previous tenant's rent, (Collective Bargaining Act Sec. 5 Para. 1). A landlord may not raise the rents or raise the rent vis-à-vis a new tenant without negotiations having taken place. Failure to comply leads to nullity and the landlord's liability for repayment, (Collective Bargaining Act Sec. 23). The Rent Tribunal is also hindered from trying an application regarding these issues if the landlord has not fulfilled his/her obligation to negotiate with the Tenants' Union, SFS 1973:188 Sec. 11a.

#### *Mutual Obligation to Negotiate*

An agreement on collective bargaining procedure further entails a mutual obligation for the parties to negotiate on issues regarding (i) the terms for the tenancy agreement, (ii) condition of the premises, including the building, (iii) joint facilities and amenities and (iv) other housing conditions in so far as they relate to the tenants in common, (Collective Bargaining Act Sec. 5). In the fourth category of issues, tenants' influence on the housing conditions is included.<sup>83</sup> The parties may agree to extend or restrict the issues that oblige both parties to negotiate.<sup>84</sup>

#### *Sanctions against Failure to Comply*

Both parties of an agreement on collective bargaining procedure are obliged to negotiate within three weeks after either of the parties have called for a collective negotiation, (Collective Bargaining Act Sec. 15 Para. 3). Party who fails to comply with an obligation to negotiate may be liable for non-pecuniary damages, whether the obligation is founded on the Collective Bargaining Act or the agreement on collective bargaining procedure (Collective Bargaining Act Sec. 26 and 28). Case law from the courts suggest that damages usually amount to 5.000 SEK.<sup>85</sup>

<sup>83</sup> VICTORIN, p. 202 ff.; BENGSSON, HAGER and VICTORIN, p. 135.

<sup>84</sup> Prop. 1977/78:175 p. 118; VICTORIN, p. 192 f.

<sup>85</sup> BILLQUIST and OLSSON, Comments to Sec. 28, (10 October 2017, Zeteo); Bengtsson, Hager and Victorin, p. 137.

## d) Collective Bargaining Agreement<sup>86</sup>

A collective bargaining agreement is the result of each collective bargaining initiated under the agreement on collective bargaining procedure. It has to be put in writing and signed by all negotiating parties, (Collective Bargaining Act Sec 19). The parties agree upon the manner in which concerned tenants are notified about the agreements. Usually, it is done by means of individual letters or notices in the stairwell.<sup>87</sup>

## e) Compensation for Collective Bargaining

The Tenants' Union and the landlord may conclude a collective bargaining agreement to include compensation to the Tenants' Union for their work in the collective bargaining system in the rents, (Collective Bargaining Act Sec. 20). The amount may not exceed what can be deemed as fair in relation to the overall rent, the costs related to the collective bargaining and other relevant circumstances, (Collective Bargaining Act Sec. 20). The compensation is determined by the Tenants' Union.<sup>88</sup> It is usually around 0.5 % of the rent in total.<sup>89</sup> In some regions, there are currently agreements between the Tenants' Union and landlords (or a regional branch of the federation for landlords) that entitle landlords to parts of the compensation. These agreements are not collective agreements.<sup>90</sup>

The compensation may be included in all rents to which an agreement on collective bargaining procedure apply – regardless of the individual tenant's membership in the Tenants' Union. Tenants who have opted out of the collective bargaining procedure get a rent reduction comparable to the compensation for collective bargaining, (Collective Bargaining Act Sec. 3; Land Code Ch. 12 Sec. 55, Para. 4, Sec. 55c Para. 3).

## 4.3. Collective Bargaining Clause in the Agreement

In order for a tenancy relation to be included in the collective bargaining system, the tenancy agreement has to include a collective bargaining clause.<sup>91</sup> A collective bargaining clause is defined as a contractual term through which a tenant – after the conclusion of an agreement on collective bargaining procedure in accordance with the Collective Bargaining Act – is bound by collective bargaining agreements, (Collective Bargaining Act, Sec. 2 Para. 1). The

<sup>86</sup> Sw. Förhandlingsöverenskommelse.

<sup>87</sup> BILLQUIST and OLSSON, Comments to Sec. 19, (10 October 2017, Zeteo).

<sup>88</sup> LJUNGKVIST 2015, p. 49.

<sup>89</sup> BENGSSON, HAGER and VICTORIN, p. 145.

<sup>90</sup> LJUNGKVIST 2015, p. 49.

<sup>91</sup> Sw. Förhandlingsklausul.

clause should refer to the applicable agreement on collective bargaining procedure.<sup>92</sup> As stated above, tenants may opt out of the agreement on collective bargaining procedure by entering individual agreements with the landlords to exclude the concerned apartment.<sup>93</sup>

## 5. Mechanisms to Protect the Tenant in a Residential Dwelling<sup>94</sup>

### 5.1. Tenure Security

#### a) Direct Tenure Security

Direct tenure security entails a far reaching right for the tenant to prolong his/her tenure upon the landlord's request to terminate the tenancy agreement. The provisions on tenure security are generally mandatory. It is possible for the contractual parties to agree to exclude the right to prolongation. Such agreement has to be approved by the Rent Tribunal in general, (Land Code, Ch. 12 Sec. 45a Sec. 1). An approval from the Rent Tribunal is not necessary in the following situations:

- (i) The agreement is concluded after the tenancy has begun and refers to a tenancy, which is combined with the right of prolongation.
- (ii) The tenancy agreement is concluded for a period that does not exceed four years from the commencement of the tenancy, and the content of the agreement is that the tenant does not have a right to prolongation, where
  - a. it is a residential unit in a single- or two-family dwelling which is not operated commercially and the landlord is to reside in the dwelling or dispose of the building, or
  - b. it is a subtenure of a dwelling in which the landlord resides.<sup>95</sup>

The tenant exercises the right to prolongation by challenging a notice of termination to the Rent Tribunal. The Land Code prescribes exceptions to the tenant's right to prolongation in Ch. 12 Sec. 46 Sec. 1 Items 1–10. These exceptions are, *inter alia*,

- (i) related to the building: extensive alteration of the building (item 3), demolition or change of use of the building (items 4 and 5);
- (ii) related to terms of the agreement: tenancy agreement connected to employment which has ended (items 8 and 9);
- (iii) related to the tenant's misbehavior either in use of the building or as a contractual party (items 2 and 10); and
- (iv) related to good practices in tenancy relations (item 10).

<sup>92</sup> BENGSSON, HAGER and VICTORIN, p. 142; RBD 1980:6.

<sup>93</sup> See 3.2.C above.

<sup>94</sup> The overview will cover the interconnected aspects of tenure security and rent setting.

<sup>95</sup> If the dwelling is a condominium, if the owner either is about to reside in the dwelling or dispose of it, (Land Code, Ch. 12 Sec. 45a Para 1).

In all these situations, a balancing exercise is made to different degrees where the landlord's objective reasons for terminating the agreement is weighed against the fairness of terminating the tenancy for the concerned tenant.

The tenant is not entitled to prolongation if the tenancy is forfeited. All circumstances that may lead to forfeiture are listed in the Land Code Ch. 12 Sec. 42. Here, it is a question of neglectful behavior, disturbing or criminal manners related to the use of the tenancy and serious breach of the contract. Failure to pay rent could lead to forfeiture after one week, (Land Code Ch. 12 Sec. 42 Item 1).<sup>96</sup> There are however several mechanisms built in the system to protect the tenant. After forfeiture, the tenant has the right to recover the tenancy by paying the rent within the recovery period. The period is three weeks from the day the tenant is notified about the right to recover the tenancy. The municipal social welfare board also has the right to recover the tenancy by assuming payment responsibility, (Land Code Ch. 12 Sec. 44, Para. 1 Item 1). The board's right to guarantee the fulfilment of the tenant's obligation to pay rent does not require the landlord's consent.<sup>97</sup> If a tenant has been hindered to recover the tenancy because of illness or equivalent, the tenancy cannot be forfeited, (Land Code Ch. 12 Sec. 44, Para. 1 Item 4). A tenant who repetitively recovers the rent could risk termination of the tenancy agreement under the Land Code Ch. 12 Sec. 46 Sec. 1 Item 2.

## **b) Termination of the Tenancy Agreement**

### *Formal Requirements*

A notice of termination from the landlord has to be in writing if the tenancy period exceeds three months. As a general rule, the notice should state the reason for notice, (Land Code Ch. 12 Sec. 8 Para. 2). If the tenant does not enjoy tenure secure according to the provisions in the Land Code, the reason does not need to be stated. The notice of cancellation should clearly state the intention to terminate the tenancy and that the tenant has to move out at a specific date.

An oral termination from the tenant to the landlord or its representative is valid if the landlord subsequently confirms it in writing, (Land Code Ch. 12 Sec. 8 Para. 2). A tenant is always entitled to end a tenancy agreement, irrespective of reason and contractual duration, (Ch. 12, Sec. 5 Para. 1). The period of notice of termination does however vary depending on duration of the tenure.<sup>98</sup>

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<sup>96</sup> Before 1992, it was two days. (Prop. 1992:93:115).

<sup>97</sup> Prop. 1992/93:115 p. 16.

<sup>98</sup> See under 3.2.

### *Procedural Requirements*

In order for a termination from the landlord's side to be valid, the tenant has to be served personally, (Land Code Ch. 12 Sec. 8 Para. 3 and Ch. 8 Sec. 8 Para. 2). When the tenant cannot be served in person, the notice may be sent by registered letter to the tenant's customary address if the tenant has his/her residence in Sweden, (Land Code Ch. 12 Sec. 8 Para. 3). Notification is deemed to have been made upon the mail's dispatch.<sup>99</sup> An application to a court requesting that the tenancy be terminated or the eviction of the tenant acts as a notice of termination when service has been duly processed, (Land Code Ch. 12 Sec. 8 Para. 5).

## **5.2. Tenant's Right to Judicial Review of Rent**

### **a) Initial Rent**

There is in general no legal requirements for how the initial rent is set. An exception to this rule is when the residential dwelling is a newly constructed building. Here, the landlord and the Tenant's Union have the opportunity to collectively bargain the rent for all residential units in the building, (Land Code Cp. 12 Sec. 55c). When collectively bargaining these initial rents, usually referred to as *presumed rents*, the rent should compensate the landlord's efforts and give a reasonable return.<sup>100</sup> The rent specified in the collective bargaining agreement is presumed to be fair for fifteen years after the first tenant has moved in, (Land Code Cp. 12 Sec. 55c).

Chapter Twelve of the Land Code departs from the principle of freedom of contract on the initial rent. The parties are however entitled to judicial review of the initial rent after concluding the agreement. One month after having informed the counterpart about wanting to change the rent, the party who questions the fairness of the rent may apply for judicial review by the Rent Tribunal, (Land Code Ch. 12 Sec. 54 Para. 1). There is no requirement on contractual duration.<sup>101</sup> If the parties agree to modify the rent after the initial notification, a judicial review is not necessary.

### **b) Connection to the Collective Bargaining System**

As previously stated, a collective bargaining agreement sets the rents in the specified apartments in a defined building. Chapter Twelve of the Land Code stipulates that a collective bargaining agreement has to specify the rent for each residential dwelling, (Land

<sup>99</sup> In RBD 1978:28, the landlord had sent the notification to the concerned residential dwelling despite knowledge of actual residence elsewhere. The court found the tenant had not been served in a proper manner.

<sup>100</sup> SOU 2017:65, p. 90.

<sup>101</sup> This provision regulates amendment of tenancy terms in general.

Code Ch. 12 Sec. 19). The agreements do however not include a description of the unit, its standard or other amenities that affect its use value.<sup>102</sup>

### **c) Yearly Rent Setting through Collective Bargaining Agreements**

#### *A Collective Bargaining Agreement on Rent*

An important part of the collective bargaining system is the yearly conducted negotiations between the tenants and both categories of landlords. These negotiations are not regulated but are conducted under authority the agreements on collective bargaining procedure provide. The results of these negotiates are binding to the residential dwellings included in the agreement on collective bargaining procedure.

#### *Rent Increase When the Tenant has Opted Out of the Collective Bargaining System*

If a landlord wants to apply same rent increase on dwellings that are excluded from the collective bargaining system, the landlord has to send a written notification to the individual tenants, (Land Code Ch. 12 Sec. 54 Para. 1). The notification should state that the landlord requests to amend the rent. The notice shall specify the requested rent increase in Swedish Krona and the total amount of rent after the proposed increase. The notice also has to state the day on which the new rent is to take effect. Additionally, the notice should inform the tenant of his/her obligation to pay the requested rent unless he/she informs the landlord that he/she contests the increase before a certain day. The notice has to include particulars of the landlord's address. The tenant must have at least two months to inform the landlord of objection to rent increase. Furthermore, the notice must inform the tenant that the regional Rent Tribunal can assess the fairness of the requested rent. The notification should also include particulars of what the tenant needs to do in order for such assessment to take place, (Ch. 12 Sec. 54a, Para. 54a).

If the tenant does not contest the landlord's request, the new contractual term is applied on voluntary basis. When a rent increase is contested, both parties have the right to apply to the Rent Tribunal for a modification of contractual term.<sup>103</sup>

#### *Fairness Assessment by the Rent Tribunal<sup>104</sup>*

A contested rent is determined by the regional Rent Tribunal. The Tribunal sets the rent to a "fair amount", (Land Code Ch. 12 Sec. 1 Para. 1). A rent that is palpably higher than the rent for units of equivalent use value is not deemed fair. The fairness is determined, in the first

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<sup>102</sup> LJUNGKVIST 2015, p. 28.

<sup>103</sup> SOU 2004:91, p. 60.

<sup>104</sup> See also section 1.3.

instance, on the basis of a comparative test between the concerned residential dwelling and generally comparable units – seen to their use value – in the same area. Secondly, by a general fairness assessment, (Land Code Ch. 12 Sec. 55 Para. 2).

The disputing parties submit material and data that the Rent Tribunal can use to form the basis (point of reference) for comparison. The basis has to consist of collectively bargained rents primarily. This data is exclusive knowledge to the organizations on the rental market.<sup>105</sup> Tenants who are not members of the Tenants' Union therefore have a disadvantage in this process.<sup>106</sup> The preparatory works exemplify use value with factors such as size, number of rooms, layout of the apartment, location within the house (floor), general residential standard and soundproofing, laundry and storage facilities, convenience to transportation and local center etc.<sup>107</sup> A requested rent has to be palpably higher than the comparable rents. If the requested rent is around five percent higher than the comparable rents, it is deemed to be unfair.<sup>108</sup>

If a fairness assessment cannot be done, a general fairness assessment has to be made. Although the legislative construction positions the general fairness assessment as a secondary method, it is the most frequently applied method. The courts apply a general fairness assessment in about 90 to 95 percent of all cases in rent disputes.<sup>109</sup>

#### **d) The Possibilities for a Tenant to Challenge a Collective Bargaining Agreement on Rent**

Each tenant has the right to challenge a collective bargaining agreement to the extent the agreement concerns him or her, (Collective Bargaining Act Sec. 22). Within three months after the tenant was informed about the agreement, the tenant may submit an application to the Rent Tribunal for judicial review. Alternatively, when the agreement concerns the change of rent, the tenant may challenge the agreement within three months after the new rent is applied. It is therefore possible for a tenant to challenge the outcomes of the collective bargaining system.

If the tenant has applied for a judicial review of the collective bargaining agreement on rent because he or she believes that the rent has been set too high, the Rent Tribunal assess the fairness of the rent by applying the use value method prescribed in the Land Code Ch. 12 Sec. 55, (Collective Bargaining Act, Sec. 22). The purpose of the individual tenant's right to

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<sup>105</sup> The size of the Tenants' Union in combination with the fact that they collectively bargain 90 percent of all rents is quite remarkable. They have a rather large information capital, so called "know how".

<sup>106</sup> LJUNGKVIST 2015,

<sup>107</sup> Prop. 1983/84:137 p. 72.

<sup>108</sup> HOLMQVIST and THOMSSON, p. 621.

<sup>109</sup> Ibid., p. 633 f.



judicial review is to provide guarantees for the tenants' legal certainty under the collective bargaining system.<sup>110</sup>

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<sup>110</sup> SOU 1976:60, p. 93.

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