

My Rights as Tenant in Europe



A compilation of the national Tenant's Rights Brochures from the TENLAW Project

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

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

Preface

This information brochure is part of the ***Tenlaw Project on Tenancy Law and Housing Policy in Multi-level Europe***, which is funded by the European Union under the *Seventh Framework Programme of the European Community for research, technological development and demonstration activities* from April 2012 until September 2015. The *Tenlaw* Consortium consists of the Centre for European Law and Politics at Bremen University acting as coordinator and the Universities of Delft, Southampton, Lund, Katowice, Celje, Pisa, Tarragona, Tartu and the MRI Budapest as partner institutions. In the main part of *Tenlaw*, comprehensive national reports of housing policies and regulation in 31 European countries (plus Japan) were drafted by national scientists over ca. 6300 pages, all of which are available online on the project website (www.Tenlaw.uni-bremen.de). The authors of the reports are qualified national lawyers who have been working in multi-disciplinary teams. In its current second phase, *Tenlaw* is dealing with a comparison of the national reports at *intra* and *inter*-team level as well as with an analysis of the possible future role of the EU in the field.

The present brochure is part of the results dissemination activities of the consortium. For citizens wishing to move to another EU state, there is a wide lack of information in an accessible language on the way to find a rental dwelling and the rights and obligations of tenants in other EU States. Already after the Internet publication of the 2003 predecessor project on *Tenancy law and procedure in Europe* carried out at the European University Institute Florence, we have received a high number of emails by Erasmus students, academics and professionals of all kinds who had to move, often on a transitory basis, to another EU state and had to find suitable rental accommodation for themselves and their families there. All of them were seeking advice on how to proceed on the national rental markets or on the contents and consequences of rental contracts. This brochure aspires at filling this information gap as far as possible. On about 30 pages per country, we have tried to assemble all relevant information for prospective tenants, which includes the ways to find a dwelling, the conclusion, execution and termination of rental contracts, bureaucratic duties, possible traps, the role of estate agents and tenants' associations (including contact data) as well as ways to apply for public/ social housing etc. In a second edition, we hope to update the brochure and to extend it to further important "tenancy countries" of the world to which the EU has strong economic and social contacts, in particular the US, Canada, Brazil, Israel, Russia, China, Australia and New Zealand.

As a final word of caution, it should be noted that the information contained in this brochure was given at our best knowledge. Notwithstanding that, it cannot be excluded that some information is inaccurate, incomplete or no longer up to date. Therefore, we cannot guarantee the reliability of its content in all cases and would like to stress that the brochure cannot substitute itself for qualified individual legal advice by national lawyers. Moreover, please note that whereas we welcome feedback on the brochure of any kind, we are prohibited by national law from giving

legal advice in individual cases. For this purpose, we would recommend to our readers to turn to national tenant associations listed in this brochure.

We hope that this brochure will facilitate the relocation of European and third country nationals to (other) European States, thus filling with life one of the fundamental principles of European integration, the free movement of persons, and ultimately contributing to the gradual development of a European people. We wish its readers all the best in their European host countries, and hope we have rendered their lives a bit easier.

Bremen, March 31, 2014

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TENLAW PROJECT QUESTIONNAIRE

Tenant's Rights Brochure

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1. Introductory information

- Brief introduction on the national rental market
 - Current supply and demand situation
 - Main current problems of the national rental market from the perspective of tenants
 - Significance of different forms of rental tenure
 - Private renting
 - “Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc)
 - 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)
 - Main problems and “traps” in tenancy law from the perspective of tenants
- Compile a brief section of “*Important legal terms related to tenancy law*” by quoting their original in the national language

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

2.2. The rental agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?

- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?
 - Duration: open-ended vs. time limited contracts (if legal, under what conditions?)
 - Which indications regarding the rent payment must be contained in the contract?
- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?
 - Is the landlord or the tenant expected to provide furnishings and/or major appliances?
 - 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)?
 - Any other usual contractual clauses of relevance to 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.)?
 - Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?
 - Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);
 - apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);
 - death of tenant;
 - bankruptcy 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 contract but only a sublease contract) be counteracted?
 - Does the contract bind the new owner in the case of sale of the premises?
- Costs and Utility Charges
 - What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?
 - Which utilities may be charged from the tenant by the landlord? What is the standard practice?
 - Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?
 - Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?
- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?
- Are additional guarantees or a personal guarantor usual and lawful?
- What kinds of expenses are covered by the guarantee/ the guarantor?

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)?
 - 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)
- Repairs of the dwelling
 - Which kinds of repairs is the landlord obliged to carry out?
 - Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?
- Alterations of the dwelling
 - Is the tenant allowed to make other changes to the dwelling?
 - In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)
 - Affixing antennas and dishes
 - Repainting and drilling the walls (to hang pictures etc.)
- Uses of the dwelling
 - Are the following uses allowed or prohibited?
 - keeping domestic animals
 - producing smells
 - receiving guests over night
 - fixing pamphlets outside
 - small-scale commercial activity

3.2. Landlord's rights

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

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?
 - Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?
 - What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?
- 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?
 - Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?
 - Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

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

4.2. Termination by the landlord

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

4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to

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

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?

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?
- Is any kind of insurance recommendable to a tenant?
- Are legal aid services available in the area of tenancy law?
- To which organizations, institutions etc. may a tenant turn to have his/her rights protected?

AUSTRIA

Tenant's Rights Brochure

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1. Introductory information

- **Introduction: The national rental market**
 - **Current supply and demand situation**

In 2012, the number of dwellings (main residences) in Austria reached 3,678,100 units. Of these, 1,449,900 units (39.4% of the total stock) were occupied by home-owners, 379,200 (10.3 %) were possessed by owners of a dwelling in condominiums, 1,476,700 (40.1%) units were rented to main tenants, 38,200 units (1%) were rented to subtenants and 335,100 units (9.1%) were occupied on other legal grounds (use of dwellings on family ties, etc.).

Characteristic for Austria are the huge regional differences with respect to the legal basis for possession, especially between Vienna and the other eight states. Whereas in Vienna 75.4 % of the population are main tenants and only 7.9 % of the population live in home-ownership (excl. condominiums), in Burgenland 79.7 % of the population live in home-ownership (excl. condominiums) and only 13.2% as main tenant.

In 2012, a dwelling (main residence) in Austria on average had 99.6 m² of floor space. Home-owners lived in dwellings with an average floor space of 138.1 m², owners of dwellings in condominiums in dwellings with 83.3 m² and main tenants in dwellings with 69.3 m². On average, 2.27 people lived in one dwelling with an average floor space per person of 43.9 m². This is a raise of average floor space per person of almost 6 m² within the last 11 years (38 m² in 2001). This raise cannot only be explained with a general increase in size of dwellings, but also with a shrinking number of people living together in one dwelling (2.38 persons/dwelling in 2001). Again strong regional differences between Vienna and the other eight Austrian states have to be considered, as in Vienna in 2012 only 1.99 people lived in one dwelling with only 37.9 m² floor space on average, in Burgenland e.g. 2.48 people/dwelling with 50 m² floor space.

In comparison to other European States the supply of housing in Austria in 2012 was indeed adequate. Per 1,000 inhabitants about 440 units were available, on average were 2.3 persons living together.

Recent forecasts show that the total Austrian population will increase from 8.43 million in 2012 up to 8.99 million in 2030 (+ 7%) and 9.37 million in 2060 (+11%). A severe change is predicted with respect to the demographic structure of the Austrian population, especially with respect to a significant increase of people aged 65 or older from 1.51 Mio. in 2012 (17.9 % of the total population) up to 2.16 Mio. in 2030 (24 %) and 2.70 Mio. in 2060 (28%). The number of households is expected to increase even stronger because of the upwards tendency to live in one-person households.

The Austrian legal system has two main sources of tenancy law: the “Allgemeine Bürgerliche Gesetzbuch 1811” (ABGB, General Civil Code), and the “Mietrechtsgesetz 1982” (MRG, Tenancy Statute). Judgements are rendered either according to the ABGB, the MRG or other special statutes. With regard to some rented premises or tenancy agreements, the freedom of contract is not (or almost

not) limited at all, whereas with regard to other rented premises or tenancy agreements the almost exclusively mandatory norms of the MRG minimize the freedom of contract significantly in favour of the tenant.

In general, the most important differences exist between tenancy agreements where the MRG is fully, partially or not applicable. For tenancy agreements, where the MRG is

- fully applicable, the tenant is protected by strict rent limits (“Preisschutz”) and against unwarranted eviction (“Beendigungs- bzw. Kündigungsschutz”);
- partially applicable, the tenant is protected only against unwarranted eviction;
- not applicable the tenant neither is neither protected by strict rent limits nor against unwarranted eviction.

Therefore, also a tenant living in a rental dwelling owned by a private landlord can benefit from strict rent limits and protection against unwarranted eviction, if the MRG is fully applicable to the tenancy agreement.

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

- increasing rents in urban areas, especially in Vienna
- wrong calculation of rents by landlords in disfavour of their tenants, although the rent is regulated by law
- wrong calculation of operating expenses

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

- **Private renting**

Private renting is characterized by the fact that the rented dwellings are owned by private landlords (for-profit corporations or for-profit cooperatives, limited or public limited companies or individual landlords).

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

“Housing with a public task” means that the rented dwellings are owned by

- Limited-profit rental housing in dwellings owned by limited profit housing associations (“gemeinnützige Bauvereinigungen”) or
- Municipal rental housing in dwellings owned by municipalities or non-profit municipal bodies (“Gemeindewohnungen”).

With respect to a total amount of 1,474,700 rented units in 2012, 19 % of the total stock was owned by municipalities, 40.5 % by limited-profit housing associations and 40.5 % by private landlords.

- **General recommendations to foreigners on how to find a rental home**

In general, it is advisable for a non-German speaking foreigner to find a serious Austrian who can come along to the viewing of a dwelling and act as a translator, to avoid communication problems or misunderstandings. The German spoken in most parts of Austria also differs significantly from standard German.

Furthermore it is recommended to contact the following persons / institutions:

- the employer, if he can provide you a dwelling or help you finding a dwelling;
- the municipality, to get information about free dwellings for rent and their criteria for allocation of a dwelling owned by them;
- (local) limited-profit housing associations, to get information about free dwellings for rent and their criteria for allocation of a dwelling owned by them;
- a practicing lawyer or tenant protection association before concluding any tenancy agreement, as Austrian tenancy law is rather complex and tricky.

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

- Unclear which rules apply to the tenancy contract, especially with reference to freedom of contract vs. rent regulation; there exist various different systems of rent regulation applying even to dwellings rented out on the private rental market;
- Unreflected use of standard contract by the private landlord or estate agent without prior check by a practising lawyer; especially an intensive check of clauses on duties of maintenance is recommended;
- Operating costs invoices; they are often calculated incorrect;
- Use of the dwelling and house rules; foreigners should inform themselves in detail about “dos and don'ts” to avoid quarrels with landlords or neighbours

- **Important terms related to tenancy law**

German	Translation into English
Angemessener Mietzins	adequate rent, a specific form of rent control
außerordentliche Kündigung	extraordinary notice
befristeter Mietvertrag	tenancy contract limited in time
Betriebskosten	operating costs
Bezirksgericht	district court
Erhaltungsarbeiten	maintenance works
Hauptmieter / Hauptmiete	main tenant / main tenancy
Hausordnung	rules of the house
Kategoriemietzins	category rent, a specific form of rent control
Kaution	security deposit
Maklergebühr	brokerage fee
Miete / Mietzins	tenancy / rent
ordentliche Kündigung	ordinary notice
Pacht / Pachtzins	usufructuary lease / rent for usufructuary lease
Richtwertmietzins	standard value rent, a specific form of rent control

Schlichtungsstelle	arbitrational board
unbefristeter Mietvertrag	tenancy contract unlimited in time
Untermieter / Untermiete	sub-tenant / sub-tenancy
Verbesserungsarbeiten	improvement works
Wohnbauförderung	subsidies for construction and modernization

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?**

The Anti-discrimination Statute regulates nowadays that discrimination based on gender, ethnic background or civil standard is forbidden for the access to and the supply of goods and services which are available to the public, including housing. A violation of the equality principle offers the victim a claim for damages; consequently a tenant who is not considered in the choice-of-tenant-procedure because of discrimination can claim damages. Discrimination in the selection by status as a foreigner or as unmarried partner per se is prohibited, whereas discrimination in the selection by status as a student or person with a short-term work contract is exceptionally allowed for valid reasons.

- **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?**

Information concerning the personal status or the solvency of the potential tenant can be gathered lawfully if the landlord can argue a legitimate interest. Questions on sexual orientation or intention to have children are prohibited and the tenant has a right to lie.

- **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)?**

A “reservation fee” is unusual and illegal in Austria.

- **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)?**

It is assumed that a landlord may ask any tenant for a salary statement, but the tenant can deny disclosing this information with reference to his right of protection of his or her personal data. Also, a landlord may resort to a credit reference agency like the “Kreditschutzverband von 1870” (KSV 1870) or the “Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft” (AKV) and ask for the degree of creditworthiness of a prospective tenant, if the landlord can claim an overriding legitimate interest in the disclosure of this data. The tenant however has in many cases a right of withdrawal of such data without giving any reason.

- **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?**

The practice of estate agents is limited to licensed estate agents that have to comply with regulatory law requirements. In Austria, the general services an estate agent provides in the area of rental housing are:

- searching for current entries in the land registry, plans and data of the rent object
- creating an exposé, advertising the rent object in newspapers and internet
- finding out the personal needs and interests of prospective tenants, organizing showing dates and providing all relevant information of the object and its usage
- consulting of both contractual parties about all legal and economical aspects of the tenancy, mediating the balancing interests of the landlord and the tenant, participating in the clearing and settlement of the tenancy agreement.

Furthermore municipalities or municipal bodies often assist tenants in the search for housing.

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

None of these lists or systems exists in Austria.

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)?**

An agreement will not be binding on the parties until one is able to identify either an offer by the landlord to let, and a convergent assent by the tenant to take, or an offer by the tenant to take and an acceptance by the landlord to let.

An offer by the tenant or landlord has to be substantially specified with the intention to enter into a legal binding relationship and this offer has to be received by the other negotiating party. There must be an offer capable of acceptance by one of the parties, i.e. a simple response to a request for information is not an offer but an invitation to treat (“*invitatio ad offerendum*”).

Essentialia negotii of a tenancy agreement are rent object and rent. For the conclusion of the contract the transfer of the rented object is not necessary.

The written form of a tenancy agreement is not a formal requirement. A duty to register tenancy contracts in Austria only exists with reference to tax law.

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

There are no explicit rules for mandatory minimum requirements of what needs to be stated in a tenancy contract. Nevertheless, the rules of (general) contract law apply. Therefore, as minimum requirements for the valid conclusion of a contract for example statements about the rented object and about the rent amount are required.

Mandatory provisions of the ABGB and MRG apply to the tenancy contract independently from the terms that are concluded by the parties in their individual agreement.

In almost every written tenancy agreement a detailed description of the dwelling and indication of the habitable surface is laid down within the first sections of a tenancy contract.

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

Tenancy contracts in Austria can be concluded as either unlimited or limited in time. If the MRG is partial or full applicable, a landlord can only limit the duration of a tenancy agreement to three years and has to do that explicitly in written form.

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

If the parties have not agreed on any specific indications regarding the rent payment, the rules of the ABGB and MRG apply independently.

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

If the MRG is not or is partially applicable to the tenancy contract, the obligation to keep the rented dwelling in useable condition can be lawfully assigned to the tenant, if no general private law principles (bonos moros or laesio enormis) are at stake.

If the MRG is fully applicable, the shift of costs for repairs to the tenant is limited.

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

Neither the landlord, nor the tenant is expected to provide furnishings. Major appliances like access to water, electricity, heating etc. usually are provided by the landlord.

- **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)?**

It is not required by law to have an inventory made, but it is recommended as proof of evidence so as to avoid future liability for losses and deteriorations.

- **Parties to the contract**

- **Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?**

A specific legal norm governing which persons are allowed to move into an apartment together with the tenant does not exist in Austria. Apart from any express restriction, the tenant may not be prevented from using the dwelling for any purpose which is lawful.

Anyhow, the provisions of the tenancy agreements and responsibilities according to family law (marriage, maintenance for children or other family members, etc.) have to be considered. In case of full- or partial applicability of the MRG, rules indicate that spouses, non-married partners, affinity and collateral relatives in direct line, adoptees and siblings are definitely allowed to move into the apartment together with the tenant, as they also have entry rights into the existing tenancy contract. In the author's opinion, the moving in of these benefitted persons cannot be restricted by any agreement.

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

The tenant in general has no obligation to live in the rented dwelling, unless specific administrative law provisions are enacted that oblige citizens to use a dwelling as a main dwelling, which is common in touristic areas to prevent the establishment of too many secondary homes for rent only. Furthermore an obligation of the tenant to live in the dwelling can be concluded in a tenancy agreement.

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

A landlord is obliged to enter into a tenancy agreement if a court order in post-divorce trials declares the transfer of the tenancy right to a spouse or a registered same-sex partner. The tenancy right in question has to be part of the matrimonial property proceedings after divorce.

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

A student moving out of his rented dwelling in Austria may only be replaced by motion of the other students, if a right of representation has been explicitly included into the tenancy agreement.

- **death of tenant;**

In case the MRG is not applicable to the tenancy agreement, it is not annulled automatically on the death of a lessee, but can be terminated by the landlord and the tenants' heirs at particular dates for giving notice usually on 4 weeks' notice.

In case the MRG is partially or fully applicable to the tenancy agreement, the tenancy agreement is also not annulled automatically on the death of a lessee. Furthermore it can only be terminated by the landlord if there are no entry rights of thirds into the contract.

The deceased lessee's spouse, registered or unregistered partner, relatives in direct ascending (e.g. parents) or descending lines (e.g. children) or his siblings enter ex lege into a rental contract, if they have been living in the rented dwelling at the time of the tenants' death and have an urgent need of accommodation.

The same provision excludes a succession of the tenancy rights of the deceased tenant to his legitimate heirs. For unregistered partners it is additionally required that they either have moved in together with the deceased tenant or have lived in the rented dwelling for at least the last three years before his death.

All these benefitted persons can declare within 14 days after the death of a tenant that they will not enter into the existing tenancy agreement.

- **bankruptcy of the landlord;**

Foreclosure in general does not change the rights and duties of the tenant at all. If a liquidator has been appointed by court, he or she ex lege enters as landlord into the existing tenancy contract. The provisions about change of ownership according to public auctions apply. Therefore a termination of the tenancy agreement by the (new) landlord is just lawful in limited cases, where the MRG is not applicable and the tenancy agreement has not been registered into the land registry or – if registered – the tenancy agreement ranks subordinate to other incorporated charges (mortgages).

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

In case the MRG is not applicable to the tenancy agreement, de facto the right of subletting of the main tenant without consent of the landlord is often prohibited. A main tenant, though, can sublet his rented dwelling (or parts of it) for any period less than his own term without the consent of the landlord

- in the absence of an agreement restricting his right and
- the subletting is not to the disadvantage of the landlord; this is e.g. indicated in case of an excessive wear and tear of the sublet object by the sub-tenant.

In case the MRG is partially or fully applicable to the tenancy agreement, the landlord not only has to conclude an agreement restricting the tenants right to sublet, but also needs to have an important reason for the prohibition. Important reasons would be, for example, a complete sublease of the rented object; a disproportionately high sub-rent in comparison to the main-rent; if the number of lodgers would exceed the number of available rooms or if there is a threat that the new sub-tenant would disturb the household community.

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

The same rules as for main tenancy contracts apply, differentiating between full applicability of the MRG on the one hand and partial and non-applicability on the other.

- **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?**

If the MRG is not or is partially applicable to the tenancy agreement, it is assumed that the landlord in principle takes all general expenses and public charges into consideration for his calculations of the rent and consequently has to bear all expenses and public charges alone. Without special agreement between the parties, the rent is not divided into main rent, general expenses and public charges.

If the MRG is fully applicable to the tenancy agreement, rent is divided i.a. into main rent, general expenses and public charges. General expenses (“Betriebskosten”) are costs for water supply, official calibration, maintenance and control of measuring devices, e.g. electric or water meter reader, chimney sweep, canal dues, garbage collection and pest control, lights in common parts of the building, e.g. stairwell, floors, house entrance, fire insurance including insurance for demolition costs, third party liability insurance and tap water damage insurance including insurance for damages through corrosion, insurance for other kinds of damages, especially glass breakage or tornado, administration and facility management.

Public charges are taxes on land and buildings („Grundsteuer“) and taxes of the states (“Landesabgaben”), if they may be passed on to the tenant.

Additionally, extraordinary costs (“besondere Aufwendungen”) for common facilities like lifts, central heating, laundry room or green keeping have to be considered.

General expenses, public charges and extraordinary costs and their increase are also subject to prize control by court, so these expenses have to be comparable to local market prices.

Contracts for supply can usually be concluded either by the landlord or the tenant, if they are not connected directly to the whole building. Is this the case, the landlord concludes the contracts.

- **Which utilities may be charged from the tenant by the landlord? What is the standard practice? Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?**

In case the MRG is not or is partially applicable to the tenancy agreement, individual agreements on a different allocation of costs to the disadvantage of the tenant are lawful and standing practice.

In case the MRG is fully applicable to the tenancy agreement, the above-mentioned general expenses, public charges and extraordinary costs are expenses of the landlord, for which he is liable towards third parties. Nevertheless the tenant has usually to bear all the above-mentioned expenses. Individual agreements in favour of the tenant are possible, in disfavoured unlawful.

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

The local municipalities do not levy taxes for the provision of public services (e.g. for waste collection or road repair) directly from the tenant.

- **Deposits and additional guarantees**

Austrian tenancy law follows the legal concept of deposit as guarantee deposit. The deposit cannot be qualified as an advanced rent payment but can be used to cover loss of rent.

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

In case the MRG is not or is partially applicable to the tenancy agreement, the contractual partners are in general free to agree on any amount of a deposit. Legal limits for extraordinarily high deposits exist only in regard to general provisions of private law.

In case the MRG is fully applicable to the tenancy agreement, the Supreme Court has declared in several decisions that the amount of deposit has to be in an adequate relation to the guarantee interests of the landlord, depending i.e. on the property value and the size of the dwelling. In a specific case, the Supreme Court has held as acceptable an amount of deposit up to 6 months' rents including utilities and taxes.

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

In case the MRG is not or is partially applicable to the tenancy agreement, management and allowed uses of the deposit are subject to the individual tenancy contract.

In case the MRG is fully applicable to the tenancy agreement and the deposit has been provided in cash, the landlord is obliged to invest the money on a savings account (bankbook) and inform the tenant notationally by request about the investment. Other forms of investments are allowed, if these forms offer at least the

same guarantees and interest for the invested money as a saving bank account and a separation of the property of the landlord is possible in case of bankruptcy.

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

The MRG only refers to a deposit either paid in cash or in the form of a surrender of a bankbook and interestingly not to the - also legal and defacto quite often used - form of a bank guarantee.

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

The deposit covers possible future claims of the landlord because of contractually prohibited or illegal use of the rented object (e.g. damages) or breach of contractual duties (e.g. loss of rent) by the tenant.

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 general definition of “defect” (“Mangel”) does not exist in Austrian tenancy law. In a general private law context, “defect” signifies a divergence in quality or quantity between actual performance and contractual obligation. The criterion for the assessment is the purpose of the tenancy contract.

A defect according to established case law of the Supreme Court also includes any act or default of the landlord that prevents or disturbs the tenant from the use of the dwelling according to the purpose of the contract. This includes cases in which the landlord does not prevent disturbances by third parties, even though they are not contracting parties of the landlord themselves.

Disturbances by noise can be one disturbance of the use of the dwelling according to the purpose of the contract. The exposure of the house to noise from a building site in front of the house or from neighbours has to be tolerated by the tenant, if the noise does not supersede the volume of noise that is usually expected for people living next to building sites. Also, the occupation of the house by third parties such as squatters can be considered as a defect in the legal terms.

- **What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent**

reduction to be allowed by court; damages; “right to cure” = the landlord’s right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)

The tenant has a right to unilateral rent reduction if the volume of noise is too high. Before reducing the rent, it is recommended to inform the landlord about the existing problems and ask him to take remedy actions.

- **Repairs of the dwelling**

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

In case the MRG is not or is partially applicable to the tenancy agreement, the landlord has to keep the rented dwelling in useable condition. The rented dwelling remains in useable condition if the tenant can use it according to the purpose of the contract and according to accepted standards of use. Without any specific agreement, the landlord has to provide a condition for medium standard of use and the landlord is responsible for all kinds of maintenance works to keep the rented dwelling in useable condition.

The obligation to keep the rented dwelling in useable condition can be lawfully assigned to the tenant, if not general private law principles (bonos moros or laesio enormis) are at stake. The assignment of this obligation to the tenant is also common practice.

In case the MRG is fully applicable to the tenancy agreement, maintenance works (“Erhaltungsarbeiten”) and improvement works (“Verbesserungsarbeiten”) of the landlord have to be distinguished. The landlord is obliged to carry out maintenance work and may carry out improvement works.

Maintenance works of the landlord are defined as works according to the legal, economic and technical conditions and possibilities that keep the condition of the building, the rented dwelling and the plants serving the common use of the residents of the building unchanged with respect to the local standard and to prevent severe damage of residents of the building. This includes e.g. the maintenance of common parts of the building; the maintenance of dwellings to rent, but only if these works are aimed to remove severe damage of the building or substantial risks to health or alternatively are necessary to handover the dwelling in usable condition; the economically justifiable maintenance of plants serving common use of the residence e.g. central heating, lift or common laundry room; technical improvements or redesigns due to public law obligations, e.g. connection to water supply or waste water disposal system; economically justifiable technical improvements to reduce energy consumption and the installation of measuring devices, e.g. electric or water meter reader.

Improvement works of the landlord are works that lead to useful improvements of the building or the rented dwelling according to the legal, economic and technical conditions and possibilities and with respect to the general maintenance conditions of

the building. Priority has to be given to useful improvements of the building and not of the rented dwelling. Improvement works of the landlord are e.g. new construction or redesign of water, gas, electricity or heating lines and sanitation; new construction or configuration of plants for the common use of the residents like lifts, central laundry room or panic room; technical measures for noise prevention like change of windows, doors, etc.; connection to long-distance heating; initial construction of water intakes or toilets in dwellings and technical redesign of one dwelling.

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

In general, the tenant does not have the right to make repairs at his own expense and then deduct the repair costs from the rent payment.

- **Alterations of the dwelling**

- **Is the tenant allowed to make other changes to the dwelling?**

In case the MRG is not or is partially applicable to the tenancy agreement, the tenant is allowed to make changes or improvements on the dwelling within the limits of the individual tenancy agreement.

In case the MRG is fully applicable to the tenancy agreement, the tenant has the opportunity to make changes (“Veränderungen”) and improvements (“Verbesserungen”) on the dwelling.

For inessential (“unwesentliche”) changes or improvements like putting in new tiles, hanging wallpaper or painting rooms, no consent of the landlord is needed if the changes are small, insignificant and easy to remove. Furthermore, worthy interests of the landlord and the existence or value of the rented object do not have to be interfered.

For essential (“wesentliche”) changes or improvements that exceed the above-mentioned criteria certain requirements have to be fulfilled by the tenant.

The tenant has to inform the landlord about any proposed changes or improvements on the dwelling. If the landlord does not reject the proposed changes or improvements within two months, his consent is assumed. The landlord cannot refuse his consent, if the changes correspond to the respective technological development; the changes are common and of important interest of the tenant; the perfect workmanship of the changes is guaranteed by the tenant; the tenant bears all costs for the changes; no worthy interests of the landlord or other tenants of the same building are affected by the changes; no damages to the building, especially to its outer appearance, are expected by the changes; the changes are no danger for the security of persons and goods. The above-cited requirements for changes are fulfilled in any case of new construction or changes of water pipes, branch circuits, gas pipes, heating or sanitary plants; changes of the dwelling to reduce energy consumption; changes of the dwelling that are public funded by the municipality ;

installation of a telephone connection; installation of antennas or other facilities for radio, television and multimedia services, but only if a connection to an existing installation is not possible or not reasonable (fig. 6 leg. cit.).

The landlord has a right to link his consent to some changes on the dwelling with the condition that any changes have to be rebuilt by the tenant at the time of return of the dwelling.

- **In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

In general, the tenant is not entitled to do such adaptations without consent of the landlord.

- **Affixing antennas and dishes**

The tenant may install antennas or other facilities for radio, television and multimedia services, but only if a connection to an existing installation is not possible or not reasonable

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

As above mentioned, inessential changes or improvements like putting in new tiles, hanging wallpaper or painting rooms does not need the consent of the landlord, if the changes are small, insignificant and easy to remove.

- **Uses of the dwelling**

In general, the tenant has the right to use the dwelling ad libitum. This general rule does not apply, if

- a specific use of the dwelling has been prohibited in the tenancy agreement or
- the use of the dwelling compromises rights of third parties such as neighbours or
- the use of the dwelling does damages to the substance of the dwelling.

- **Are the following uses allowed or prohibited?**

- **keeping domestic animals**

In Austria, no special statutory rules exist for the keeping of animals in dwellings. The Supreme Court has ruled on the one hand that the landlord cannot prohibit the tenant from keeping small animals like goldfish, hamsters or turtles that live in cages,

aquariums or terrariums at all, if the above mentioned other criteria are fulfilled. On the other hand, the landlord can prohibit the keeping of middle-sized and large animals like cats and dogs in the tenancy agreement. In case it is laid down in the tenancy agreement that keeping animals needs the consent of the landlord, he cannot disallow the keeping arbitrarily. Keeping dangerous or wild animals like crocodiles, poisonous snakes or lions without explicit consent of the landlord is in any case unlawful.

- **producing smells**

The tenant cannot produce smells that exceed the local conditions and fundamentally interfere with the local common usage.

- **receiving guests over night**

The right to receive guests by the tenant cannot in general be limited by the landlord.

- **fixing pamphlets outside**

The right to fix pamphlets depends on the content of the pamphlets and the rules of the house.

- **small-scale commercial activity**

Commercial uses of dwellings are allowed if the above cited-criteria for uses of the dwelling are fulfilled.

3.2. Landlord's rights

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

Attention: The author strictly recommends that persons who do have questions and inquiries about rent control and rent increase in Austria should contact a practicing lawyer specialized in tenancy law or a tenant protection association, as within this brochure the Austrian system of rent regulation can only be presented in a very general and simplified way!

A good balance between freedom of contract and rent control with reference to rent payment does not exist in Austria.

Various different factors are relevant to determine the applicable rules of law for one specific rent agreement ("Mietzinsvereinbarung"), i.a. date of conclusion of the rent agreement; size of the dwelling; standard of the dwelling; owner of the dwelling; number of dwellings within a building; date of construction permit of the building;

location within the building (attic) or subsequent separation of one dwelling into several separate units.

The rent is either

- strictly limited by provisions of the MRG, if the MRG is fully applicable or
- unlimited by any provisions of the MRG, if the MRG is partially or non-applicable.

In the latter case rent control is only enforced by general restrictions for contracts in the ABGB, *laesio enormis* or usury.

In case the MRG is fully applicable to the tenancy agreement, three different systems of rent regulations are relevant today (not considering other intertemporal rules):

(i) “Angemessener Mietzins” (adequate rent):

The adequate rent is a normative rent control system that limits free market rents depending on size, type, location, maintenance condition and furniture of a dwelling. In a pending court case, a property assessor as court expert first evaluates the common rent by comparing the dwelling to other dwellings of similar kind, type and location. Then, surcharges or discharges for maintenance condition and furniture will also be listed by the court expert, and the adequate rent will be determined by the judge (eventually by exercising discretion).

(ii) “Kategoriemietzins” (category rent):

The category rent limits free market rents through classification of dwellings according to their equipment level (standard). Four categories ranging from A (best category) to D (worst category, sub-standard) are relevant:

For each category a maximum monthly rent is fixed per m² and enacted by decree of the ministry of justice; the category rents per m² today¹ are EUR 3.25 (A), EUR 2.44 (B), EUR 1.62 (C) and EUR 0.81 (D).²

(iii) “Richtwertmietzins” (standard value rent):

According to this system of rent control, a standard dwelling (“mietrechtliche Normwohnung”) is defined and for this standard premise a certain basic rent per m² and month is fixed for each Austrian State separately in bylaws. In Vienna, e.g., this basic rent is currently³ EUR 5.16 per m² /month – in Styria EUR 7.11 per m²/month.

Surcharges and deductions to this basic rent, depending on size, kind, location, maintenance condition and furniture, have to be taken into account.

¹ Since 1.8.2011, BGBl. II Nr. 218/2011.

² Please note that category D is under certain circumstances even divided into two subcategories of inhabitable (“brauchbar”) and uninhabitable (“unbrauchbar”).

³ Since 1. 4. 2012, BGBl II 2012/82.

All three systems of rent control have in common that for contracts limited in time an additional discharge for this limitation in time of 25% has to be considered, after the maximum legal rent level has been determined.

In case, the landlord is a limited-profit rental housing association, the rent is based on the cost covering principle and limited by provisions of the WGG and the criteria for subsidies for construction and modernization of dwellings, which have been in force at the time of application for the subsidies.

- **Rent and the implementation of rent increases**
 - **When is a rent increase legal? In particular:**
 - **Are there restrictions on how many times the rent may be increased in a certain period?**
 - **Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?**

In case the MRG is not or is partially applicable to the tenancy agreement, the parties are usually free to agree on every clause on rent increase. Nevertheless there is no possibility for the landlord to increase the rent one-sidedly, e.g. by taking legal action for an “adequate” increase of rent. The landlord certainly can give notice of termination and make a new agreement with the tenant, if the contract is unlimited in time. If the tenant refuses to consent to the increased rent requested by the landlord, but continues to use the rented dwelling, he is obliged to pay an adequate compensation for use.

In case the MRG is fully applicable to the tenancy agreement, an agreement on rent increase by the parties is only valid within the strict limits of the MRG. This means that the contracting parties are in principle free to agree on any clause of rent increase, but the rent after rent increase is not allowed to exceed the limits for adequate rent, category rent or standard value rent, depending on which system of rent control is applicable to the concrete rented dwelling.

In case, the landlord is a Limited-profit rental housing association, provisions of the WGG and of the Statutes about subsidies for construction and modernisations are relevant and *leges specialis*, so rent increases are not allowed to out-value the limits set therein.

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

The landlord has to inform the tenant about the prospective rent increase beforehand. The tenant can refuse to pay a higher rent if he thinks that the rent increase is not lawful. Additionally the tenant can file a request to the district court or an arbitral board for housing – if existing in the municipality – to prove the unlawfulness of the rent increase.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

A landlord may enter the premises – as any third party – to obviate a threat of actual danger (like a fire or the burst of water pipe).

Furthermore, the landlord is allowed to enter the premises for important reasons. Important reasons are, for example, that the landlord wants to show the rented dwelling to prospective tenants or buyers or that the landlord needs to prepare, supervise or execute necessary maintenance works. Also, he can control the actual use of the premise by the tenant, but only in a way that is not deceitful.

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

There exist no special rules or court decisions on a possible right of the landlord to keep a set of keys to the rented apartment. As long as the landlord does not actually use the keys, he does not violate any right of the tenant.

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

A tenant cannot legally lock a tenant out of the rented premise until the day of 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?**

The landlord has a lien on any moveable property within the rented dwelling, which is property of the tenant and of those relatives who live together with him in the rented dwelling. The lien is to secure not only the payment of the rent, but also the payment of overheads, taxes and other costs and expenses considered as service of the landlord in return for the use of the dwelling. The scope of this right is directed to all movable property including money of the tenant and his relatives which can be subject to distress, i.e. in general everything above the minimum subsistence level ("Existenzminimum").

To enforce his lien, a landlord de facto often files a request for attachment of property – which is similar to a request for an interim order – together with a claim for rent payment and for eviction ("Mietzins- und Räumungsklage").

4. Ending the tenancy

4.1. Termination by the tenant

- **Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?**

In Austria, ordinary notice (“ordentliche Kündigung”) means giving notice without reference to any reason for termination. The tenancy ends usually after the period of notice at the date of termination. Extraordinary notice (“außerordentliche Kündigung”) signifies giving notice with reference to an important reason. The tenancy usually ends immediately.

Every continuous obligation (“Dauerschuldverhältnis”) – whether limited in time or unlimited – can be terminated by extraordinary notice. Important reasons for this extraordinary notice are lost confidence in the other party, frustration of contract or serious impairment of performance.

In case the MRG is not applicable to the tenancy agreement, the tenant must respect the contractual terms for giving notice, if the parties have agreed on period of notice and date of termination in a tenancy agreement unlimited in time. Otherwise the tenant has to comply with the period of notice and date of termination, which are regulated by law. The notice period for dwellings or parts of dwellings is one month, if the rent is paid monthly or in shorter intervals. If the rent has to be paid in intervals longer than one month, the notice period for dwellings or parts of dwellings is three months. The date of termination is the last day of the month.

A contract limited in time generally requires no notice to quit at the end of the term. The term simply expires by effluxion of time or on the occurrence of an event that is deemed to terminate the tenancy.

In case the MRG is partially or fully applicable to the tenancy agreement, the notice period for the termination of contracts limited in time prior to the agreed term or prior to the agreed prolongation term by the tenant is three months.

- **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)?**

In case the MRG is not applicable to the tenancy agreement, the tenant may terminate the agreement before the end of the term for important reasons („aus wichtigem Grund“), if the tenant according to the purpose of the contract cannot use the rented dwelling any more or the dwelling is in unhealthy conditions. Culpability of the landlord for the unusableness or the unhealthy housing conditions is not required. The tenant is not allowed to terminate the agreement if the reason for the unusableness of the dwelling lies within his own sphere of control.

In case the MRG is partially or fully applicable to the tenancy agreement, the tenant also has a right to terminate the tenancy contract for important reasons. Furthermore the tenant can (ordinary) terminate his contract limited in time if a minimum period of one year after conclusion of the contract has passed (§ 29 par. 2 MRG). Additionally, the three months period of notice and the date of termination have to be considered; therefore, a tenant is at maximum bound to a contract limited in time for 16 months. A tenant can also terminate a tenancy contract limited in time after prolongation of the contract, if a minimum period of one year has passed.

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

suitable replacement tenant?

There are no legal preconditions such as proposing another tenant to the landlord for the termination of a tenancy agreement by the tenant.

4.2. Termination by the landlord

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

In case the MRG is not applicable to the tenancy agreement, the landlord may terminate contracts unlimited in time by ordinary or extraordinary notice. Contracts limited in time may be terminated by extraordinary notice only. Important reasons for the extraordinary notice are the harmful use of the dwelling or arrears of rent.

Contractually agreed limits to the possibility to give notice are lawful and common.

In case the MRG is partially or fully applicable to the tenancy agreement, the landlord may terminate contracts unlimited and limited in time only by extraordinary notice. Important reasons are again the harmful use the dwelling or arrears of rent and other cases demonstratively listed in the MRG like arrears of rent, after the tenant has been dunned and a period of grace of minimum 8 days has past; failure to perform a service, if a rent payment in the form of performance of service has been agreed; harmful use of the dwelling or illegal conduct or considerable criminal acts that attack the property, morality or integrity of the human body of the landlord or of other tenants; illegal subletting; death of the tenant, if no one enters ex lege into the contract; non-use of the premise as dwelling; adverse use of business premises; personal need for housing of the landlord or of his descendents without requirement to provide the tenant an alternative dwelling; a weight of interests has to be in clear in favour of the landlords/descendents interests; personal need for housing of the landlord or of his ascendants or descendents with requirement to provide the tenant an alternative dwelling; no weight of interest is necessary; the landlord's employees need for company housing; the need of federal state, state or municipality of using premises for administrative purposes with requirement to provide the tenant an alternative dwelling; termination of subleases by the main tenant, if he needs the dwelling for his own or his relatives living purposes or if the living together with the subtenant is not acceptable any more; an additional important reason for termination has been included into the tenancy agreement in written form; maintenance works are technically impossible or lack of finance with requirement to provide the tenant an alternative dwelling; deconstruction/alteration of the building in the public interest with requirement to provide the tenant an alternative dwelling and if the tenant of a category D-dwelling refuses improvement works to raise the standard category C.

- **Must the landlord resort to court?**

The landlord is obliged to file a request of an order of termination by judicial decree ("gerichtliche Aufkündigung") to the District Court even for contracts where the MRG is not applicable.

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

After receiving the court order, the tenant can challenge it within four weeks and then a regular civil process with hearings of both parties and applicability of special procedural norms for tenancy law processes is started. Otherwise the court order will become final and enforceable. At the end of the civil process in first instance, the District court decides in a judgment whether the notice was justified or not.

Against a District Courts` decision the tenant has a right of appeal to the second instance, the Court of Appeal, within four weeks and in limited cases also a right of appeal to the third instance, the Supreme Court.

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

In case the MRG is not applicable to the tenancy agreement, contracts unlimited or limited in time may be terminated by the landlord by extraordinary notice. Important reasons for the extraordinary notice are the harmful use of the dwelling or arrears of rent.

In case the MRG is partially or fully applicable to the tenancy agreement, the landlord may – as already mentioned above - terminate contracts unlimited and limited in time only by extraordinary notice.

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

The tenant can challenge the court order within four weeks and then a regular civil process with hearings of both parties.

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

The eviction of the tenant can be requested by the landlord and the tenant has to pay rent for the additional time he stays within the dwelling.

4.3. Return of the deposit

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

In case the MRG is partially or not applicable to the tenancy agreement, the contractual partners are free to agree on any clause regarding deposits.

In case the MRG is fully applicable to the tenancy agreement, the landlord is obliged according to § 16b par 2 MRG to return the deposit (plus interest) or give back the bank book immediately after termination of the tenancy agreement, insofar the deposit is not used to cover justified claims of the landlord arising from the tenancy agreement.

- **What deductions can the landlord make from the security deposit?**

Again, in case the MRG is partially or not applicable to the tenancy agreement, the contractual partners are free to agree on any clause for deposits. Allowed uses of the deposit are subject to the individual tenancy contract.

In case the MRG is fully applicable to the tenancy agreement, the landlord may deduct an amount of money from the security deposit for any contractually prohibited or illegal use of the rented object (e.g. damages) or breach of contractual duties by the tenant.

- **In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?**

The landlord is not allowed to make any deduction for damages due to the ordinary use of furniture.

4.4. Adjudicating a dispute

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

In proceedings regarding rights in rem in immovable property or tenancies of immovable property, the ordinary court – so called “Bezirksgericht” (District Court) – has generally exclusive jurisdiction *rationae materiae*. *Rationae loci*, one of currently 128 District Courts in which the immovable property or dwelling is located, enforces tenancy law regardless of the actual domicile of the landlord or tenant.

A party has a right to appeal a District Court’s decision to the second instance, one of currently⁴ 16 “Landesgerichte” (Courts of Appeals) and in limited cases, also a right of appeal to the third instance, the Supreme Court.

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

Yes.

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

In some municipalities like Vienna, Graz or Salzburg, “Schlichtungsstellen” (arbitrational boards for housing) are authorized to settle specific tenancy law cases in first instance. In many cases a claim to an ordinary court in pending cases before the arbitrational board is lawful only if a minimum period of three months has passed. The decisions of the arbitrational boards are binding, and no appeal against their decisions is possible. However, a delegation of competence of decision to the District

⁴ 1.7.2013 (Quelle)

Court is possible for any party within four weeks after notification of the board's decision.

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?**

Most municipalities or non-profit municipal bodies allocate their dwellings using waiting lists and specific point systems for applicants. Apart from the date of application, actual living conditions of the applicants, number of people living together in one household, and age of the applicants (e.g. young family, elderly persons) and income are taken into account. Furthermore, priority allocation exists – for example for criminal victims, evicted citizens with urgent need for allocation and for handicapped people.

Limited-profit housing associations usually allocate their dwellings – if organized as cooperatives – to their members and use waiting lists of applicants. Often municipal authorities also have a right of allocation of citizens into dwellings of limited-profit housing associations as well.

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

Most tenants are obliged by tenancy agreement to conclude a household insurance (“Haushaltsversicherung”) for damages in relation to the interior parts of their rented dwellings and often are also obliged to prove the conclusion of these insurances at the time of the beginning of their tenancy agreements through presentation of a valid insurance policy to the landlord.

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

In procedures in front of arbitral boards, no legal fees are charged at all, and so only costs for own legal representation by a lawyer can occur. In trials before the regular civil courts, the legal fees and costs differ significantly among the various procedures, but tenants and/or landlords always can apply for legal aid (“Verfahrenshilfe”) if they are not able to pay the legal fees or costs for their representation without endangering their existence.

Additionally, district courts offer so called “Amtstage” (“office days”) once per week where legal council is provided by young lawyers (“Rechtspraktikanten”) under supervision of a judge. At these occasions, citizens also have the possibility to file requests for legal aid or can even file a lawsuit against another party orally. The Austrian bar association offers a service of so called “first legal council by a registered lawyer” free of charge once per week.

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

The author recommends tenants to contact the Austrian bar association, the “Österreichische Rechtsanwaltskammer” (<http://www.rechtsanwaelte.at/>) of the State where they live and ask for attorneys specialized in tenancy law.

Burgenland

Rechtsanwaltskammer Burgenland / Bar Association of Burgenland

Marktstraße 3, 7000 Eisenstadt
Tel.: +43 (0) 26 82/70 45 30
Fax: +43 (0) 26 82/70 45 31
e-mail: rak.bgld@aon.at

Carinthia / Kärnten

Rechtsanwaltskammer Kärnten / Bar Association of Carinthia

Theatergasse 4/I, 9020 Klagenfurt
Tel.: +43 (0) 4 63/51 24 25
Fax: +43 (0) 63/51 24 25-15
e-mail: kammer@rechtsanwaelte-kaernten.at
Internet: <http://www.rechtsanwaelte-kaernten.at>

Lower Austria / Niederösterreich

Rechtsanwaltskammer Niederösterreich / Bar Association of / Lower Austria

Andreas-Hofer-Straße 6, 3100 St. Pölten
Tel.: +43 (0) 27 42/71 6 50-0
Fax: +43 (0) 27 42/76 5 88
e-mail: office@raknoe.at
Internet: <http://www.raknoe.at>

Salzburg

Rechtsanwaltskammer Salzburg / Bar Association of Salzburg

Imbergstraße 31C, 5020 Salzburg
Tel.: +43 (0) 6 62/64 00 42
Fax: +43 (0) 6 62/64 04 28
e-mail: info@srak.at
Internet: <http://www.srak.at>

Styria / Steiermark

Rechtsanwaltskammer Steiermark / Bar Association of Styria

Salzamtsgasse 3/IV, 8010 Graz
Tel: +43 (0) 3 16/83 02 90-0
Fax: +43 (0) 3 16/82 97 30
e-mail: office@rakstmk.at
Internet: <http://www.rakstmk.at>

Tyrol / Tirol

Rechtsanwaltskammer Tirol / Bar Association of Tyrol

Meraner Straße 3/III, 6020 Innsbruck
Tel.: +43 (0) 5 12/58 70 67,
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e-mail: office@tiroler-rak.at
Internet: <http://www.tiroler-rak.at>

Upper Austria / Oberösterreich

Rechtsanwaltskammer Oberösterreich / Bar Association of Upper Austria

Gruberstraße 21, 4020 Linz
Tel.: +43 (0) 7 32/77 17 30
Fax: +43 (0) 7 32/77 17 30 85
e-mail: office@ooerak.or.at
Internet: <http://www.ooerak.at/>

Vorarlberg

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Marktplatz 11, 6800 Feldkirch
Tel.: +43 (0) 55 22/71 1 22
Fax: +43 (0) 55 22/71 1 22-11
e-mail: kammer@rechtsanwaelte-vorarlberg.at
Internet: www.rechtsanwaelte-vorarlberg.at

Vienna / Wien

Rechtsanwaltskammer Wien / Bar Association of Vienna

Ertlgasse 2/Ecke Rotenturmstraße, 1010 Wien

Tel. +43 (0) 1/533 27 18-0

Fax: +43 (0) 1/533 27 18-44

e-mail: kanzlei@rakwien.at

Internet: <http://www.rakwien.at>

Further general information in English language about tenancy law as well as an updated list of other housing authorities and advisory boards can be found online at <https://www.help.gv.at/>

BELGIUM

Tenant's Rights Brochure

Hafida Bounjoh, TU Delft

Team Leader: Hendrik Ploeger

National Supervisor: Maarten Dambre

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1. Introductory information

- **Introduction: The national rental market**
 - **Current supply and demand situation**

The special and complicating feature of Belgium is the fact that it has become a federal state quite recently, while responsibilities for housing were at different levels of government. Belgium consists of the Flemish Region, the Brussels Region and the Walloon Region. Since 1980 the Regions are responsible for social housing. The private rental sector falls within the scope of the federal state.

Since 1889 the central government's policy aim was to stimulate owner-occupation. Consequently, that sector has become the largest sector on the housing market, as Table 1.1 shows. Of the almost four million Belgian occupied dwellings in 2001, up from more than 3.5 million dwellings in 1991, the majority of dwellings are owner-occupied: almost 2.75 million in 2001, up from almost 2.5 million in 1991. Owner-occupation thus increased from circa 65% to almost 70% in ten years' time, while renting decreased from 35% to 31%. Country averages always conceal regional differences. In this case, the Brussels Region is "lagging behind" the national trend. It may be considered a well-known fact that rental dwellings generally are overrepresented in urban areas. The fact that the size of the Brussels rental sector decreased between 1991 (61%) and 2009 (55%) most likely must be ascribed to the emphasis in housing policy on home ownership.

More recent data than 2001 for all the categories in Table 1.1 and based on household data will be available in due course from the 2011 Census. Data from sources other than the Census report show slightly lower rates of home ownership than in 2001: 68% in 2007⁵, 65% in 2009⁶, and 68% in 2009⁷ (based on the share of population living in the different tenures). The most recent available data is for 2009, as shown in Table 1.1. The difference between the Flemish and the Walloon Region is five percentage points. As it is up from two percentage points in 1991 (but based on households), it may indicate that the rate of home ownership in Flanders is growing faster than in the Walloon Region.

⁵ Based on calculations with EU-SILC 2008 database reported on in: Marietta Haffner, Christian Lennartz & Kees Dol, 'Housing', in *Countries compared on public performance. A study of public sector performance in 28 countries. Appendices*, ed. Jedid-Jah Jonker (The Hague: The Netherlands Institute for Social Research, 2012a), 91.

⁶ Based on OECD Housing Market questionnaire reported on in: Dan Andrews, Aida Caldera Sánchez & Åsa Johansson, *Housing Markets and Structural Policies in OECD Countries*, OECD Economics Department Working Papers, No. 836 (no place of publication: OECD Publishing, 2011), 16.

⁷ Dol & Haffner, *Housing Statistics*, 64.

Table 1.1 Tenure structure: share of occupied owner-occupied and rented dwellings, in Belgium and the Administrative Regions (%), 1991 and 2001 (based on occupied dwellings population)⁸

	1991		2001		2009	
	Owner-occupation	Renting	Owner-occupation	Renting	Owner-occupation	Renting
Flemish Region	69	31	74	26	77	23
Walloon Region	67	33	70	30	72	28
Brussels Region	39	61	43	57	45	55
Belgium	65	35	70	31	72	28
Belgium, dwelling total	1,270,000*	2,400,000*	2,709,868	1,188,255	NA	NA

* Estimated from graph.

N/A = data not available

Based on number of households, it is the outright owners (households without a mortgage) that make up the largest tenure in Belgium (36%). The Walloon Region can be found exactly on the country-average, while it is higher for Flanders (39%) and much lower for Brussels (22%). With a Belgian average of 30% the group of home owners with a mortgage comes second (30%); again following a similar distribution across the regions: highest for Flanders (32%), closely followed by the Walloon Region (31%) and the Region of Brussels (17%).

Furthermore, given the urban context (see above), Brussels with 12% is the region with the largest share of renting with a public task (here called the rental tenure with a below-market rent; with 47% it is also the region with the largest share of private renting (the sector without a public task). Thus, the growth of home ownership has caused the rental sector to decline.

Table 1.2 shows data on the housing stock for both government levels for the years 1991 and 2001 pursuant to the national survey which was held. In this period the stock of occupied private dwellings increased 9%, more in the Flemish Region (9.6%) and the Walloon Region (9.5%), and less in the Brussels Region (3.7%). In the period 1981-2009 the total housing stock is estimated to have increased by about 40%.

Table 1.2 (Occupied) housing stock, in Belgium and the Administrative Regions, 1981, 1991, 2001, 2009

	Housing stock	Occupied private stock				Housing stock
	1981, 31 March ⁹	1991 ¹⁰	2001	2001 (%)	Development (%) 1991-2001	2009 ¹¹
Region of Flanders	1,961,481	2,141,557	2,348,025	58	9.6	NA*
Walloon Region	1,184,822	1,212,139	1,327,084	33	9.5	NA*
Region of Brussels	453,674	394,468	408,882	10.0	3.7	NA*
Belgium	3,599,977	3,748,164	4,083,991	100.0	9.0	5,043,000

*NA: Data not available

The normal tenure structure of renting versus owning is described in Section 1.2 (see also Summary

⁸ Calculation with EU-SILC database from: Sien Winters & Kristof Heylen, *Kwaliteit en betaalbaarheid van wonen: een vergelijking tussen de drie Belgische gewesten als case voor het testen van de samenhang tussen huisvestingssystemen en woonsituatie van huishoudens met een laag inkomen* (Leuven: Steunpunt Wonen, 2012), 4.

⁹ Boelhouwer & Van der Heijden, *Housing Systems in Europe: Part I. A Comparative Study of Housing Policy*, 85.

¹⁰ 1991 and 2001 from Vanneste, Thomas & Goosens, *Woning en woonomgeving*, 38. The statistics on occupied stock do not allow for determining the number of vacant dwellings, as can be observed in: Kees Dol & Marietta Haffner, *Housing Statistics in the European Union 2010* (The Hague: Ministry of the Interior and Kingdom Relations, 2010), 63.

¹¹ K. Dol, Kees & M. Haffner, *Housing Statistics in the European Union 2010*, The Hague: Ministry of the Interior and Kingdom Relations, 2010, 60.

table 1).

- **Main current problems of the national rental market from the perspective of tenants**
 - Finding an affordable rental dwelling in the private rental sector is difficult.
 - Shortage of social dwellings.
 - Potential tenants have to join a social housing waiting list, without getting the guarantee that a dwelling will be allocated.

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

In Belgium it is the landlord's nature that largely determines whether one can speak of social or private renting. If private persons or companies let dwellings, they belong to the private rental sector. If a registered or accredited social housing association lets dwellings, they are considered as social rental dwellings. The regional housing societies are responsible for the accreditation of the social landlords.

- **Private renting**

In the Flemish Region, private landlords with small portfolios dominate the rental market sector. On average, each private person or individual landlord let 2.2 dwellings in 2005, while 60% of them owned no more than one dwelling for renting. The self-employed are the biggest group of private person landlords at 46%.

Most private individual landlords (more than 70%) manage their dwellings themselves. The remainder make use of one of two types of agent or intermediary organization which operate on this market: the commercial real estate agents with a share of almost 29% and the social rental agencies that manage the remainder of the dwellings (about one percent). The latter dwellings are officially regarded as social rental dwellings and are discussed in the next section.

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

The regulatory tenure with a public task has been called social renting in Belgium. The main landlords will be the registered or accredited social housing associations. As explained in Section 1.4, they are called different names in the Administrative Regions:

- In the Flemish Region, they are called *sociale huisvestingsmaatschappij* (SHM). In total there are 102 active housing associations.
- In the Walloon Region the social landlords are called *Sociétés de Logement de Service Public* (SLSP). 68 (or 70) of this type of social landlords are active. They manage 103,000 dwellings, which is about one quarter of the housing stock in the Walloon Region. They house about 214,000 people, about six percent of the Walloon population. There are 32,000 tenants on the waiting list. New constructions amount to about 620 units per year.
- In Brussels the social landlords may also be called SHM or *Openbare Vastgoedmaatschappij* (OVM). Thirty-three OVMs are active in the Brussels Region. In total they owned 38,000 dwellings in 2009; the largest one renting out almost 3,600 dwellings; the smallest one owning 276 dwellings.

- **General recommendations to foreigners on how to find a rental home**

It is advisable for tenants to be assisted by a real estate agent. Only registered agents are permitted to act as intermediaries between tenants and landlords. Also, a prospective tenant should be aware that contracts may differ in period of time. Besides this, generally speaking, a tenancy contract can only be set aside by the landlord.

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

- Written contracts: Tenancy contracts with a duration of no longer than 9 years concerning dwellings used as the tenants’ primary residence must be registered at the registration office where the dwelling is located.
- Parties must attach an inventory of dwelling. This prevents legal discussion.
- The right to attach a parabolic antenna to the dwelling is still a discussion.
- Potential tenants paying a deposit without getting access to the rented dwelling.
- It is advisable to place the deposit on an interest-bearing bank account in the tenant’s name. This is a blocked account, and the tenant’s authorization is required to withdraw the money.

- **Important legal terms related to tenancy law (see Table 1.3)**

Table 1.3 Important legal terms related to tenancy law

<i>Brusselse Gewestelijke Huisvestingsmaatschappij</i>	Brussels Regional Housing Association
<i>Identificatie nummer Rijksregister</i>	National Register’s identification number
<i>Kaderbesluit sociale huur</i>	Frame work Social Rent
<i>Openbaar Centrum voor Maatschappelijk Welzijn</i>	The Public Centre for Social Welfare
<i>Plaatsbeschrijving</i>	Inventory
<i>Sociale huisvestingsmaatschappij</i>	Housing association
<i>Sociale verhuurkantoor</i>	Social Rental Agency
<i>Société Wallonne du Logement</i>	Walloon Society of Housing
<i>Woningkwaliteitsnormen</i>	Housing quality standards

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?**

The federal state has implemented two Acts to prevent discrimination: the Antidiscrimination Act and the Antiracism Act. These acts are only applicable for dwellings in the private tenancy sector which are made available to the general public. The Antidiscrimination Act prohibits discrimination based on age, sexual orientation, disability, religion or belief, marital status, birth, wealth, political opinion, trade union beliefs, language, current or future state of health, physical or genetic property, and social origin. The Antiracism Act prohibits discrimination based on nationality, a so-called race, skin colour, heritage or national of ethnic origin.

The holder of a uniform European Blue Card enjoys equal treatment with nationals of the Member State issuing the Blue Card, regarding access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing.

EU citizens who reside more than three months in Belgium no longer have to make an application for establishment and no longer need to be in possession of a Belgian residence permit (purple or blue card). Consequently, EU citizens and their family members have to be treated equally as Belgian citizens.

With respect to the regions it can be said that Flemish Housing Code and the Framework Social Rent (*Kaderbesluit Sociale huur*) include the obligation for the social landlord to implement an objective allocation system. In the Brussels Region, the Brussels Housing Code was amended in March 2009, which prohibits racism and discrimination. The Walloon Region has amended the 6 November 2008 *Decreet ter bestrijding van bepaalde vormen van discriminatie*, which abandons racism and discrimination.

- **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?**

Information concerning the name, surname, and the number of persons who will live in the dwelling can be gathered lawfully. Questions about the tenant's solvency (e.g. payslips and other income documents) are allowed as long as the information is used only to check whether the prospective tenant is solvent. The handover of the document is not allowed, as the landlords check is merely to conclude whether the prospective tenant is solvent. Questions concerning tenant's handicap or health status are not allowed, unless the prospective tenant has given his permission in writing (which always is revocable) and the permission is necessary in order to be granted a dwelling which is adjusted for handicaps or tenants with health issues. Collecting data about ethnic descent, place of birth, date of birth and nationality is a priori discrimination according to the Antidiscrimination Act. The tenant does not have

to answer these questions.

- **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)?**

The costs for the provided services may not be charged to the tenant, unless the tenant has assigned the agent to act as an intermediary. Moreover, the agent may receive fees only from his client, unless stipulated otherwise.

- **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)?**

Checks on payslips and other income documents are allowed as long as the information is used only to check whether the prospective tenant is solvent. The handover of the document is not justified, as the landlords check is merely to conclude whether the prospective tenant is solvent. A tenant does not have to provide a certificate of good conduct. Furthermore, a check on the tenant's National Register's identification number is prohibited.

With respect to the social tenancy sector, it can be said that each region has its own regulations and conditions concerning the registration and allocation of social dwellings. A candidate-tenant must meet additional requirements in order to get registered and to get a dwelling allocated, e.g., an age and income check. Therefore, these checks are allowed.

- **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?**

Rental agencies can find rental property according to the client's wishes by doing a so-called 'sign hunting'. The agency checks advertisements in newspapers, magazines, internet and other available recourses and draws up an inventory of the available housing stock. Furthermore, it will provide their clients a list of available dwellings and contact details. The client has to contact the landowner and do all the negotiations by himself.

Registered agents provide other types of services, such as the managing the property and collecting the rent for the landlord. In order to do so, parties must conclude a contract.

Besides the above mentioned options, a tenant can also apply to a social rental agency. Social Rental Agencies aim to create an alternative to market rent for vulnerable tenants who are unable to find a social rental dwelling. They do not act as intermediaries or as rental agents or real estate agents. The prospective tenant must meet several conditions in order to be entitled to a dwelling and has to take a vesting into consideration.

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

landlords/tenants?

Blacklists fall under the Privacy Act's scope and must comply with this Act. Such lists harm tenant's interests. The constitutional right to a decent dwelling could be damaged by this list. A blacklist may only be drawn up, if it meets the Privacy Act's conditions.

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)?**

Only those who are legally competent may conclude contracts. To conclude a valid tenancy contract both parties' declaration of intention concerning the dwelling and the rent payment is required. The contract must be in writing. However, it should be noted that oral contracts are also valid. There is no fee for the conclusion of tenancy contracts. It should be noted that written contracts must be registered by the landlord within two months at the local office of the Receiver of Registrations (Ministry of Finance) by submitting a signed contract or a copy of it. Within these two months, registration is free of charge. The contract can be submitted via internet, e-mail or ordinary post.

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

The following data must be included in the contract:

- the landlord's and tenant's identity;
- the starting date;
- description of the spaces in the rented dwelling;
- the rent.

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

Four types of private tenancy contracts can be concluded.

Firstly, standard contracts can be concluded for a period of nine years. Oral agreements are also considered to be concluded for a period nine years. The same applies for contracts with a duration between three and nine years or which do not state a duration and for contracts concluded after 31 May 1997 for an indefinite period. Oral agreements concluded before 28 February 1991 follow the same regime as the aforementioned contracts.

Secondly, parties can conclude a contract for a period of three years or less.

Thirdly, tenancy contracts can also be concluded for a period longer than nine years, however, no longer than 99 years. These contracts must be in writing.

The fourth exception to the general rule is that, as of 1 June 1997, contracts can be concluded for the duration of the tenant's life. The contract ends by law when the tenant dies. The applicable provisions are mandatory.

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

The contract should state the rent, when it is due and how it should be paid.

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

The tenant must, by nature of the contract and without need of any particular stipulation, maintain the dwelling in good order so that it can serve the use for which it has been let.

What is the landlord's responsibility?

The basic rule is that the landlord must deliver the dwelling in good repair or character. During the contract, he is responsible for damage resulting from normal wear and tear, normal use, old age, major repairs, major maintenance, force majeure and hidden defects. Furthermore, he must make all the repairs which may become necessary other than those incumbent upon the tenant. Finally, keeping the wells and cesspools clean is also the landlord's responsibility.

What is the tenant's responsibility?

The tenant is responsible for repairs and day-to-day and routine maintenance, which are not major repairs or major maintenance. Furthermore, he is not responsible for damage resulting from normal wear and tear, normal use, and old age. Damage caused by the tenant, his family members or visitors must also be repaired by him. The same applies for damages as result of a fire, unless it is force majeure.

Furthermore, the tenant is responsible for the repairs regarding:

- fireplaces, back-plates, mantelpieces and mantelshelves;
- the plastering of the bottom of walls of flats and other places of dwelling, to the height of one metre;
- pavements and tiles of rooms, where only a few are broken;
- panes of glass, unless they are broken by hail, or other accidents, extraordinary and by force majeure, for which a tenant may not be made responsible; and
- doors, windows, boards for partitioning or closing shops, hinges, bolts and locks.

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

It is not expected from the landlord to provide furnishing and/or major appliances, unless otherwise stipulated. However, the landlord must provide his tenant a suitable dwelling, which means that the dwelling must meet the basic quality requirements of safety, health and habitability.

The tenant is obliged to sufficiently furnish the rented dwelling. It serves as a security for the rent payment. This obligation lapses, if the tenant pays the full rent or the

entire rental period in advance or pays it over the course of the lease. The landlord may also seize the furniture in the dwelling to ensure the rent's payment. The seizing is allowed without a court's leave.

- **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)?**

The description of the dwelling is detailed in the tenancy contract itself. In case wrong data is provided by the landlord, he can be held liable for the consequences. Parties must make a detailed inventory to avoid future liability for losses and deterioration.

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

The following usual contractual clauses are relevant to the tenant:

- the clause which states that the dwelling is used by the tenant as his primary resident;
- the clause on the payment of rent and when it is due;
- the clause concerning the deposits;
- the clause describing under what circumstances the landlord may enter the dwelling;
- the clause concerning the responsibility of repairs;
- the clause concerning keeping animals.

- **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.)?**

The landlord must respect the tenant's family and private life and may not interfere. Therefore, unless parties have contracted otherwise, he is free to decide with whom he will share his dwelling. However, the tenant is restricted, as his landlord may object if objective conditions justify so, e.g., overcrowding or subletting.

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

The tenant must use the lease property as his main residence for himself and his family. If the tenant does not comply with the obligation to reside in the dwelling himself, he will be in default. The landlord may demand from the justice of peace that the contract will be set aside.

- **Is a change of parties legal in the following cases**
 - **divorce (and equivalents such as separation of non-married**

and same sex couples)

Consequences if spouses divorce

Both spouses have signed the tenancy contract

In case both spouses have signed the tenancy contract, they are both tenants. If it is their family dwelling, both spouses are, even after a divorce, still jointly and separately liable. A notice to terminate the contract, given by one spouses, is null and invalid. Both parties jointly must give notice to terminate the contract.

The departing spouse has signed the tenancy contract

Also in this case, the same principle applies as describes above. Both spouses are tenants. They can only jointly give notice to terminate the contract.

Legal consequences if legal co-habitees separate

Legal co-habitees and married couples are by law treated equally.

Legal consequences if the spouses actual separate

Both spouses have signed the tenancy contract

If one spouse leaves the dwelling, he still remains contract party and, therefore, still is jointly and severally liable with his the spouse who stays behind. This means that only both spouses can give notice to terminate the contract. There are authors claiming that it is possible to give notice without the other spouse's cooperation.

The actual departing spouse has signed the tenancy contract

Another scenario is that the departing spouse has signed the tenancy contract and leaves the dwelling. In that case, the dwelling can no longer be considered as the principal residence. The spouse who remains behind may only reside in the dwelling, if the landlord explicitly agrees in writing that the tenancy contract is transferred to him.

Legal consequences for unmarried couples living together

The protective provisions do not apply to unmarried couples living together. If there are two tenants and one has left the dwelling, he still is jointly and severally liable.

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

If a landlord rents out a separate apartment in a building to a student, the other students do not have the right to decide who will replace the student who moves out of his apartment. However, if a student rents a room and he is allowed to sublet or transfer a part of the tenancy contract, he is entitled to decide who replaces the student who moves out. It is not unlikely that parties have agreed that sharing the dwelling is not allowed without the landlord's permission. Such a stipulation is valid, and the landlord may refuse the new student.

- **death of tenant;**

Tenancy contracts are not terminated by the landlord's death. The landlord is considered to have stipulated for himself and for his heirs and assigns, unless the parties have agreed otherwise or it results from the nature of the contract. It should be noted that Flemish and Brussels social tenancy contracts will be terminated by operation of law when the last tenant dies.

- **bankruptcy of the landlord;**

Generally, a landlord's bankruptcy does not terminate the tenancy agreement by law. However, it will terminate by law, if either the bankruptcy is a condition subsequent or the contract has an intuited personae-character. This means that the identity of one of the parties is of overriding importance. In case of a bankruptcy, the bankruptcy trustee is, under conditions, entitled to terminate contracts which were concluded before the adjudication order was issued.

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

In case a private tenancy contract is concluded and the tenant uses the dwelling as his principle residence, the tenant is not allowed to sublet the dwelling completely. The tenant may sublet a part of it under the conditions that the remainder part of the dwelling remains assigned as his principal residence. The landlord has to grant him permission, which can be also given tacitly or afterwards. The tenant may in no case sublet the dwelling or a part of it in case a social tenancy contract is concluded.

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

Whether the change of landlord through sale also changes the tenant's position, depends on the questions whether the tenancy contract is registered and therefore has a 'fixed date'.

The position of the tenant who has a contract with a fixed date does not change if the dwelling is transferred to the buyer. The buyer cannot evict the tenant, even if this right is reserved in the tenancy contract.

The consequences for a tenant with a contract without a fixed date depend on whether he resides longer or shorter than 6 months in the rented dwelling. If the tenant resides longer than 6 months, the buyer should respect the tenancy contract. Nevertheless, he has the right to terminate it, if (a) he takes a notice of three months into consideration and (b) he will reside in the dwelling himself. The three months' notice must be served to the tenant within three months after the execution of the authentic deed of sale. The result of non-compliance with this deadline is that the buyer must respect the tenancy contract.

If the tenant resides less than 6 month in his dwelling, he is less fortunate. The buyer can terminate the contract without a reason and without owing him compensation.

- **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?**

If no agreement has been made, the tenant should bear only the costs and expenses associated with a service or performance which the tenant takes advantage of, such as heating, electricity and gas. He may conclude an individual contract with the suppliers.

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

The landlord may charge the tenant the heating, electricity and gas. Parties may decide that the tenant concludes an individual contract with the suppliers.

The landlord may also provide this service by concluding a contract and having the tenant pay him. In this case, the tenant should only pay the actually incurred expenses. Parties may agree a payment of an irrevocable fixed amount and this may differ from the actually incurred expenses. If that is the case, parties should take into account that unilateral adjustment is not allowed. They may request from the justice of the peace a revision of the fixed amount or conversion in the actually incurred expenses. Furthermore, each year the landlord must provide the tenant a detailed annual settlement.

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

Only the taxes concerning the use of property, such as waste collection, antipollution tax may be charged from the tenant.

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

There is a separate regulation for apartment buildings, in case the landlord provides the heating, electricity and gas. If the management is in one hand and the apartment building has more than one apartment, it is sufficient that the cost calculations are presented and that the individually invoices are deposited for inspection. This includes providing a copy, if requested.

- **Deposits and additional guarantees**

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

If the tenant guarantees a deposit in cash, a maximum deposit of two months' rent is allowed, provided that it is paid once in full. He may also have his bank issue a bank guarantee, which may not exceed the amount of three month's rent.

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

There are three possibilities for the landlord to manage the deposit.

- Deposit in cash

A payment in cash can be placed in an interest-bearing bank account in the tenant's name. This is a blocked account, and the tenant's authorization is required in order to withdraw the money. If the landlord receives the deposit in cash and he refuses to deposit it in to the account, he owes the tenant an average market rate of interest. Moreover, if he remains in default after receiving notice, he must pay the tenant the statutory interest as of the notice date.

- Issuance of a bank guarantee

The tenant must pay the bank instalments for a maximum of three years. In return, the bank provides the landlord a guarantee letter. On the one hand, the bank will not receive any interest from the tenant. On the other hand, the bank will only have to pay the tenant the interest from the day the deposit is fully paid.

- Issuance of a bank guarantee with the assistance of OCMW

Tenants who have access to social assistance can be assisted by the local OCMW i.e. the Public Centre for Social Welfare. The bank can issue a bank guarantee through the intermediary of the OCMW, and it will stand surety for the tenant. Also in this case, the deposit may equal a maximum of three months' rent.

These deposits can only be resealed after the contract has ended under condition that both parties agree or by a court verdict.

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

A deposit in kind may also be agreed upon by parties. The above described legal limitations will then not be applicable. This means that even jewelry, shares, gold, etc. can be handed over to the landlord. Moreover, there is no maximum deposit amount to take into consideration.

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

The general rule of contractual freedom applies here, and parties may decide which expenses are covered.

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)?

If it is clear that it the landlord is responsible for the defects, he is obliged to repair them or pay the costs involved.

The landlord has the obligation to warrant his tenant against third parties' legal acts. He is not obliged to warrant the tenant against defects which third parties cause to his quiet enjoyment under a tenancy contract. Nevertheless, the tenant may proceed against them in his own name. This means that noise from a building site in front of the dwelling, noisy neighbours or damages caused by third parties do not qualify as defects.

With respect to occupation of third parties and squatters, the landlord has to warrant his tenant only in case the third party claims to have a real right or a personal right with respect to the dwelling. If this is not the case, the landlord is not required to guarantee the tenant against disturbance which third persons cause by acts of violence against his enjoyment.

- **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)**

In case of a defect, the tenant must immediately notify the landlord. As of that moment, the tenant has several legal options:

- a) he may claim that the contract will be set aside including compensation,
- b) he can claim rent reduction,
- c) he can claim the repair of the dwelling at the expense of the landlord, or
- d) he can claim other compensation.

- **Repairs of the dwelling**

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

The basic rule is that the landlord must deliver the dwelling in good repair or whatever character. During the contract, he is responsible for damage resulting from normal wear and tear, normal use, old age, major repairs, major maintenance, force majeure and hidden defects. Furthermore, he must, make all the repairs which may become necessary other than those incumbent upon the tenant. Finally, keeping the wells and cesspools clean is also the landlord's responsibility.

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

The tenant can claim the repair of the dwelling at the expense of the landlord, or make the repairs himself and claim rent reduction.

- **Alterations of the dwelling**

- **Is the tenant allowed to make other changes to the dwelling?**

Alterations not leading to a change in the dwelling structure, such as decorative embellishment, may be executed by the tenant.

- **In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

A landlord cannot forbid the tenant to make reasonable adjustments to the dwelling which are needed to accommodate a handicap. The landlord's refusal to make reasonable adjustments is considered to be discrimination of persons with disabilities. However, there is no discrimination if the adjustment to make the dwelling accessible for wheelchair users is an unreasonable burden for the landlord.

- **Affixing antennas and dishes**

Contractual clauses may prohibit the tenants from erecting a (parabolic) antenna. However, under European law, it is doubtful that landlords can invoke these clauses.

The European Court of Human Rights ruled that a country may breach an individual's right to freedom of information, if they are constrained from having a satellite dish on their property. A contractual clause, which prohibits erecting satellite antennas, may be an unlawful breach of the tenant's right of freedom to receive information. The right to have a satellite dish to receive free information may be limited, but only on very serious grounds of public interest. The interests of the tenant and landlord will have to be weighed up. Furthermore, the landlord's restriction should be proportionate in relation to the tenant's interests.

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

Repainting the walls is allowed, unless the parties have agreed otherwise. Furthermore, the tenant is allowed to drill the walls, as long as this does not lead to a change in the dwelling structure.

- **Uses of the dwelling**

- **Are the following uses allowed or prohibited?**

- **keeping domestic animals**

A prohibition from keeping too many or dangerous pets or pets which cause damage or inconvenience is allowed. Parties may stipulate otherwise. Nevertheless, landlords have to make sure that the tenancy contract does not violate the tenant's private and family life. It can be said that a general prohibition to keep pets is disproportionate. However, a limited prohibition is allowed. The justice of the peace decides on a case-by-case basis whether a contract can be terminated when a tenant violates the ban on keeping pets (e.g., a dog or a cat).

- **producing smells**

A use clause can be found in nearly every standard tenancy contract. It states the permitted and prohibited uses of the dwelling in a general or more specific ways.

Tenants who do not abide by the agreement are in breach of contract. Tenants who cause odour nuisance can be held liable to those who suffer from the nuisance. The landlord cannot be added as a third party in a legal action.

- **receiving guests over night**

The right to receive guests is a part of the tenant's private and family life. He may receive as many guests as he wishes, also over-night.

- **fixing pamphlets outside**

Right to freedom of expression falls under the scope of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Belgian Constitution. Nevertheless, it is subject to certain restrictions, such as the interests of national security and discrimination regulations.

- **small-scale commercial activity**

The tenant must use the dwelling with due care and according to the purposes intended by the lease, or according to the circumstances in the absence of an agreement. The tenant may not, without the landlord's consent, change the intended purpose. The landlord's consent can be given tacitly, but the mere fact that the landlord does not respond, does not imply that he has given his consent. An explicit stipulation of the purpose should be applied strictly. If the tenant uses the dwelling in another way than it was intended for, the landlord may, according to the circumstances, have the lease terminated by the justice of peace. It is not required that the landlord has suffered damage.

3.2. Landlord's rights

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

If a contract is governed by private tenancy law, the rent, with respect to short-term (maximum duration of three years) contracts, is controlled. This restriction is to prevent that new short-term tenancy contracts are concluded systematically between the same parties or with another tenant, each time at a higher rent.

Parties are allowed to extend a short-term contract once under the same conditions. The rent may only be increased with the statutory rent indexation, unless:

- the rental value of the dwelling has increased or decreased with at least 20% due to new circumstances, or
- the rental value has increased with at least 10% due to performed work, such as a renovation. The Court of Cassation ruled that this is mandatory law.

If parties do not respect these limitations, the tenancy contract is considered not to be extended under the same conditions. Consequently, by law, the short-term contract will be converted into a standard contract (nine years contract). The

commencement date equals the commencement date of the first short-term contract. The aforementioned consequences apply also in the following situations:

- if the contract is extended a second time;
- if the same parties conclude a different contract;
- if the same parties conclude a second contract under different conditions;
- if parties have not given a notice in time to terminate the first or second contract;
- if the contract duration is more than three years;
- despite a valid notice, the tenant continues to live in the dwelling, without the landlord opposing;
- if the second contract is concluded under (more or less) the same conditions, but with another tenant.

In all the aforementioned situations, the rent is blocked for nine years.

Statutory rent indexation is allowed, even if parties have not concluded this. After the nine years period, parties are free to conclude a new rent. This has to be done in writing.

If a social tenancy contract is concluded, it is advisable to contract the social landlord, as the rent control regulations on regional levels differ from the private tenancy law. Each region has its own complex regulation concerning rent control.

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

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

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

There is no distinction between open-ended contracts and contracts limited in time. The rent may be indexed every year by the landlord. The contract does not have to include an explicit provision. An automatic indexation is not allowed. There is no automatic rent increase.

In case a social tenancy contract is concluded, it is advisable to contact the social landlord, as each region has its own system for increasing or decreasing the rent.

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

Landlord and tenant may freely decide what the rent will be, and there is no orientation with respect to the market rent. The Flemish Region has developed a tool to help the landlord and tenant determine a rent price for dwellings in the Flanders Region. This tool can be found on <https://www.woninghuurprijzen.be/>

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

The possibility to index the rent should be requested in writing by the landlord and it has a retroactive effect limited to three months. This means that the landlord's

request may be done after the date on which the rent can be indexed, but it will only have effect for the last three months. Rent will be time-barred after one year. The time limit will begin on the day on which the request has been sent to the tenant.

The new rent can be calculated as follows:

$$\text{New rent} = \frac{(\text{initial price of the contract} \times \text{consumer price index})}{\text{beginning consumer price index}}$$

A website maintained by the Belgium government offers a calculator in order to determine the new rent in an easy way.

http://statbel.fgov.be/en/statistics/figures/economy/consumer_price_index/rent_calculator/

It should be noted that the initial rent is the rent which was agreed on in the first contract and it may not include other costs and charges.

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

The landlord is obliged to provide the tenant the peaceful enjoyment of the dwelling for the duration of the contract. Therefore, the landlord is not allowed to enter the dwelling at any moment without the tenant's permission to, e.g., check whether urgent work has to be carried out or whether the tenant complies with the designated use of the dwelling. This right elaborates on the tenant's fundamental right to privacy and the fundamental right of inviolability of the home.

In some situations, the landlord has the right to enter the rented dwelling, for example to draw up a detailed inventory. If, during the lease, the dwelling needs repairs and these cannot be delayed, the tenant must tolerate them. Even if they cause inconvenience to him and they deprive him of the use of a part of the dwelling while the repairs are carried out. However, if such repairs last more than forty days, the rent will be diminished in proportion to the time and to the part of the dwelling of which he was deprived. Furthermore, the landlord may enter the dwelling with a prospective tenant or buyer, but only if the contract provides this option. If this matter is not arranged, it is the justice of the peace who decides.

Obviously, in all these cases, the landlord has to inform his tenant about the intended visits. This also applies in cases the landlord has reserved this right in the tenancy contracts (although this is called into question in the literature).

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

There are several opinions concerning the question whether a landlord is allowed to keep a set of keys of the rented dwelling. On the one hand, it is said that he may not keep a set of keys without the tenant's permission. On the other, if he may keep a set of keys, he may not enter the dwelling without the tenant's permission. The tenant may not refuse his permission on unreasonable grounds.

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

Locking a tenant out of the rented dwelling is not allowed.

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

A landlord may seize the furniture in the dwelling to ensure the rent payment. The seizing is allowed without a court's leave.

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?**

Tenancy contracts are fixed-term contracts, and this type of contract is in principle non-terminable, unless it is regulated by law or parties have agreed otherwise. The term and deadlines which must be respected are described below.

- **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 party towards whom the engagement has not been executed has the choice either to force the other to execute the engagement, if this is possible, or to claim damages. Rescission must be sought at law, and the defendant may be granted a delay according to the circumstances. An express clause to rescind is considered not written. Nevertheless, parties are allowed to agree that the tenant, the landlord or both, may rescind the contract in certain events, (e.g., a diplomat clause meaning that in case the tenant will be reassigned, a shorter notice period applies).

In case the dwelling is in a bad state the tenant may request to court to terminate the contract or claim damages.

If, during the period of the contract, the dwelling is completely destroyed by a fortuitous event, the contract is terminated as a matter of law. If it is destroyed partly, the tenant may, according to the circumstances, demand either a diminution of the rent or the termination of the contract itself. Neither case gives rise to indemnification. The same rules apply if the government decides to expropriation for public use.

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

The law describes if and under which conditions a private tenancy contract can be terminated or terminated early.

There are four types of tenancy contracts under private tenancy law. Each has its own regime when it comes to termination or early termination.

1. Early termination of a standard contract (nine years)

The tenant can terminate the contract at any time during the contract period with a notice period of three months. The tenant must pay the landlord a fixed compensation, if he ends the contract during the first three years period. The following fixed compensations are applicable:

- three months' rent, if the contract ends during the first year of the contract;
- two months' rent, if the contract ends during the second year of the contract;
- one months' rent, if the contract ends during the third year of the contract.

However, if the tenancy contract is still not registered within two months after closing the contract, the tenant can terminate the contract at any moment, without a notice period or paying a fixed compensation.

Furthermore, the landlord has no right to a fixed compensation, if the notice period ends on the last day of the third year of the tenancy contract. The same is applicable in case the tenant terminates the contract after the third year. Moreover, no compensation has to be paid in case the parties mutually agree to terminate the contract.

The tenant's statutory notice options are mandatory. Stipulations which are in conflict with mandatory provisions have no effect.

2. Early termination of a short-term contract

Parties do not have a unilateral right to early terminate a short term contract. However, the case law accepts a contractual stipulation concerning early termination in favour of the tenant. Stipulations which are in the landlord's favour are void.

3. Early termination of a long-term contract (longer than nine years)

The tenant can terminate the contract at any time during the contract period with a notice period of three months. But he must pay the landlord a fixed compensation, if he ends the contract during the first three years period. The fixed compensations are:

- three months' rent, if the contract ends during the first year of the contract
- two months' rent, if the contract ends during the second year of the contract
- one months' rent, if the contract ends during the third year of the contract.

Generally speaking, a contract for the duration of the tenant's life terminates when the tenant dies. The tenant may always terminate this contract at any moment, even if it is not stipulated in the contract itself. The termination is subject to three months' notice.

4. Social tenancy contract

The regulation concerning termination and early termination in social tenancy law differs from private tenancy law regulations. Each region has its own regulation.

Therefore it is recommended to contact the social landlord for the specific rules on this subject.

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 (early) termination of a private tenancy contract for the duration of the tenant's life by the landlord is only possible if it is stipulated in the contract.

- **Must the landlord resort to court?**

The landlord does not have to resort to court.

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

Private tenancy contracts

The tenant has, in exceptional and difficult circumstances, a certain statutory prolongation right to extend the tenancy contract for an additional period of time. This is called the "social clause". Examples of such circumstances are serious illness, old age, the death of a next of kin, and pregnancy. He can claim this right in any case in which the landlord has given notice to (early) terminate the tenancy contract.

The tenant must request the landlord, by registered letter, to renew the contract not later than one month before the expiry of the contract. Non-compliance with the aforementioned term entails nullity. The tenant may also request a contract extension if he has given notice to terminate the tenancy contract. Moreover, the tenant's request can also be done in case the dwelling has been transferred to a new owner or the landlords' heirs or beneficiaries.

In case the landlord grants his permission, parties can agree upon the duration of the extended contract. In case the landlord refuses, the justice of the peace must decide. Both parties' interests and their age have to be taken into consideration. Renewal for an indefinite period is not allowed.

If the judge extends the existing contract, it will be done under the same contractual conditions, except for the conditions which are altered by court judgement. The judge may grant the landlord compensation, in case the contract will be extended. The contract terminates without prior notice, and a short-term contract (*three years or less*) will not be converted into a standard contract (*nine years*). The landlord has to take into account that, if at the expiration of a written tenancy contract, the tenant remains in the dwelling and is left in possession, a new tenancy contract arises whose effect is regulated by the same conditions as the previous contract.

Social tenancy contracts

The regulation in social tenancy law differs from private tenancy law. Therefore it is recommended to contact the social landlord for the specific rules on this subject.

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

Private tenancy contracts

Termination by landlord: early termination of a standard privacy contract (nine years)

The landlord has three options to early terminate a standard contract. These are further detailed below.

Early termination by landlord: for one's own or his family's use

The landlord may terminate the contract early, if he wishes to reside in the dwelling or have it occupied by his family. This includes:

- The landlord's children, (great-) grandchildren, adopted children, parents, (great-) grandparents, brothers, sisters, uncles, aunts, cousins, nephews and nieces.
- The landlord's spouse, his/hers spouse's children, (great-) grandchildren, adopted children, parents, (great-) grandparents, brothers, sisters, uncles, aunts, cousins, nephews and nieces.

Early termination by landlord: building activities

The second possibility to terminate a private tenancy contract early is if the landlord wishes to refurbish, rebuild and/or reconstruct (a part of) the dwelling.

The early termination is possible at the end of the first and second three-year period, is subject to 6 months' notice, and must be in writing.

Early termination by landlord: without stating reasons

The third and last option for the landlord to terminate a private tenancy contract early does not require stated reasons. This is allowed at the end of the first and second three-year period. The landlord has to give a 6 months' notice.

Unlike the above two options to terminate a contract early without paying compensation, the landlord must compensate the tenant:

- nine months' rent if the contract period ends at three years, and
- six months' rent if the contract period ends at six years.

For the sake of clarity, no compensation is due if the contract ends after the nine-year period.

It should be noted that parties may agree to exclude or restrict the right to early termination.

Short-term private tenancy contract

Early termination of a short-term private tenancy contract is excluded by law.

Long-term private tenancy contract (longer than nine years)

The options to terminate a long-term private tenancy contract early are the same as the termination options for standard private tenancy contracts (nine years contracts).

Private tenancy contract for the duration of the tenant's life

The (early) termination of a private tenancy contract for the duration of the tenant's life by the landlord is only possible if it is stipulated in the contract.

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

For this question reference is made to “*Are there any defences available for the tenant against an eviction?*”

- **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 such cases, the landlord can start an eviction procedure with the court of justice.

4.3. Return of the deposit

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

The parties may agree on this subject. If not, the landlord must return the deposit within a reasonable time. The tenant has to send a default notice, after which the landlord will be in default. The deposit, which is placed in an interest-bearing bank account, can be paid to the tenant only if both parties agree.

- **What deductions can the landlord make from the security deposit?**

The deposit may be used to repair damage beyond normal tear and wear or to restore personal property other than because of normal wear and tear, such as a broken key. It may also be used in case the tenant is in breach of contract.

- **In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?**

The deposit may be used to restore personal property other than because of normal wear and tear.

4.4. Adjudicating a dispute

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

The forum for tenancy cases is the justice of the peace court is a judicial sub-district; it is the justice of the peace who has competence over tenancy disputes, regardless of the amount.

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

All claims in matters of tenancy law fall within the jurisdiction of the justice of the peace court of the place where the dwelling is located, regardless of the amount of the claim. The justice of the peace court is a judicial sub-district; the justice of peace has competence over tenancy disputes, regardless of the amount.

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

Although out-of-court settlements are encouraged, as of 1 January 2003 there is no compulsory mechanism of conciliation or alternative dispute resolution. Parties may even well decide to have their dispute settled by means of mediation or arbitration. The same procedure applies for private and social tenancy contracts.

Social tenancy contracts

Flemish Region: Internal complaint handling

Besides bringing an action before the justice of peace, tenants in the Flemish Region can also file a formal complaint against their social landlord. The social landlord must handle the complaint within 45 calendar days. It has to notify the social tenant in writing about the findings of the investigation pursuant to the complaint and the reasons for its findings. The social tenant has to be notified, in case the complaint can be lodged with the Flemish Ombudsman Service or with another agency.

Flemish Region: External complaint handling

The Flemish Ombudsman Service examines the functioning of the administrative authorities of the Flemish Region.

Social Housing Supervisor

The Flemish housing code described in which cases social tenants can make objections with the *Social Housing Supervisor against* social landlord's decisions – for example, the decisions concerning the allocation of a dwelling and the decision to refuse a candidate-tenant.

Brussels Region

In Brussels social tenants can make objections to the allocation of housing. But it has no *Ombudsman Service*, such as the Flemish *Ombudsman Service*, where citizens can submit their complaints.

Walloon Region

In 2011 the Walloon Region introduced the “service de médiation” for anyone who has a dispute with a Walloon authority. This institution can be compared with the Flemish Ombudsman Service.

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?**

In order to rent a social dwelling, the tenant must subscribe to an accredited social housing landlord. A dwelling can be allocated if the tenant meets certain conditions with respect to e.g., his age, income, composition of the family and assets.

In Flanders, a tenant can also subscribe to a Social Rental Agency. Social Rental Agencies aim to create an alternative to market rent for vulnerable tenants who are unable to find a social rental dwelling. They do not act as intermediaries or as rental agents or real estate agents. The prospective tenant must meet several conditions in order to be entitled to a dwelling and has to take a vesting into consideration.

On the one hand, a social rental agency acts as tenant if a contract is concluded with a landlord. On the other hand, the agency itself then acts as a landlord if the dwelling is thereafter rented out to a tenant. This tenancy contract is governed by social tenancy law.

People living in rented accommodation in Flanders can apply for housing benefits. The application must be sent to ‘*Wonen-Vlaanderen*’ Agency.

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

It is advisable to conclude an insurance that covers legal expenses. This insurance covers the judicial and extrajudicial litigation costs, the cost of lawyers, bailiffs, experts, mediators, and implementation. The premium is limited to € 144 per year with a tax benefit (exemption from tax which the government normally raises from insurance contracts).

The Minister of Justice and Minister of Consumer Affairs introduced the ‘Insurance legal aid contract’. This guarantees the free choice of a lawyer in case a judicial or administrative proceeding is initiated or if a conflict arises between insurer and insured. Furthermore, it guarantees that the insured has the right to choose a lawyer in case of disagreement between the insurer and the insured.

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

In Belgium, the right to legal aid is a constitutional right and laid down in the Belgian Constitution. It is the legislators aim to enable citizens to defend their legitimate interests. To guarantee this right, the Belgian Constitution expressly instructed the legislature to take the necessary measures to meet this aim.

Nevertheless, this does not imply that the legislature itself should provide for help. It also does not imply that the assistance should be free of charge. However, for those who have insufficient income, the government must bear the costs associated with the conduct of legal proceedings.

To ensure that the social right of legal aid has a broad range, the legislator has developed several options, which are described below.

1. First inquiry

The main task of the 'first inquiry' is to inform citizens concerning legal questions and if necessary refer them to a specialized body or organization. The first inquiry is organized in all houses of justice by legal assistance. It is free of charge and anonymous.

2. Primary assistance: first legal advice

Lawyers provide primary legal assistance in the form of practical and legal information. They can initiate legal opinion or refer to a specialized body or organization. This assistance is free of charge.

3. Secondary legal assistance: advocate's assistance

Secondary legal assistance is provided to an individual in the form of a detailed legal advice or assistance, which can also be in the context of a procedure, or assistance in proceedings including the representation. The secondary legal assistance is free or partially free for people who meet certain conditions.

4. Legal aid by the government: exception of payment of legal costs

The government provides legal aid to those who do not have the necessary income. It exempts persons seeking assistance for the costs of judicial or extrajudicial proceedings, e.g., registration costs and costs concerning bailiffs and experts.

www.rechtenverkenner.be provides an online overview of the social rights of the people living in the Flemish Region. It shows a distinction between social rights on federal, regional, provincial and municipal level.

5. Legal expenses insurance

The legal expenses insurance enables access to law and justice for all strata of the population. This insurance covers the judicial and extrajudicial litigation costs, the cost of lawyers, bailiffs, experts, mediators, and implementation. The premium is limited to € 144 per year with a tax benefit (exemption from tax which the government normally raises from insurance contracts).

The Minister of Justice and Minister of Consumer Affairs introduced the 'Insurance legal aid contract'. This guarantees the free choice of a lawyer in case a judicial or administrative proceeding is initiated or if a conflict arises between insurer and insured. Furthermore, it guarantees that the insured has the right to choose a lawyer in case of disagreement between the insurer and the insured.

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

There are several organizations or institutions for a tenant to turn to in order to have his rights protected in certain situations.

Flemish Region

- De Huurdersbond (Tenants Union, which represents the tenants' interests)
There are several locations which can be found via
<http://www.vob-vzw.be/HB/AdressenenSpreekuren/Routebeschrijving/tabid/500/Default.aspx>
- First inquiry offices (they advise tenants on their issues and help them with other practical issues)
The addresses can be found via
https://www.wonenvlaanderen.be/over_wonen_vlaanderen/wie_help_t_u_waarmee_item_1693
- Decentrale dienst van Wonen (helps tenants with questions with respect to allocations rules)
There are several addresses which can be found via
https://www.wonenvlaanderen.be/over_wonen_vlaanderen/wie_help_t_u_waarmee_item_1693
- Wonen Vlaanderen (helps tenants with questions concerning housing benefit, local housing policy, quality of dwelling etc.)
Phoenixgebouw Koning Albert-II laan 19 bus 40 1210 Brussel
Tel: 02 553 82 98 Fax: 02 553 17 50
e-mail: wonenvlaanderen@rwo.vlaanderen.be
website: www.wonenvlaanderen.be
- Federale overheidsdienst financiën (helps tenants with questions concerning registration of tenancy contracts and the content of contracts)
Contactcenter FOD Financiën
Tel: 0257/257 57
website: www.myrent.be

Brussels Region

- Accredited social housing landlords (the Brussels Region has more than 30 accredited social housing landlords). The addresses can be found via <http://www.slr.b.be/huisvestingsmaatschappijen/contacts>
- Huurdersbond (Tenants Union, which represents the tenants' interests)
There are several locations which can be found via <http://syndicat-des-locataires.skynetblogs.be/archive/2009/09/21/presentatie-van-de-huurdersbond.html>

Walloon Region

- Service public de Wallonie (service point for information concerning dwellings)
Permanence Info-Conseils Logement : +32 (0) 81-33.23.10.

BULGARIA

Tenant's Rights Brochure

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1. Introductory information

Introduction: The national rental market

• Current supply and demand situation

In 2011 the whole Bulgarian housing stock consists of 3,887,149 units. More than two thirds (67.94%) of them are situated in residential buildings, and are inhabited. In addition, beyond the dwellings in residential buildings there are 21,338 homes in non-residential buildings, 3,547 non-conventional (sub-standard) and mobile dwellings, and 792 institutional dwellings. The overall number of the inhabited dwellings is 2,666,733, representing 68.6% of the national housing stock (incl. 141,244 or 3.6% inhabited holiday houses/second homes). 7,068,967 residents lived in the inhabited dwellings according to the Census 2011, so the average Bulgarian home is inhabited by 2.65 persons. (Source: National Statistical Institute, Census, 2011¹²)

Bulgaria is among the EU Member States with the highest rate of homeownership: 87% of the population consist of owners. Tenants account for 18.5% of the population. Approximately 6% of the population lives in shared abodes (cohabitation of tenants and owners).

The overall number of dwellings with either private or public rental tenants in Bulgaria is approximately half a million: 487,564 residents, representing 18.3% of all inhabited dwellings. Every fifth dwelling in cities (21.8%) is inhabited by tenants, while in the villages the share of dwellings with tenants is only 9.3%.

Tenancy is typically a city phenomenon: 93% of rented dwellings and 92% of tenants are situated in the cities. Tenants living rent free also prevail in the cities – 77% of them live in cities and 23% in villages. The same goes for tenants living in cohabitation with owners: 86% of them live in cities and only 14% in villages.

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

- shortage of social housing in big cities and very small number of newly constructed social dwellings: The demand for social dwellings extensively exceeds its supply; For example, currently, in the Municipality of Sofia (inhabited with app. 1.3 million citizens) the number of social dwellings is about 5,000. The list of enrolled individuals with established needs of accommodation in social houses is significantly longer: some citizens registered recently in the list of enrolled individuals with identified housing needs have a theoretical chance of access to municipal housing after about half a century;
- relatively low incomes and high food costs and overheads payments for water, electricity, heating and maintenance of the house) (consisting almost half of

¹² Преброяване на населението и жилищния фонд в Република България през 2011 г., Том 2. Жилищен фонд/Книга 2. Жилища, НСИ, 2012, 20.

- the household spending), and the higher interest costs on potential mortgage (in case of changing the rental housing with dwelling ownership);
- high 'turnover' in social housing and lack of investments in dwelling maintenance significantly depreciate the quality of life in those abodes.
 - perceptions of renting without public tasks are much more positive compared to renting public housing.

• **Significance of different forms of rental tenure**

The data from the last Census show that as of 1 February 2011, 96.9% of the inhabited dwellings are owned by individuals, 2.6% belong to the state or municipalities and 0.5% are properties of legal entities.

Tenants that pay rent are equal in number to the various types of rent free tenants (6.2% of all residents). The share of tenants paying rent in villages (1.7%) is much smaller than the share of tenants that do not pay rent (5.1%) or tenants sharing the dwelling with owners and other rent free residents (3.1%).

Private renting

The overall share of tenants that pay rent at market price is very low: about 120,000 (1.7% of all residents), and 785,000 tenants (11.1% of all residents) rent at reduced price or for free.

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

In 2011 the state owned housing stock comprised of 92,314 units, of which 24.3% was not inhabited¹³. The remaining 69,878 dwellings were inhabited, which is only about 15% of all state owned housing units in 1985 (441,493)¹⁴. In reality, the whole state owned housing stock that is currently in use in all towns is 64,723¹⁵. In the rural areas, the inhabited state-owned dwellings have never reached more than 3.2% of the state owned rental stock,¹⁶ it can be concluded that the decrease in number and share of state and municipal dwellings has affected primarily the larger urban areas. All in all between 1985 and 2011 the number of state-owned dwellings in Bulgaria was reduced more than 6 times from 441,493 (of which 409,692 in the towns) to 69,878 (of which 64,723 in the towns).

• **General recommendations to foreigners on how to find a rental home**

It is highly advisable for a foreigner to address a well-known brokerage agency with proven track of experience. The National Real Estate Association (NREA), NGO¹⁷

¹³ Преброяване на населението и жилищния фонд в Република България през 2011 г., Том 2. Жилищен фонд/Книга 2. Жилища, НСИ, 2012, 23.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Professional organization estimated to represent some 10% of all real estate operators throughout the country, <http://www.nсни.bg/en> (English version of the web-site available), March 2014.

and the Bulgarian National Association ‘Active Consumers’¹⁸ can also be used as a starting point.

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

- Cheating by false owners pretending to be landlords;
- The landlord refuses to return the deposit after termination of the tenancy agreement;
- The landlord violates peaceful use of the dwelling – disturbs the tenant, enters the property without asking for permission in a reasonable period before intended entering, initiates different repairing activities of the property without appropriate arrangements with the tenant;
- The landlord harasses the tenant to make him or her pay a higher rental price;
- Landlord changes the locks of the dwelling, not permitting the tenant to enter and or to take his or her possessions.
- Landlord evicts the tenant before having the dispute solved by the court.
- The landlord does not fulfil his or her obligation to repair damages different from those caused by the ordinary usage of the dwelling.
- Discrimination – refusal to enter into agreement or imposing less favourable conditions for the tenants belonging to different minorities or vulnerable groups (incl. refugees).

“Important legal terms related to tenancy law”

Bulgarian	Latin transliteration	Translation into English
Собственик	Sobstvenik	Owner
Наемодател	Naemodatel	Lessor
Наемател	Naematel	Lessee
Наем	naem	Rent
Текущи разходи	Tekushti razhodi	Operating costs
Индексация на наема	Indexatsiya na naema	Indexed rent
Депозит	deposit	Security deposit
Дребни поправки	Drebni popravki	Minor maintenance work
Комисионна	Komissionna	Brokerage fee
Повишаване на наема	Povishavane na naema	Rent increase
Разходи за комунални услуги	Razhodi za komunalni uslugi	Utility costs
Прекратяване на договор	Prekratyavane na dogovor	Termination of the contract
Срочен договор	Srochen dogovor	Fixed-term contract
Съдебен изпълнител	Sadeben izpalnitel	Enforcement agent

¹⁸ Leading consumers’ organization in the country, <http://aktivnipotrebiteli.bg>, March 2014.

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?**

Protection against Discrimination Act¹⁹ in its relevant parts provides for prohibition of any practice or indirect discrimination based on gender, race, nationality, ethnic belonging, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or public status, disability, age, sexual orientation, family status, property status or any other characteristics established by an Act or by an international agreement to which the Republic of Bulgaria is party. This provision concerns both private and public housing relations. Several types of measures shall not be considered Discrimination, inclusive of the special measures in favour of underprivileged persons or groups of persons on the grounds of the characteristics under Art. 4, para. 1, for the purpose of equalizing their possibilities, inasmuch as while these measures are necessary²⁰. Therefore, the state targeted policy and measures, for example in the area of social housing, shall not be considered discrimination.

- **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?**

Private tenancy

A simple identity check of the lessee and her or his family members which will inhabit the dwelling usually are made by presenting the ID documents of the lessee. The implementation of systematized questionnaires is not prohibited by the law however the information collected must be kept in compliance with the requirements of the Law for Protection of the Personal Data²¹.

Public tenancy

It is left to the municipal authorities to decide what kind of data and documents to request from the applicants for municipal dwellings. Usually, the applicant for a municipal dwelling shall file a declaration containing, among others, the following information: full names of the applicant and family members (household); data regarding the type, size, ownership and duration of the actual occupancy of the property currently occupied by the applicant; transactions with any real estate done in the past; ownership of personal property whose value exceeds a certain amount; total annual income of the family (household) for the previous year originating from salaries and pensions, as well as additional income from honoraria, commercial

¹⁹ Protection against Discrimination Act, promulgated in State Gazette issue 86 of 30 September 2003, in force from 1 January 2004, last amended State Gazette issue 68 of 2 August 2013, Art. 4, para. 1.

²⁰ Ibid., Art. 7.

²¹ Law for Protection of the Personal Data, promulgated State Gazette 1 of 4 January 2002, last amended and supplemented State Gazette 15 of 15 February 2013.

activities, renting of private buildings, agricultural land etc.; evidence for previous filings, etc.

In addition to the information described below, the applicant is required to present the following documents: certificates issued by the Address Service; certificates from the Registry Agency for committed transactions with real estate on the territory of the Sofia Municipality or in the territory of other settlements; certificates issued by the Tax Office for declared properties, official certificates for annual income from the employment or civil servant relationship for the previous year; copies of filed tax returns; copies of lease contracts where the person and the members of his family (household) live on a free market rent; copy of the decision of the Medical Advisory Board, established degree of disability, etc. Similar requirements for declarations and presenting documents issued by different authorities are included in the ordinances of other municipalities for the purpose of establishing housing needs of candidates for municipal housing and members of their families.

Failure to present required information and evidence, or declaring untrue information, or delay in submitting information shall result in a refusal for the accommodation of the person in a municipal house, or respectively, the tenancy to be terminated.

● **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)?**

Although not prohibited by the law, in Bulgaria there are no cases of money charged by the landlord to allow the prospective tenant to participate in the selection process. Therefore, “the reservation fee” would be lawful if agreed between the parties.

However, the commissions charged by the brokers are not regulated and some real agents collect additional fees for organising inspections and/or for providing of legal assistance.

● **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)?**

Data checks on the prospective tenant would be lawful with the consent of the tenant. Private credit reference agencies keeping records on individuals do not exist. The Central Credit Register with Bulgarian National Bank²² is only accessible by banks and other financial institutions in relation to the assessment of the financial status of clients. Enquiries into financial status are very rare and only in the sphere of the commercial renting. They are not practised in the private renting because the landlord has no means available to check the information eventually provided by the prospective 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?**

The real estate agents provide intermediary and advertising services together with some accompanying services such as legal advice and assistance to the parties in the course of the negotiations and the concluding of the lease contracts. They

²² Bulgarian National Bank, http://www.bnb.bg/AboutUs/AUFAQ/CONTR_CREDIT_REGISTER_FAQ?toLang= EN, December 2013.

provide information to prospective tenants for available dwellings on the basis of their requirements and organise inspections of the houses to let.

Generally, there is desire for direct search (through individual advertisements in specialized magazines and Internet sites) and negotiation between tenants and landlords. The avoidance of real estate mediation can be explained by the fact that the majority of landlords and tenants belong to low-income groups for which the amount of commission charged for the brokerage services is high, especially given the fact that often rental contracts are for a period less than one year.

Given the fact that there are lots of illegal real estate brokers²³, there are voices for the introduction of a licensing regime for the real estate agencies.

Official information for the available social housing and application procedures can be obtained by the specialized municipal and state administration. However, this information is not transparent, not easily accessible, not user-friendly enough and not publicly available.

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

There are no blacklists of “bad tenants and landlords” in Bulgaria. Official channels for information of ‘bad tenants’ do not exist. In an informal manner some real estate agencies may give advice to their clients (landlords) as to the reliability of the tenant wishing to rent the house. Real estate brokers do not maintain lists and do not exchange information of bad landlords.

In the field of public tenancy, for example, according to Article 65 of the Municipal Property Act²⁴ as ‘bad tenants’ will be considered those individuals and/or members of their families, from which a municipal property is seized because it is being held on no legitimate grounds, is not being used as designed, or the need for use does not exist anymore. Usually, municipal orders provide a term, within which such a person will not be allowed to be accommodated in municipal housing.²⁵

The tenant is enabled to access the following registers or data and documents: access to the public property register where the tenant could obtain information regarding the ownership of the dwelling or on any other circumstances that may hinder the tenant’s rights in the future such as mortgages, claims concerning rights over the real estate, right to use, other recorded tenancy agreements, etc.; documents and data provided by the landlord in regard to the landlord’s capacity to sign the contract, such as identity documents, power-of-attorney, etc. When the landlord is a company, a check may be done on the legal status of the company and its representatives in the public Trade Register²⁶.

²³ According to data from the joint study of NREA and the National Revenue Agency published in December 2012, 80% of real estate operators do not declare correct income, and evade taxes.

²⁴ Municipal Property Act, promulgated in State Gazette issue 44 of 21 May 1996, last amended State Gazette issue 66 of 26 July 2013, Art. 65.

²⁵ For instance, in Sofia Municipality this term is two years as of the date of the seizure.

²⁶ Trade Register, <http://www.brra.bg/>, December 2013.

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)?**

Lease contracts are not subject to compulsory registration. It is left to the common will of the parties whether to register their rent contract in the property register.

There is no explicit requirement for written form of the lease. However, the lack of a written contract can generate several problems in the internal relations between landlord and lessee – including falseness over rent, length of contract etc.

The written form is also relevant to the duration of the contract in cases of transfer of the real estate property. A written contract with a date of conclusion verified before a notary shall be binding for the new proprietor for the period of the contract but for not more than one year. A contract that is registered in the property register shall remain valid until the expiration of the time-period specified in it and the new proprietor will be obliged to comply with it.

In the context of the municipal renting, the rent relation comes as a result of a complex and often very long procedure, including as a minimum: entering of the candidates in a 'waiting list'; assessment of each candidate's application and classification of the candidates eligible for municipal lodging; issuing an accommodation order by the mayor of the municipality; conclusion of a rent contract in writing. Such procedure is followed for accommodation of officers in state owned departmental houses, as the chief of the respective authority specifies the conditions for assessment of the housing needs of the candidates and for amendment of the rental price.

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

The *consent of the parties* to the contract over the main elements of the deal – *object and rent price* – is sufficient for the deal to be considered as concluded. The lacking stipulations regarding other conditions of the rent contract, such as period of the contract, payment deadlines, rights and obligations of the parties, etc., shall be substituted by the respective dispositive provisions of the law. However, when it comes to the burden of proof in a potential court proceeding related to the rent contract, oral agreements between the parties could hardly be substantiated.

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

Open-ended shall be considered any lease agreement that lacks provisions regarding time period. If the contract of lease has an indefinite term, each of the parties may renounce it by a one month notice to the other party. But if the lease is daily a one day notice shall be sufficient. In addition, a limited in time contract is converted into an open-ended upon transfer of the property to a new proprietor when the contract does not bear an officially certified date of signature and the lessee is in possession of the property.

The duration of the contract may be extended upon expiration with an agreement by both sides. It is disputable whether such extension is possible when the contract has been signed for the maximum possible period of ten years. Nonetheless, there is no legal prohibition for a new contract to be signed immediately after the expiration of

the previous one. A specific case of automatic prolongation is provided, when the lessee continues to use the real estate after expiration of the agreement with the knowledge and without the objection of the landlord. In this case the contract shall be deemed extended for an indefinite term. There is no legislative ban on applying this rule in cases when the contract is signed for the maximum 10-year period and the term expires. In addition, the parties may agree on a variety of prolongation modalities within the agreement itself, as for instance: a specific time period which shall be extended automatically if none of the parties expresses its will to terminate the contract prior to its expiration. Tenancy contract for life shall be void as regards the term of the contract and the respective clause shall be replaced by the statutory provision, establishing the maximum term of the contract.

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

The lack of agreement over a fundamental element of the contract, that is the price, shall render the contract void.

Private lease agreements, unlike the renting of state and municipality owned dwellings, is not regulated in terms of maximum amount of rent payments, payment due dates, changes and indexing of the rent, etc. It is up to the parties to the agreement to arrange all such issues at their own discretion.

The rental prices of municipal dwellings are regulated with municipal ordinances governing the terms and conditions for establishing the housing needs of citizens and their accommodation or respectively for management of municipal property.

The due payment date should be agreed between the parties to the rent agreement, and it can be set as a fixed payment date, a specific time period upon the beginning of the payment period, etc. Although most commonly the payment period is one month, it is up to the mutual will of the parties to the agreement to set a different payment period. In the very rare cases where the parties have omitted the arrangement for the payment period, the landlord may demand the rental price immediately²⁷.

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

Bulgarian legislation provides for a distinction between the repairs for which the tenant is responsible and those for which the landlord must take care. The tenant is responsible for all small repairs (related to damage which is caused by conventional use, such as dirty walls in the rooms, corrosion of faucets, door locks, blockage of chimneys etc.) and for those repairs caused guiltily by the tenant. The repair works of all other damage, if it is not caused through the tenant's fault, shall be at the expense of the landlord. If the landlord fails to make these repairs, in addition to the rights listed above, the tenant shall have the right to make the repair with due diligence and to deduct the cost of the repair from the rent.

Improvements to the real estate consist of works leading to the increase of the value of the real estate. There are no mandatory provisions concerning improvements to

²⁷ Obligations and Contracts Act, promulgated in State Gazette issue 275 of 22 November 1950, last amended State Gazette issue 50 of 30 May 2008, Art. 69.

the rented real estate, the parties may agree upon the conditions of such improvements. Generally, the case-law reveals the following approaches to this matter: (1) all improvements shall be on the account of the tenant; (2) all improvements shall be on the account of the landlord; (3) only improvements that have been approved in advance by the landlord shall be covered by the landlord; (4) improvements shall be eligible for reimbursement by the respondent party only if they meet certain criteria such as: quality and quantity of the works, total amount of the works, etc. Where such provisions exist, they will govern the relations between the parties originating from the improvements to the dwelling.

● **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)?**

In the beginning of the tenancy relation and at its end, a delivery-acceptance protocol shall be signed between the parties. It is highly advisable that the protocol should contain the following information: the number and condition of the rooms of the dwelling, its equipment and furniture, and also the figures of the utility bills in the beginning and in the end of the tenancy agreement, according respectively to water meters, electricity meters, calorimeters, etc. The protocol may serve as a guarantee that the lessee will be held liable only for the damages and the wear and tear on the leased property related to its usage by the tenant.

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

Other contractual clauses of relevance to the tenant may include:

- Clause on the provision of a security deposit;
- Clause on the responsibilities of the parties for the operating costs;
- Clause on the prohibition of smoking, keeping domestic animals etc.;
- Clause on the right of the landlord to inspect the dwelling;
- Clause on the landlord's right to access to the property in case of repair works and a procedure to be followed;
- Clause on the usage of central heating and landline phone;
- Clause on the responsibility to pay the respective municipal duties;
- Clause on the participation in General Meeting of the Condominium Assembly.

● **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.)?**

Tenancy relations usually concern basic needs not only of the tenant but also of the tenant's family (household).

This issue is not explicitly stipulated in the law as regards private tenancies. The parties to the agreement may agree on which persons will legitimately use the dwelling. Even if they fail to do so, it is commonly accepted that a person is going to live in the house together with a spouse and children, parents or other members of the family and the landlord would hardly be able to prove noncompliance with the rent agreement on the part of the tenant due to the admittance to the dwelling of people who were not explicitly authorised with the contract.

Accommodation in municipal housing is based on the established standards for satisfaction of the housing needs of the families. The approach is not the minimum, but the maximum size of the dwelling, according to the number and special needs of

the members of the family (household). The legislation still remains silent on the status of unmarried couples.

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

In a private tenancy, the tenant is not obliged to use the rented property, and therefore it would be enough for the landlord to ensure that the dwelling is available to the tenant without the need of any particular formal actions to be performed. Once the dwelling is handed over, the tenant shall be obliged to pay rent no matter whether the tenant actually uses the house. This is apparently why the tenant's refusal to accept the property without due legal justification would be immaterial as regards the existence of the contract and the obligation for payment of the rent.

When it comes to a private tenancy, although the tenant is not obliged to use the property, the tenant is not released from the duty to cover the expenses related to the use of the property²⁸ nor is the tenant freed from the obligation to maintain the dwelling so that it could be returned to the landlord without damages.

In a public tenancy, non-occupancy for more than six months without good reason may be a ground for termination of the tenancy agreement.

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

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

Regarding the rights of a former spouse in relation to the use of the marital home, the Family Code provides that a tenancy relationship shall arise as a result of the court judgement on the divorce when any of the former spouses is entitled to continue using the marital home.²⁹

In the case of minor children from the marriage, the court shall rule on the use of the marital home ex officio. In the case of minor children from the marriage and the marital home is owned by one of the spouses, the court may award its use to the other spouse to whom the exercise of parental rights is awarded as long as that spouse exercises those rights.

By virtue of the court judgment awarding the use of the marital home, a tenancy relationship arises. The judgment may be entered into the property register, and the registration shall have the effect of binding any subsequent owners of the property with the rent until the expiration of its term.

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

Cases of apartments shared among students, co-workers, etc., lack any specific legal provision. Subsequently, the general rules regarding the parties and the beneficiaries to the contract shall apply. More specifically, except for the family members, the contract cannot create rights in favour of persons which are not

²⁸ Obligations and Contracts Act, promulgated in State Gazette issue 275 of 22 November 1950, last amended State Gazette issue 50 of 30 May 2008, Art. 232, para. 2.

²⁹ Family Code, promulgated in State Gazette issue 47 of 3 June 2009, last amended State Gazette issue 68 of 2 August 2013.

specified in it as parties or beneficiaries. This is why the consent of the landlord shall be required in any event of change of some of the co-tenants.

- death of tenant;

The lease shall be terminated upon the death of the tenant. However, in the case of inheritance the inheritors shall remain bound by the contractual obligations of their legator, as the contract had not been concluded with view to the personality of the landlord and the obligations of the landlord do not cease to exist with the landlord's death.

In the field of social housing, some municipalities and state institutions allow the surviving husband to be entitled to continue the lease. In this case the surviving husband shall meet the criteria for accommodation in social house and shall bear the liabilities and obligations of the deceased tenant incurred up to death.

Furthermore, the lease can stay valid if the contract contains a clause providing that, in case of death of the tenant, the tenancy is continued with a third party (for instance, heirs).

- bankruptcy of the landlord;

In case of bankruptcy³⁰, the public auction conducted by a bailiff (for example for debts of the landlord) cancels all other rights over the real estate property. Inconsistent practice exists in cases in which the rent contract has been entered into the property register. According to the practice of the bailiffs, even in this case the rights of the tenant cease to exist. If the contract does not have a verifiable date and the lessee is in possession of the property, the contract shall be binding upon the transferee as a contract of lease with an indefinite term.

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

In private tenancy, subletting is allowed if not agreed upon otherwise. The lessee may sublease parts of the leased property without the consent of the lessor. But even in this case the lessee is not discharged from his obligations under the contract of lease. The sublessee shall not have more rights than the lessee as to the use of the property. The sublessee shall be liable to the lessor only for payment of the lease which he himself owes upon the bringing of the action, without being entitled to plead the payments he made in advance.

Moreover, only part of the property may be subleased and the subletting does not release the initial tenant from his or her obligations towards the landlord. The main tenant remains liable for paying the rent, for damages, expenses, etc. The rights of the sublessee derive from the rights of the lessee. This is why the lease relationship between the sublessee and the lessee is dependant upon the initial lease agreement between the lessee and the landlord. As a result, the sublessee could not claim more rights than the lessee. For example, the sublease agreement could not survive the

³⁰ The notion "bankruptcy" is not applicable if the landlord is natural person. If the landlord is legal entity the general rules are applicable.

expiration of the term of the initial lease agreement even if otherwise stipulated between the sublessee and the lessee.

Subletting is explicitly forbidden in cases of social housing (both state and municipal).

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

The lease contract shall be bounding to the new proprietor for the period of the contract – but for not more than one year – the contract bears a notary verified date of signature. The proprietor shall be obliged to respect the contract for its entire period in case the contract had been entered into the property register (as there is a presumption that the proprietor became aware of its existence prior to the transfer of the property, because the register is public).

• **Costs and Utility Charges**

- **What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?**

The lessee must use the property as specified in the contract, and when the use is not specified, in accordance with its function. He shall pay the lease and the expenses related to the use of the property. Usually, the term ‘expenses’ includes electricity, water supply, gas supply, central heating, landline telephones, etc. Where the lessee is a private person, the contracts will usually be signed with the landlord or the owner of the real estate (in some cases the assignment of a contract from the landlord to someone else may be a real administrative adventure, and that is why this practice is rarely used). There are, although uncommon, lease agreements where the rent price includes the utilities.

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

The tenant is charged for all utilities which are connected with the use of the dwelling if it is not otherwise stipulated in the contract. He/she is also obliged to cover the expenses for the maintenance of the common parts of the building, such as cleaning, guard, elevators, repairs, etc.

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

In Bulgaria waste collection usually is performed by the municipality (or a company appointed by it), and the owner of the real estate, together with property tax is obliged to pay the waste collection fee. These are local taxes (called ‘communal taxes’), determined and collected by local authorities through the municipal administration. Tax rates vary in different municipalities and cities; they also vary depending on the location of the property (by the settlement area – e.g. central, suburban part etc.) and its floor space.

In the case of private rented properties, property tax and waste management fee remain the responsibility of the owner, unless otherwise agreed with the tenant. As for public rental (municipal or state property), recent changes in the Law on Local

Taxes and Fees³¹, stipulate that tax-bearer for the state property and for the municipal property is the person to whom the property is provided for management. In this case, the tenant is the one who usually pays the household waste fee to local authorities (this is arranged in the tenancy contract between the municipality and the tenant).

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

Parties are free to negotiate this issue, and there is no legal prohibition the operational condominium costs (cleaning, common water, electricity consumption etc.) for to be shifted to the tenant. However, those of costs for substantial improvements or repairs (for example, fixing the roof, installation of video surveillance facilities), shall be borne by the lessor.

• Deposits and additional guarantees

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

The deposit in the lease agreement is not explicitly regulated by the law, though commonly used.

The usual amount of the deposit is the amount of the rent for one month, although the parties to the agreement are free to negotiate any other amount of the deposit they consider to be appropriate for the purpose of guaranteeing the risk of damage to the dwelling.

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

The deposit is paid when the agreement is concluded and is kept by the landlord until the agreement expires or is otherwise terminated. As far as there are no specific rules whether the landlord should put the deposit in special account or whether he should owe an interest to the tenant, the parties could agree on these figures.

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

Additional guarantees or a personal guarantor are lawful but, however, not usual practice in Bulgaria.

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

Unless otherwise stipulated in the lease, the expenses covered by a guarantee or a guarantor with the security deposit would be similar to those covered by the tenant's security deposit.

³¹ Local Taxes and Fees Act, promulgated in State Gazette issue 117 of 10 Dec ember 1997, last amended State Gazette issue 101 of 22 November 2013, Art. 1, para. 5.

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)?

The notion of 'defects' is not defined in the applicable law. Nevertheless, the term should be understood in its ordinary sense according to the requirement of the Law for the Normative Acts³². Article 230, paragraph 3 of the Obligations and Contracts Act³³ states that the lessor shall not be liable for the defects of the leased property which were known to the lessee or which he could easily detect if he had been normally attentive upon conclusion of the contract, except if the defects are hazardous to his health or the health of the members of his household. Apparently, the landlord could not be held responsible for any particularities and specifics of the dwelling that could have been easily noticed by the tenant prior to the conclusion of the contract. Whether this is the case is a matter of assessment in each particular case. However, exposure to excessive noise would hardly be a convincing reason giving rise to the landlord's contractual responsibility unless in exceptional circumstances where, even the noise could have been noticed by the tenant prior to the conclusion of the rent contract, it is of such a nature that could be regarded as harmful for the health of the tenant and the tenant's family members.

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

The legal consequences of the provision of a house with defects consist of the right of the tenant to choose one of the following remedies: to claim the repair of the dwelling; to claim a proportional reduction of the rent price; or to terminate the rent contract. In addition, in all cases the tenant may claim damages. Furthermore, the tenant also has the right to make repairs at his own expense and then deduct the costs from the rent payment.

- **Repairs of the dwelling**

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

The lessor is bound to hand over and maintain the property in a state which is appropriate to the use it has been leased for. If the property was not delivered and maintained as regards the landlord's duties in the proper condition, the lessee may claim its repair or a proportional reduction in the lease price, or may avoid the contract of lease, as well claim damages in all cases.

³² Law for the Normative Acts, promulgated in State Gazette issue 27 of 3 April 1973, last amended State Gazette issue 46 of 12 June 2007.

³³ Obligations and Contracts Act, promulgated in State Gazette issue 275 of 22 November 1950, last amended State Gazette issue 50 of 30 May 2008, Art. 230.

Only the small repairs related to damage which is caused by conventional use shall be at the expense of the lessee. The repair of all other types of damage, if they are not caused through the lessee's fault, shall be at the expense of the lessor.

In case the property perishes completely or partially, the extinguished obligation of the landlord due to impossibility of performance shall lead to cancelation of the lease *ex jure*.

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

In case of a bad state of the dwelling, if the landlord fails to make the necessary repairs, in addition to the rights listed above, the tenant has the right to make the repair with due diligence and to deduct the cost of the repair from the rent. In such cases the tenant may claim damages only when the repair is due to reasons for which the landlord is liable.

There are no specific deadlines for execution of these rights of the tenant, meaning that the general rules of the civil law shall apply. The Obligations and Contracts Act³⁴ states that all claims for which the law does not provide for another time period shall be extinguished upon the expiration of a five year limitation period. The obligations that are extinguished upon the expiration of a three year limitation period include, among others: claims arising from damages and liquidated damages from non-performed contracts and claims for rent, interest and other periodic payments.

• 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.)

Changes for accommodating a handicap do not constitute repairs. Thus, it is to be considered whether these result in an improvement. Mounting facilities for people with disabilities is a statutory requirement for all new residential buildings (after 2009). However, the case of adapting a dwelling to the need of tenants with a disability appears to be a very rare situation. Since the new facility will most probably require a building permit, which can only be issued upon request of the owner accompanied with a full set of designs and plans, the preliminary consent of the lessor must be acquired.

- Affixing antennas and dishes

Regarding the mounting of antennas and dishes, they are considered movables capable of being mounted and removed without causing changes to the real estate, the only possible issue that may arise being of a public law nature, namely any restrictions originating from the regulations for the appearance of the facade of the buildings.

However, the tenant shall be held liable if there any damage or cost is incurred as a consequences of affixing (and subsequent removal) of antennas, dishes or similar facilities.

³⁴ Ibid., Art. 110 – 111.

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

Repainting and drilling the walls to hang pictures, if not related to alterations affecting the structure of the dwelling, are considered ordinary use of the dwelling or small repairs. Moreover, if they are considered tenant's obligation and if implementing them results in damage such as dirty walls in the rooms, corrosion of faucets, door locks, blockage of chimneys, such damage caused by the tenant is to be indemnified.

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

- keeping domestic animals

The tenant shall use the property as specified in the contract, and when the use is not specified, in accordance with its function. In addition, the lessee of a dwelling in a condominium must obey the internal rules of the condominium. Otherwise, the lessee may be evicted from the leased premises upon the motion of the management. Furthermore, even if it is not forbidden under the internal rules, the landlord may, prior to the conclusion of the contract, place certain limitations as to the use of the dwelling that may include a ban on animals. Such limitations will usually be included in the rent contract. However, in general the keeping pets, cats and dogs inside the dwelling is not legally forbidden.

In any case, the Condominium internal rules and the requirements of the legislative acts must be strictly respected while breeding domestic animals: for example, keeping them in separate premises and not causing disturbance to their close neighbours.

- producing smells

Bulgarian Law on the Condominium Ownership Management³⁵ provides for owners, users and the occupants a duty to not perform in their separate premises or in part of it activities, which would disturb the other owners, users and occupants to a greater extent, than the usual one. Therefore, the excessive smell hindering the normal use of the building of the other owners, users and occupants and caused by poor maintenance of a dwelling might lead to eviction from the building of an owner, a user or an occupant for a certain period of time, but not longer than 3 years.

Furthermore, all occupants (including tenants) shall not perform activities in their separate premises or in part of it, through which the fire safety or the safe usage of the condominium can be endangered, which can be the case of gas leakage.

The issues related to the prohibition of smoking or indemnifications for damages caused to the dwelling as result of smoking can be arranged in the rental contract.

- receiving guests overnight

Generally, receiving guests overnight does not consist of a breach of the law. However, it is a duty of the owners and tenants to write in the Condominium book the forename, father's name and family name of occupants, temporarily residing in the facility on a separate legal grounds for more than 30 days, as well as the check-in date and the check-out date.

³⁵ Law on the Condominium Ownership Management, promulgated in State Gazette issue 6 of 23 January 2009, in force from 01 May 2009, last amended State Gazette issue 66 of 26 July 2013.

Another significant aspect of the use of a house is the criminal liability imposed on a person who systematically places at the disposal of different persons premises for sexual intercourse or for acts of lewdness³⁶ and also on persons who systematically place the premises at the disposal of different people for taking of narcotic substances or organizes the use of such substances³⁷. The case-law clarifies the notion 'systematically' as meaning 'over three times'. Both the landlord and the tenant may be held liable for such crime.

- fixing pamphlets outside

Fixing pamphlets outside is generally lawful if it does not contravene the mandatory provisions of the law and good morals and if not explicitly forbidden in the lease. Furthermore, it must not hinder the other owners, users and occupants in their use of the common areas of the condominium and their dwellings.

- small-scale commercial activity

Small-scale commercial activity is permitted if the landlord and lessee agree on the purposes for which the premises could be used. In any case, to be used for commercial purposes, the premises have to meet the specific requirements for the different commercial activities, as established in the legislation.

Moreover, an owner or an occupant, exercising a profession or carrying out activity in a separate facility in the condominium requiring access of foreign persons, shall pay the cost of management and maintenance of the common parts amounting to three to five times the cost, determined by a decision of the General Meeting of the Condominium.

3.2. Landlord's rights

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

In the area of **private tenancy** no rent control in the strict sense of this phrase exists. The relations between the parties to the lease agreement are subject to judicial control performed by the regular courts in cases of claims based on rent agreements.

The rental prices of **municipal dwellings** are defined with municipal ordinances governing the terms and conditions for establishing the housing needs of citizens and their accommodation or, respectively, for management of municipal property.

There is a regulated rental price per square metre in different municipalities varying according to the location of the dwelling, which year the dwelling was built, the material, from which it is built, the floor, the exposure, amenities (water supply, drainage, electricity, central heating), and quality of the environment. Usually the basic rental price for municipal dwelling is less than EUR 1 per square metre per month.

• Rent and the implementation of rent increases

³⁶ Penal Code, promulgated in State Gazette issue 26 of 2 April 1968, corr. State Gazette issue 29 of 12 April 1968, last amended State Gazette issue 84 of 27 September 2013, Art. 155, para. 2.

³⁷ Ibid., Art. 354b, para. 4.

When is a rent increase legal? In particular:

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

In regard to the **private tenancy**, the law does not grant the landlord any rights of indexation of the rent, unless it is explicitly agreed. Most commonly, indexation clauses shall be met in long-term contracts, for example contracts concluded for two or more years. Frequently, the rent contracts are signed for one year, which gives opportunity for the parties to renegotiate the terms and conditions of the agreement, including in particular the rental price.

In the area of **public tenancy**, the issue of rent increase is regulated differently by the various municipal ordinances. However, in most cases indexation takes place at the end of the year or as of March 1 (once the official statistical data on inflation is published). In some municipal ordinances, there are no provisions concerning the indexation of prices; in others, the indexation of the rental price is written in the rental agreement.

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

There is no cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully.

The issue of an excessive rent may only be relevant in two cases: (1) when a contract has been entered into because of extremity, under clearly unfavourable terms, it shall be subject to invalidation, which however shall not be admissible if the other party proposes to repair the damage, and (2) in respect to the taxation of the persons concerned, the mechanism for corrections of the amount of the rent concerns not the relations between the parties, but the relations between the parties on one hand and the tax authorities on the other. Such could be the case when the excessive rent is considered to constitute an attempt at tax evasion.

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

In the **private rental market**, there are few typical clauses intended to protect the value of the rent against inflation. The most commonly used clause binds the change of the amount of the rent to the inflation rate as announced by the National Statistical Institute³⁸, meaning that the rent may be either subject to increase or decrease depending on the inflation or deflation rate. The increase clause may also be tied to another index such as the Euro zone inflation rate, or it could be 'unidirectional', that is applied only in case of increase (inflation reported) but with no possibility of decrease. Automatic increase clauses would also be admissible in terms of legality but rarely used.

Most frequently the rent increase clause has 'automatic' effect, that is, the interested party may claim the increased/decreased rent without the need of the other party's

³⁸ National Statistical Institute, Inflation and Consumer Price Indices, <http://www.nsi.bg/en/content/6010/inflation-and-consumer-price-indices>, December 2013.

consent or of signing of an additional agreement, although some kind of notification is commonly used. The procedure will also usually include provisions as to the reference period, the exact date for entry into force of the increased/decreased rent, the official sources of information for the indexation of the rent, etc.

Rent increase after renovation would entitle the landlord to increased rent only if it is stipulated in the rent contract.

As regards the indexation of the rental price of the dwellings to be rented as **social housing** the Municipal Council under proposal, made by the Mayor of Municipality, establishes and indexes annually the rental costs. One of the typical approaches for indexation is related to the use of the statistically established index of inflation for the previous year of the National Statistical Institute.

Possible objections by the tenant may be based on the respective contractual provisions or on the fact that rent increase clauses have not been provided for in the contract.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

There is no legal provision permitting the landlord to enter the rented house or regulating any conditions for gaining access to the dwelling. The main obligation of the landlord is to ensure the tenant's undisturbed use of the house. As a result, in order to be justified the landlord's right to enter the premises should be present in the rent agreement. The landlord's entering of the premises may constitute a breach of the contract and may give rise to the tenant's right to terminate it and/or to seek compensation for damages. Unlawful entry into a house may also constitute a crime under Article 170 of the Penal Code, stating that a person who enters the dwelling of another by using therefore 'force, threat, subterfuge, legerdemain, misuse of power or special technical devices', shall be punished by imprisonment for up to three years or by probation for up to six months.³⁹

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

The landlord may keep (and actually use) a set of keys for the dwelling when agreed with the tenant. The landlord's retaining of a set of keys would be immaterial, unless the landlord is entitled to or actually use it to enter the premises, as the mere fact of the possession of the keys could hardly be substantiated in court.

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

The landlord is not allowed to lock the tenant out of the rented premises for any reason, including for not paying rent. Failing to pay the rent may serve as a reason for termination of the contract, as a result of which the landlord shall be entitled to ask the tenant to leave the house. However, even in this case the landlord cannot force the tenant to leave without a court decision and enforcement proceedings.

³⁹ Penal Code, promulgated in State Gazette issue 26 of 2 April 1968, corr. State Gazette issue 29 of 12 April 1968, last amended State Gazette issue 84 of 27 September 2013, Art. 170, para. 1.

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

Movable property belonging to another person may lawfully be retained only in connection with a claim related to the preservation, maintenance, repair or improvement of the same property, that is, a landlord could not be regarded as being in that position.

If the landlord locks the dwelling and does not permit the tenant to enter and take the tenant's possessions, such an act could be in violation of the Penal Code⁴⁰, according to which the person who enters the dwelling of another by using therefore subterfuge, legerdemain, misuse of power or special technical devices, shall be punished. In regard to the belongings of the tenant, under certain conditions, the offender could be punished also for theft.

In the case of a tenancy with a public task, when the forced eviction takes place in the absence of the occupants, the officers must prepare a list of the chattels found in the property and the list must be signed by the drafter, representative of the police and two witnesses. The mayor shall be responsible for keeping the belongings for a period of one month, upon expiration of which they shall be sold on an auction and the income shall be used to cover the expenses for the property.

4. Ending the tenancy

The rent contract may be cancelled by one of the parties thereto in case the other party fails to fulfil its contractual obligations. The procedure for execution of the right of cancelation is specified in the law⁴¹, which states that where a debtor under a bilateral contract does not perform his obligation due to a reason for which the debtor is liable, the creditor may avoid the contract by providing the debtor with an appropriate time period for performance with a warning that the landlord shall deem the contract avoided upon the expiration of that time period. Where the contract has been concluded in writing, the warning must also be made in writing. The creditor may inform the debtor that the he or she is avoiding the contract without providing such a time period, if the performance has become fully or partially impossible, if due to the debtor's fault it has been rendered useless, or if the obligation had had to necessarily be fulfilled within the agreed time.

4.1. Termination by the tenant

• Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?

In case the rent contract is concluded for an indefinite term, each of the parties may renounce it via a one month notice addressed to the other party. If the lease is daily, a one day notice shall be sufficient.

⁴⁰ Penal Code, promulgated in State Gazette issue 26 of 2 April 1968, corr. State Gazette issue 29 of 12 April 1968, last amended State Gazette issue 84 of 27 September 2013, Art. 170, para. 1.

⁴¹ Obligations and Contracts Act, promulgated in State Gazette issue 275 of 22 November 1950, last amended State Gazette issue 50 of 30 May 2008, Art. 87.

- **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 law does not guarantee in principle a right for unilateral termination of the contract unless it is breached by the other party⁴².

The lessor shall not be liable for the defects of the leased property which were known to the lessee or which he could easily detect if he had been normally attentive upon conclusion of the contract, except if the defects are hazardous to his health or the health of the members of his household (incl. unbearable neighbours and bad state of dwelling that endanger the health of the tenant and the tenant's household).

The tenant may also terminate the contract before the agreed date if there is a legally imposed ban for habitation over a building due to its bad or dangerous condition or the existing risk for the lives or the health of its inhabitants, so that it could not be a subject of letting. The landlord shall be held responsible for any pecuniary damage occurring as a result of the bad condition of the dwelling.

Aside from the cases of unilateral termination on legal basis, the parties may agree on special conditions for unilateral termination of the rent contract by either party. Such conditions may consist of the right of the party to unilaterally terminate the contract subject to its obligation to notify the other party; to pay compensation in a certain amount; etc.

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

The tenant may leave before the end of the rental term if he or she finds a suitable replacement tenant only if the special conditions for unilateral termination of the rent contract include the rights of the tenant to secure a new tenant in the case of termination by the tenant.

In case of municipal tenancy the tenant has the obligation to use and may not sublet the dwelling, otherwise the lease shall be terminated and administrative penalty (fine) shall be imposed on the tenant.

4.2. Termination by the landlord

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

In case of an open-ended lease, the landlord may terminate it though a one month notice addressed to the other lessee. If the contract is daily, a one day notice shall be sufficient.

- **Must the landlord resort to court?**

The landlord's notice may be challenged by the tenant if the tenant considers that the notice is ungrounded. In such a case, the landlord must refer to the court, as the landlord is not allowed to expel the tenant on his or her own. Then the matter

⁴² Ibid., Art. 20a. Article 20a. of the Obligations and Contracts Act states that the contracts shall have the force of a law for the parties which have concluded them.

reviewed by the court will be the existence of the right for termination and the compliance with the procedural rules for execution of that right.

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

The case concerning the right of the tenant to stay in the dwelling shall be reviewed by the regional court as first instance and by the district court as second instance. The case may be granted leave to the Supreme Court of Cassation in very limited circumstances which reveal, for example, incoherent case-law on similar cases.

The enforcement agent shall proceed with enforcement upon request by the interested party on the basis of a presented writ of execution or another enforceable act⁴³. The enforcement agent shall be obligated to invite the execution debtor to comply voluntarily with the obligation thereof within two weeks⁴⁴. Failing this, the respective enforcement actions shall follow.

At this stage the debtor (tenant) has in his or her disposal very limited means for protection given that the tenant was supposed to submit all relevant objections during the court procedure. The execution debtor may appeal against the eviction from an immovable for reason of not being duly notified of the enforcement⁴⁵. The appeal shall be lodged through the enforcement agent with the district court within one week upon completion of the contested action, if the party was present at the performance of the said action or if the party was summoned, and in the rest of the cases, within one week after the day of the notification⁴⁶.

The appeal lodged by the parties shall be examined in camera, except where witnesses or expert witnesses must be heard. The court shall examine the appeal on the basis of the data in the enforcement case and the evidence presented by the parties. It will deliver the judgment together with the reasoning thereof within one month after the receipt of the appeal in the court. The judgment shall be final⁴⁷. Filing of an appeal shall not stay the enforcement procedure, unless the court orders the stay. In such case, the court shall immediately transmit a duplicate copy of the ruling on stay to the enforcement agent⁴⁸.

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

Any kind of a serious and not remedied failure of the tenant to fulfil a lease clause shall give rise to the landlord's right for termination. Such failure may consist of non-payment of the rent in due time; use of the property not for the agreed purposes; non-execution of other contractual obligations, etc. It is material that the law requires the tenant be given the chance to remedy the omission within a reasonable time period⁴⁹. However, in so far as that provision has a dispositive nature, it can be overruled by the contract, which may provide for a different procedure for termination, for example by stating that the landlord shall unconditionally terminate the contract

⁴³ Code of Civil Procedure, promulgated in State Gazette issue 59 of 20 July 2007, in force from 01.03. 2008, last amended State Gazette issue 66 of 26 July 2013., Art. 426, para. 1.

⁴⁴ Ibid., Art. 428.

⁴⁵ Ibid., Art. 435, para. 2.

⁴⁶ Ibid., Art. 436.

⁴⁷ Ibid., Art. 437.

⁴⁸ Ibid., Art. 438.

⁴⁹ Obligations and Contracts Act, promulgated in State Gazette issue 275 of 22 November 1950, last amended State Gazette issue 50 of 30 May 2008, Art. 87.

when the tenant fails to pay until a certain period of time after the due payment date. The notice of termination must be based on particular legal provision or a clause of the agreement in order to have a legally binding effect.

In case of **renting municipal housing**, the tenancy relationship can be terminated due to⁵⁰:

- the tenant's failure to pay the rental price or utility bills for more than three months;
- performing of new construction, superstruction or addition, renovation or reconstruction, where such works affect the inhabited rooms;
- breach of good morals;
- the tenant's failure to show due diligence in using the housing;
- termination of the employment, under the Labour Code⁵¹ or Civil Service Act⁵², of persons accommodated in the housing designated for staff;
- elapse of the term of accommodation;
- lapse of the conditions for accommodating the lessee in municipal housing;
- use of the housing for purposes other than the designated use;

The law gives **discretion to the municipalities to introduce additional grounds for termination** of the tenancy such as social dwelling not used for more than six months without any justified reason.

Tenancy relations with the state shall be terminated on the following grounds: (1) due to termination of the employment contract or the official relations with an employee accommodated in a departmental residential property; (2) where the tenant or a member of tenant's family acquires a home or villa fit for constant occupation in the same city, town or village; (3) where the tenant ceases to satisfy the conditions for renting a residential property constituting state property.

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

In case of **eviction from public houses** the enforcement authority shall address a notice of voluntary compliance within fourteen days after the receipt thereof to the execution debtor. Where the property status of the execution debtor or other objective circumstances impede immediate enforcement, the enforcement authority, acting at the request of the execution debtor, may allow, on a single occasion that enforcement be carried out in whole after a specified time limit. In such case, the authority may determine additional conditions upon the non-compliance of which the deferral will be cancelled. Deferral shall be permissible for a fourteen-day period after the date of enforcement as initially appointed in the enforcement title.

• 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?

⁵⁰ Municipal Property Act, promulgated in State Gazette issue 44 of 21 May 1996, last amended State Gazette issue 66 of 26 July 2013, Art. 46.

⁵¹ Labour Code, promulgated in State Gazette issue 26 of 1 April 1986, last amended State Gazette issue 104 of 3 December 2013.

⁵² Civil Servants Act, promulgated in State Gazette issue 67 of 27 July 1999, last amended State Gazette issue 68 of 2 August 2013.

In the private rental market, if the tenant continues (against the will of the owner) to use the dwelling after the regular end of the tenancy or does not hand in (all) the keys of the dwelling, the landlord cannot force the tenant to leave without a court decision and enforcement procedure administered by a bailiff. The lessor is also not allowed to lock the tenant out of the rented premises for whatever reason.

The enforcement procedure is governed by an enforcement agent ('съдебен изпълнител'), a self-employed or state officer who is authorised by the law to administer the entire process of the coercive enforcement of the judicial acts, also referred as 'bailiff' or 'enforcement judge'.

Eviction from **municipal houses** which are occupied without reasons shall be executed upon order of the respective district mayor. Such order shall be based on a findings protocol, specifying, among other things, the ownership of the property; the person who occupies the dwelling and the grounds for the occupation; the order for termination of the tenancy, etc. The eviction order shall be notified to the interested persons in accordance with the rules of the Code of Civil Procedure⁵³. For the enforcement of the order the assistance of the police authorities may be sought.

In all cases, the landlord may demand compensation from the tenant for the duration of retention of the dwelling beyond the negotiated period of rent.

If after the expiration of the term of the lease the use of the property continues with the knowledge and without the objection of the lessor, the contract shall be deemed extended for an indefinite term.⁵⁴ As a result, when a lease contract is implicitly prolonged after the expiration of its term, a one month notice would suffice for the landlord (tenant) to terminate it.

4.3. Return of the deposit

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

The timeframe and conditions of returning the tenant's security deposit could be freely negotiated based on the freedom of the contract principle.

The landlord will not be entitled to keep the deposit for reasons which have not been agreed upon or without providing any reason, as such case would give rise to tenant's claim against the landlord.

- **What deductions can the landlord make from the security deposit?**

- **In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?**

The security deposit serves as a guarantee against possible damage and/or unpaid expenses upon termination of the agreement. In the lease the deposit must be specifically arranged in respect to the expenses it should cover. In practice it is refunded upon the tenant presenting the landlord evidence that all utility bills have been entirely paid and the dwelling is returned in the agreed condition.

The landlord may make a deduction or refuse to return the deposit if able to prove that there is damage to the dwelling, its equipment or furniture. He would be entitled

⁵³ Code of Civil Procedure, promulgated in State Gazette issue 59 of 20 July 2007, in force from 01.03.2008, last amended State Gazette issue 66 of 26 July 2013.

⁵⁴ Obligations and Contracts Act, promulgated in State Gazette issue 275 of 22 November 1950, last amended State Gazette issue 50 of 30 May 2008, Art. 236.

to do so under the following conditions: the deposit and its purposes are stipulated in the written agreement or it is agreed verbally and, in the beginning of the tenancy relationship and at its end, a delivery-acceptance protocol was signed between the parties, including the condition of the dwelling, its equipment and furniture.

4.4. Adjudicating a dispute

- **In what forum are tenancy cases typically adjudicated?**

- **Are there specialized courts for adjudication of tenancy disputes?**

The regular procedural rules establishing the competence and the jurisdiction of the courts and the appellate procedures apply for the disputes originating from rent contracts. Special courts or other jurisdictions reviewing such cases do not exist.

Cases arising from **private tenancies** are reviewed by the regional and the district courts and by the Sofia City Court under the general rules for distribution of the jurisdiction between the courts.

Only a very small portion of cases reach the higher court instance – the Supreme Court of Cassation – due to the minimum requirement of 5,000 BGN (app. EUR 2,500) for the financial interest involved in cases relating to civil disputes (BGN 10,000 (app. EUR 5,000) for cases related to commercial disputes).

In the area of **social housing**, the orders of municipalities can be appealed before the administrative court following the procedure set out in the Administrative Procedure Code⁵⁵.

Disputes arising from tenancy relationships in a state owned house (departmental houses rented by the staff of the respective state body) are reviewed under the common civil law and civil procedure rules⁵⁶.

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

Slow court proceedings in several cases – also carrying a risk of increased losses of time and money – is a disincentive to parties and significantly increases distrust in the judiciary.

To minimize the risks of slow and expensive judicial procedures for solving disputes relating to tenancy relationships, the parties could verify the tenancy contract with a notary, so they could later use quick judicial procedure if a dispute arises. Also, parties could agree on an arbitration clause and to address the dispute before the court of arbitration, which in many cases is considered to provide faster dispute resolution service.

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

Tenancy related disputes are most commonly resolved by mutual agreement between the parties, or, regrettably, by relinquishment of the respective party's

⁵⁵ Administrative Procedure Code, promulgated in State Gazette issue 30 of 11 April 2006, in force from 12.07.2006, last amended State Gazette issue 104 of 3 December 2013.

⁵⁶ State Property Act, promulgated in State Gazette issue 44 of 21 May 1996, last amended State Gazette issue 66 of 26 July 2013, Art. 24, para. 1.

claims (unpaid rent or utility bills) due to the fact that their financial value does not justify the initiation of proceedings, which may in the end turn out to be more costly than the disputed right itself. Although the legislation provides for a variety of means for extrajudicial dispute resolutions, such as mediation and arbitration procedures, they are very rarely used by the parties to rent contracts. Mediation as a form of alternative dispute resolution is hardly used not only regarding disputes between landlords and tenants of residential properties, but also in general. The major tool for institutional dispute resolutions still remain court proceedings.

5. Additional information

• **How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?**

Social housing

Eligibility for social housing in Bulgaria is dependent on the fulfilment of the following criteria set at the municipal level (usually by the regulation on the procedures for defining housing needs of citizens, tenancy and sale of public housing):

1. they do not own a home, villa or residential plot or more than 1/6 of the common parts of such property;
2. they do not have factories, workshops, shops, warehouses for commercial use;
3. they do not possess other assets overriding a given value fixed by Municipality Councils;
4. they receive a limited gross monthly income per family;
5. they have had permanent address in the respective municipality for five years without interruption;
6. they never squatted in public housing, or their rental contract for such housing was not terminated as a result of culpable violation of the rules by the tenant;
7. they have no financial obligations to the municipality
8. they have insufficient living space.

Eligible individuals and families are grouped in a housing register depending on their housing needs in the following groups:

- persons, whose houses have been restored to their former owners under Section 7 of the Law for Reinstatement of the Ownership of Nationalised Real Estates⁵⁷;
- public housing tenants who are affected by new construction, upgrading or extension, overhaul or reconstruction;
- citizens who do not have any accommodation in a residential area, and have been accommodated in non-housing facilities for at least a year (such as sheds, cellars, attics etc., places unfit for habitation, unacceptable from a sanitary point of view, or at risk of collapse);
- families renting premises based on free rental contract for at least one year until the submission of documents for filing in the register;
- persons or families occupying insufficient living space.

⁵⁷ Law for Reinstatement of the Ownership of Nationalised Real Estates, promulgated in State Gazette issue 15 of 21 February 1992, last amended State Gazette issue 53 of 30 June 2006.

Usually, in the case of families being in the same group, priority is given to:

- families with two or more children;
- single parents of minor children;
- families where one member has a disability level of over 50%;
- young families;
- families who have lived longer in poor housing conditions.

There are several other forms of subsidized accommodation in public housing (with preferential rent rate); these include hostels for students and soldiers, and officers of the housing units in the state administration (Council of Ministers, ministries and state agencies etc.).

In order to be eligible for dormitory accommodation, students need to meet a minimum level in educational performance. They are also classified according to family income, and students with lower family income are given preference.

Housing allowances

The most popular form of housing affordability related subsidies is the heating allowance. Individuals and families from most vulnerable groups⁵⁸ can submit applications and receive targeted allowance for heating during the heating season (5 months). The Annual report for 2010 of the Agency for Social Assistance shows that app. 260,000 persons and families received app. EUR 36 million heating allowances for the heating season 2009 - 2010.⁵⁹

Another type of social assistance is targeted assistance for rental payment for municipal housing. This type of support is available to a limited number of beneficiaries: tenants of social dwellings, who are: (1) orphans under 25; (2) who have completed social vocational training in a public training centre; (3) elderly people (over the age of 70) living alone; and (4) single parents. The eligible persons should have income from the previous month up to 250 percent of the differentiated minimum income. The social allowance covers the entire amount of rent (no garbage fee). However, given the fact that the social housing stock in the country (especially in the bigger cities) is much less than the demand of households from vulnerable groups that qualify for social housing, many of them are not able to use this type of social allowance simply because they are not accommodated in social houses.

There are also specific cases of housing related social allowances, like the targeted subsidy provided to disabled persons for the reconstructions of the home in relation to their disability. The targeted assistance is received after the repair; it is documented through submission of invoice. A social worker from the 'Social Assistance' Directorate inspects and certifies by a social inquiry that the reconstruction is made to ensure the free movement of the person with a disability. In 2010 only fifteen persons with disabilities received targeted assistance for reconstruction of housing⁶⁰.

• Is any kind of insurance recommendable to a tenant?

⁵⁸ Persons living alone, persons with a permanent disability, orphan children, single parents with a child under the age of 18 (if learning), pregnant women 45 days before birth, elder people living alone etc.

⁵⁹ Agency for Social Assistance Annual Report for 2010, Agency for Social Assistance, 2011, 5.

⁶⁰ Agency for Social Assistance Annual Report for 2010, Agency for Social Assistance, 2011, 9.

According to the Law for the Ownership⁶¹, unless otherwise decreed or agreed, the user must: pay the expenses related to the use; insure the property in favour of the owner and pay the insurance premiums.

Usually the insurance market in the area of housing is connected to the mortgages: the banks requirements for mortgages include obligatory insurance.

In 2012, for a third consecutive year, the housing insurance market is dropping down in both major insurance operations directly related to housing – the fire and natural disasters insurance and other property damages. These kinds of insurances are recommendable to a tenant; however, there are very few cases of tenants ensuring the rented abode.

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

In very rare cases legal aid in the area of housing in Bulgaria is provided by a non-governmental human rights organization – for example those protecting the human rights of ethnic minorities. In most cases the protection is against evictions from social houses (or state and municipality owned land).

The lack of financial access to legal aid for some poor social strata (such as students and pensioners partaking in tenancy relationships) decreases willingness to register concluded leases with the Notary and thus indirectly encourages the practices of oral agreements characterized by much higher level of uncertainty than written contracts.

The lack of financial access to legal aid is often combined with high financial thresholds for access to the justice system, low rental prices and short-term contracts, lack of confidence to the court system institutions and relatively low legal culture.

The legal costs – particularly the cost of hiring a lawyer – are often much higher than the amount for which an action would be brought in the court. Besides, usually judicial proceedings last more than two or three years.

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

Compared to housing professionals' associations, organized movements for consumers are much weaker. There are no registered or informal organizations representing tenants' interests, but sometimes their rights are protected by the mainstream consumer protection associations like the Bulgarian National Association 'Active Consumers'⁶².

Another body with consumers' rights protection functions is the State Commission for Consumers Protection⁶³. The Commission coordinates the activity of the controlling bodies, including the bodies of supervision of the products put on the market and/or commissioned, for which there are defined essential requirements and/or ecodesign requirements of the released/submitted to the market construction products⁶⁴ according to Regulation (EU) No. 305/2011 of the European Parliament and of the

⁶¹ Law for the Ownership, promulgated in State Gazette issue 92 of 16 November 1951, last amended State Gazette issue 105 of 29 December 2011, Art. 56, para. 2.

⁶² Bulgarian National Association 'Active Consumers', www.aktivnipotrebiteli.bg, March 2014.

⁶³ Commission for Consumers Protection, http://www.kzp.bg/index.php?mode=post_Lang&pLang=en, March 2014.

⁶⁴ Technical Requirements for the Products Act, promulgated in State Gazette issue 86 of 1 October 1999, last amended State Gazette issue 68 of 2 August 2013, Art. 1, para. 5.

Council of 9 March 2011 laying down harmonized conditions for the marketing of construction products.

CROATIA

Tenant's Rights Brochure

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1. Introductory information

- **Introduction: The national rental market**

The Croatian national rental market is still strongly marked by the consequences of privatization and the restitution processes that took place in the 1990s, after the country gained its independence from the former Socialistic Federal Republic of Yugoslavia in 1990. Due to these two processes, Croatia became a country of private housing owners (living in their own apartments and houses) dominating the housing market. This group reaches a staggering 89.4% of all the housing tenures types (Census 2011)⁶⁵. Group of tenants renting on private market is still relatively small, presenting around 5.4% of the market. Social tenure is even smaller and presents only 1.2 % to 2 % of the housing market⁶⁶. Social housing units are predominantly owned by Local authorities while the government determines the level of rent. The protected or social rent is very low, amounting to 2.61 HRK/m² (0.35 EUR/m²)⁶⁷.

A recent research⁶⁸ focused on the comparison between the rent level for private rental housing, social rental housing and public rental housing (housing intended for young families with small children, offered by Local authorities) in location Novi Jelkovec, Zagreb:

Size of flat in m ²	Up to 60	80	100
Rent on the free market in EUR	378 per month	513 per month	757 per month
Rent of public housing in EUR	199 per month	253 per month	283 per month
Rent of social housing in EUR	29 per month	38 per month	48 per month

- **Current supply and demand situation**

Currently, lack of social housing is still one of the main features of the Croatian housing market.

Supply on private rental market seems to be sufficient.

Problems occur only in coastal area (Istria and Dalmatia) where landlords are reluctant to conclude tenancy contracts for durations that include summer period, since in this period the landlords prefer to rent the apartments to tourists.

⁶⁵See: <www.dzs.hr/>, Popis stanovništva 2011, 5 January 2014.

⁶⁶P. Sunega and G. Bežovan, 'Regional differences' 10.

⁶⁷1 HRK=7.571771 EUR on 14 January 2013, <<http://www.hnb.hr/tecajn/htecajn.htm>> , 14 January 2013.

⁶⁸Baturina, Bežovan & Matančević, 'Welfare inovations at the local level in favor of cohesion, City report: Zagreb', 26.

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

- Affordability of private rentals; high prices and low legal protection (in practice)
- Legal uncertainty and lack of effective legal remedy due to long court procedures
- Lack of alternative dispute resolution forums or courts specialized for tenancy cases
- Tenancy contracts concluded orally (not in writing) leading to several problems for the tenant (impossibility to be awarded social transfers intended for subsidizing rent and heating costs)
- Impossibility to register at the address in cases of no written contract
- No tenant associations offering quality legal advice

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

Because in practice the private rental housing market in Croatia is uncontrolled and its biggest part is the 'black market', there is no accurate data on the overall size of this market and the supply and demand.⁶⁹

However, it can be said that private renting (still) represents a significantly bigger portion of the rental market than the social and public renting offered by Local municipalities, Towns (social and public housing) and the State (POS rent-to buy scheme).

- **Private renting**

The estimation is that the overall number of households that are renting housing units on private market is around 120,000 (30,000 in Zagreb, 20,000 in Split).⁷⁰ This corresponds to the number estimated by the professionals from the Bureau of Statistics.

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

Social housing is governed by special Rules adopted by the Local authorities offering social apartments. Usually the Local authorities issue a public tender governing the selection process. Rules governing social rentals are issued at the same time. The level of rent is fixed (protected rent); in accordance with Article 7 and 8 of Lease of Flats Act determined by the Croatian Government's Decree.

In 2009, public rental programs have been offered for the first time. Through these programmes some local authorities (mostly bigger cities⁷¹) are starting to rent out municipal housing to families/households that are not eligible for the housing with protected rent, but do not have the means to rent on private market. Public rents are higher than social (protected) rents and lower than private rents.

⁶⁹See: 'Studija tržišta nekretnina u Republici Hrvatskoj' Ministarstvo pravosuđa, 100.

⁷⁰ See: <www.udruga-pragma.hr/index.php?option=com_content&view=article&id=112%3Apitanja-stanara&catid=44%3Astanovanje&Itemid=202&lang=hr> 26 November 2012.

⁷¹This program has been first introduced by the City of Zagreb in the 2009. See the Decision on the lease of public housing from 26.02.2012, <www.zagreb.hr/default.aspx?id=12296>. The basis for this program is set in the Social policy program of the City of Zagreb for 2009 – 2012 (Program socijalne politike Grada Zagreba od 2009. do 2012.). The Program planned to allocate 600 housing units for public renting on the site Sopnica - Jelkovec.

According to the available data the rent of public renting in the City of Zagreb monthly amounts to:

- (1) 80 EUR + 2.00 EUR/m² for the dwelling up to 59.99 m²;
- (2) 115 EUR + 1.75 EUR/ m² for the dwelling from 60-99.99 m²; and
- (3) 135 EUR + 1.50 EUR/ m² for the dwelling from 100 m² and larger⁷².

The most recent development in the rental sector has been the introduction of rent-to-buy scheme under the POS Programme. In accordance with the Art 24 of the Publicly Subsidised Residential Construction Act (*Zakon o društveno poticajnoj stanogradnji*⁷³) – also called Publicly Subsidised Residential Construction Program (POS programme), the Agency for Transactions and Mediation in Immovable Properties (*Agencija za pravni promet i posredovanje nekretninama*) passed a new scheme. According to the programme the apartments that were not sold in the POS programme, are offered for rental. The programme is very successful, since all the apartments have been rented before 15 August 2013. The Agency is gathering information on citizens' interest in new similar programmes⁷⁴. A form can be found on their internet page: www.apn.hr.

- **General recommendations to foreigners on how to find a rental home**

Landlords in possession of available market rental dwellings usually submit their advertisement in the local newspapers, to the internet sites specialized for renting and selling of dwellings, through family and friends. Therefore the tenant is advised to use these options. Finding an apartment through Rental agency is also a viable alternative, especially in cases of renting a high end apartment.

According to data gathered in Survey on renting⁷⁵, 46% of the interviewed tenants found the rented dwelling through advertisements in newspapers, 43 % through family and friends, 28 % on internet sites and only 7% with a help of real estate agencies (more than one answer to the question could be given). 49% of landlords found their tenants through family and friends, 43% on the internet and in the newspaper ads, and 14% from real estate agencies (more than one answer to the question could be given).

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

- contracts not concluded in writing
- tenancy contract concluded with notary eviction form
- renting from a person that is not the Landlord (checks in the Land registry are necessary)
- payment of rent in advance for 6 months or more
- renting in coastal area; landlords excluding possibility to rent during the summer time

⁷²See: ' *Na t j e č a j za davanje u najam javno najamnih stanova u naselju Sopnica-Jelkovec*' from 12.09.2012, available at <www.zagreb.hr/UserDocImages/stanovi/Natjecaj%20-%20javno%20najamni.pdf>, 26 November 2012.

⁷³Official Gazette of RC, No. 109/01, 82/04, 76/07, 38/09, 86/12.

⁷⁴ See: www.apn.hr.

⁷⁵Istraživanje o iznajmljivanju nekretnina, 12:
http://www.centarnekretnina.net/download/istrazivanja/2009/01_Istrazivanje_o_iznajmljivanju.pdf.

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

• Croatian	Translation to English
Ugovor o najmu	Tenancy (lease) contract
Zakon o najmu stanova	Lease of Flats Act
Zakon o obveznim odnosima	Civil Obligations Act
Ugovor u pisnom obliku	Contract in writing
Bitni sastojci ugovora o najmu	Essential elements of tenancy contract
Javnobilježnička potvrda	Notary stamp
Najam stana	Lease of an apartment
Najam kuće	Lease of a house
Podnajam	Sublease
Najamnina	Rent
Zaštićena najamnina	Protected or social rent
Najmodavac	Landlord
Vlastnik stana	Owner of the apartment
Najmoprimac	Tenant
Socialni stan	Social housing
Registracija kod porezne uprave i jedinice lokalne samouprave	Registration with the Tax office and Local Authority
Porez	Tax
Najam na određeno doba	Tenancy contract limited in time
Najam na neodređeno doba	Open ended tenancy contract
Troškovi	Expenses

Pričuva	Mandatory maintenance fee
Materialni nedostatci	Material defects
Pravni nedostatci	Legal defects
Kršenje ugovora o najmu	Breach of contract
Otkaz ugovora o najmu	Termination of tenancy contract
Otkazni rok	Termination period
Razkid ugovora o najmu	Cancelation of tenancy contract
Opomena	Admonition
Sudski proces	Legal process
Ovrha	Execution process
Postupak na izseljenje	Eviction procedure

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?**

Discrimination on bases of nationality (against foreigners) and marital status (unmarried partner) is prohibited. However, rejecting a student or a person with a short-term employment contract as a tenant would not be in breach of antidiscrimination legislature if this status indicates that the tenant might have real problems with paying the rent or the expenses.

Article 14 of the Constitution of Republic of Croatia (*Ustav Republike Hrvatske*)⁷⁶ ensures human rights to everyone regardless of his or her personal status. Discrimination on grounds of race, color of skin, gender, language, religion, political or other convictions, social status etc. is prohibited.

Antidiscrimination Act (*Zakon o suzbijanju diskriminacije*)⁷⁷ is a general statute on antidiscrimination. There are several special acts governing antidiscrimination in specific fields⁷⁸: Constitutional Law on Rights of Minorities (*Ustavni zakon o pravima nacionalnih manjina*)⁷⁹, Law on the equality of genders, (*Zakon o ravnopravnosti spolova*)⁸⁰, Law on homosexual unions (*Zakon o istospolnim zajednicama*)⁸¹ and Criminal Code (*Kazneni Zakon*)⁸². Antidiscrimination Act has been amended in 2012 to comply with multiple EU Directives⁸³. Art 8 of the Antidiscrimination Act explicitly prohibits the discrimination in the field of housing and prescribes penalties for any breaches. The penalties can go as high as up-to 350,000 kn (more than 45,000 EUR).

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

Questions that are not in connection with the tenancy and tenant's ability to pay the rent are not allowed. Questions of personal nature such as: questions on religion, nationality, sexual orientation, intention to have children (such questions are forbidden even if they are affecting the number of persons to be living in the apartment in the future), are strictly forbidden. In cases that such questions are posed, the tenant has a right to lie.

In practice, especially due to prevailing black market (lack of proper regulation) in private renting sector, it is difficult to assess the degree of discrimination in the field of housing.⁸⁴ The Ombudsman Report from 2011 states that there were several

⁷⁶Official Gazzete of RC, No . 56/90, 135/97, 8/98.

⁷⁷Official Gazette of RC, No. 85/08, 112/12.

⁷⁸See: <http://www.ombudsman.hr/dokumenti/vodic.pdf>.

⁷⁹Official Gazette of RC, No. 155/2000.

⁸⁰Official Gazette of RC, No. 22/08.

⁸¹Official Gazette of RC, No. 116/03.

⁸²Official Gazette of RC, No. 125/11,144/11.

⁸³See:<http://www.ombudsman.hr/dokumenti/vodic.pdf>.

⁸⁴Searching the internet one can find several newspaper articles dealing with this problematic. An interesting "mini research" on the topic of discrimination in housing leases against Roma and Bosniac

cases in which the Office of Ombudsman has been contacted due to discrimination in the field of housing.⁸⁵ Nationality, race and sexual orientation of the tenant still play an (although legally prohibited) important role.

- **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)?**

A reservation fee is not usual and it would be considered illegal in such a form.

- **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)?**

There is no legal possibility for the landlord to require an independent credit report of or by the future tenant. In practice the landlord interviews the potential tenant and asks about his or her financial (possibility to pay for the rent and expenses) and marital status (in connection with the question of how many family members will live with the potential 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?**

The percentage of renting relationships concluded through real-estate agencies is small. Foreigners, especially foreign companies and various types of international organizations, usually use the services of estate agents. According to the real-estate agencies, the crisis on the housing market and decline of purchasing demand resulted in the structural shift of their business. For the time being, they are mediating in rental sector more than in sales.⁸⁶ Since the rental relations are mostly concluded on ‘the black market’,

It can be argued that estate agents play a role in providing a certain level of security of tenure to tenants.

The rules of engagement for real estate agencies in Croatia are regulated by the Real Estate Brokerage Act (Zakon o posredovanju u prometu nekretninama⁸⁷). In cases of renting, the take of the real estate agency is not regulated by the law. Usually however one month’s rent is paid to the agency.

There are no other bodies or institutions assisting the tenant to search for housing.

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

(Muslim) population has been done by the national Newspaper Jutranji List, showing that discrimination against these two groups of people is still very strong in Croatia. Article titled: Mersiha? Sorry, the apartment has already been leased, Jutranji List, published on 19th of November 2011.

⁸⁵ Available at: <http://www.ombudsman.hr/dodaci/Izvje%C5%A1%C4%87e%20o%20pojavnama%20diskriminacije%20za%202011.pdf>.

⁸⁶ See: <www.gorila.jutarnji.hr/vijesti/2011/01/31/podstanarstvo-ili-stambeni-kredit> , 27 November 2012.

⁸⁷Official Gazette of RC, No.107/07, 144/12.

There are no blacklists of bad landlords or tenants or any similar system of rating and labelling preferred landlords or tenants.

2.2. The rental agreement

- **What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?**

A tenancy contract has to be made in writing to be considered validly concluded (Article 4 of Lease of Flats Act). This provision may represent a problem in light of the fact that some of the market (private) landlords are not willing to conclude tenancy contracts in writing. However, there is an exemption to this rule. According to Brežanski⁸⁸ as well as Gorenc⁸⁹, if the tenancy contract is not concluded in writing, the rule of consolidation (Article 249 of Civil obligation Act) may apply: if the contract has been fulfilled in its whole or in its important part, it is validly concluded regardless of its (written or oral) form. The rule of consolidation shall only apply to cases when both parties have fulfilled their obligations. Fulfilment of contractual obligations by one party only, will therefore not suffice⁹⁰.

According to Article 26 of the Lease of Flats Act, all landlords have a duty to submit the tenancy contract to the administrative department of the Local government (in case of City of Zagreb, to the local authorities of the city) and to the nearest Tax office. Department of the local government responsible for housing is in charge of the list of apartments, landlords, tenants, sub-tenants and the amount of rent. Article 29 of the Lease of Flats Act prescribes a penalty in case of non-compliance with the law (paid by the landlord): “A fine in the amount of 1.000,00 to 5.000,00 Kn (approximately 130-650 EUR) shall be imposed on the landlord who does not comply with the provisions of Article 26 paragraph1 of this Law.” No fee is to be paid for the registration; however taxes paid by the landlord are assessed on the basis of the agreed rent.

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

The minimum requirements for a valid conclusion of a tenancy contract (Gorenc⁹¹) pursuant to Lease of Flats Act are described in Article 5 and include:

- the nomination of tenant and the landlord
- description of the apartment (or its part)
- the amount of rent and the payment method
- type of costs to be paid by the tenant and the payment method

⁸⁸Brežnski J. et al: Najam stanova i zakup poslovnog prostora u praksi, Novi Informator, 2006, p.29.

⁸⁹Gorenc and others: Komentar Zakona o obveznim odnosima, Prif plus, 2005,883.

⁹⁰Gorenc and others: Komentar Zakona o obveznim odnosima, Prif plus, 2005,883. According to the Decision of the Supreme Court of RC, Rev 208/96, from 19th of January 2000:“A tenancy contract fulfilled in its predominant part is valid” ; similarly also in the Decision of the Supreme Court of RC, Rev 219/98, from 20th of September 2000.

⁹¹ Gorenc and others:Komentar Zakona o obveznim odnosima, Prif plus, 2005,853.

- information on persons living with the tenant
- duration of the tenancy.
- provisions for the maintenance of the apartment
- provisions on the use of common areas, common parts and facilities and land by the persons living in the building
- provisions regarding handing over of the apartment.

Requirements of Article 5 of the Lease of Flats Act are a mere reminder to the parties of what should be determined by the contract. The absence of any provision does not cause ex-lege invalidity of the contract.⁹²

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

Contracts limited in time are legal under Croatian law. Moreover, no restrictions on the duration of the contract or even the level of rent exist.

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

The tenancy contract has to include the amount of rent and the payment method, including the due date.

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

When concluding the tenancy agreement, the parties have to decide who will pay the costs. It is therefore legal for the landlord to shift costs of repairs to the tenant, especially if the parties in turn agree on a lower rent. However, the abuse of the landlord's position (as a party having prevailing power) may and will be sanctioned by the court. Such provisions will then be deemed as null and void.

Unless agreed otherwise, the landlord will pay for the major repairs, whereas the minor repairs are paid by the tenant.

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

This depends on the tenancy agreement. In cases when nothing is agreed the tenant is expected to provide for furnishing and the major appliances.

- **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)?**

The making of an inventory is an essential part of the tenancy agreement (Art 5 of the Lease of Flats Act). Therefore the tenant is strongly advised to make an inventory prior to moving in the apartment.

⁹²Gorenc and others:Komentar Zakona o obveznim odnosima, Prif plus, 2005,838.

- **Any other usual contractual clauses of relevance to 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.)?**

According to Article 31 paragraph 2/2 of Lease of Flats Act, the tenancy contract shall specify the persons who are allowed to move in together with the tenant. Article 19 paragraph 1/4 of Lease of Flats Act stipulates that the landlord can terminate the tenancy contract if a person not specified by the tenancy contract is living in the leased dwelling for a period of time longer than 30 days. This provision does not apply to tenant's spouse, children, parents or any person for whom the tenant is obliged to provide for by the Social Care Act⁹³, or a person providing aid or care to the tenant, until such need exists.⁹⁴

Article 37 paragraph 1 of Lease of Flats Act provides for a special right: family members (as defined in the former Law on housing relationships) are entitled to be listed in the tenancy contract as having the right to use the apartment.

if the landlord is not willing to include the specified persons into the tenancy contract, they (personally or by the tenant on their behalf) are able to enforce the right to be included (into the tenancy contract) by a court decision.⁹⁵

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

No specific obligation of the tenant to live in the dwelling exists under Croatian Law—neither under Lease of Flats Act nor under Civil Obligations Act. According to Gorenc,⁹⁶ to use the dwelling is the tenant's right, not his duty (citing Article 18 (1) of the Lease of Flats Act). The actual use of the dwelling is not considered as essential part of the tenancy contract since one can enter into a valid tenancy contract and never use the apartment provided the rent is being paid.

The tenant is however obliged to use the dwelling if such a duty arises from the nature of the contract (for example if the landlord wants someone to inhabit the apartment, provided that the tenant is aware of this), if the law prescribes such obligation (protected tenants, social renting) or when the parties have explicitly agreed on a tenant's duty to live in the dwelling.

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

⁹³ Official Gazette of RC, No. 33/12.

⁹⁴ Brežanski J.: Najam stana –položaj zaštićenog najmoprimca, 2004 http://www.vsrh.hr/CustomPages/Static/HRV/Files/JBrezanski-Najam_stana-2004-02mj.pdf, 15.

⁹⁵ Ibid.

⁹⁶ Gorenc and others: Komentar Zakona o obveznim odnosima, Prif plus, 2005; Commentary by Gorenc and others to Article 561, on page.846.

In the event of the death of the tenant or when the tenant ceases to live in the apartment, his or her rights and obligations are transferred onto his or her spouse. If there is no spouse, the rights and obligations are transferred to a child, stepchild or adopted child. In such cases, the person residing with the tenant shall inform the owner about the change within 30 days of the death or move of the former tenant. Similarly, these persons are obliged to inform the owner in case they do not want to terminate the contract (Article 24 of Lease of Flats Act). These provisions apply to any other person living with the tenant prior to the leave⁹⁷.

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

A student moving out can always be replaced only with a permission of the landlord.

- **death of tenant;**

See the answer on divorce above.

- **bankruptcy of the landlord;**

In cases of bankruptcy the status of tenant remains unchanged despite the change of the landlord⁹⁸.

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

Cases of abuse of subletting by the landlord are not known in Croatia.

The tenant may sublet the apartment if the landlord agrees with the sublet (pursuant to Article 28 of the Lease of Flats Act). The tenant is obliged to deliver the sublet contract to the landlord who then informs the local authorities and the tax office. If the tenant sublets the apartment without the consent of the landlord, the landlord may (According to Article 19 of the Lease of Flats Act) terminate the contract.

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

Yes. Change of the landlord does not influence the tenancy agreement. The new landlord takes all the rights and duties of the former landlord.

In cases of public auction pursuant to foreclosure proceedings against the landlord, the Execution Act⁹⁹ defines cases in which tenancy contract ceases to exist due to execution on the apartment. If the tenancy contract is not concluded or entered into a Land registry before the acquisition of a lien or right to settlement, the rights of the tenant cease to exist once the real estate is sold. In such cases the court determines

⁹⁷Decision of the Constitutional Court of RH No. U-I-533/2000, from 24th of May 2000:

The death of the tenant or his moving out of the apartment is not a reason for termination of the tenancy contract.

⁹⁸Gorenc and others:Komentar Zakona o obveznim odnosima, Prif plus, 2005, 864.

⁹⁹Official Gazette of RC, No. 112/12, 25/13.

the period, in which the tenant has to vacate the dwelling. Such period cannot be shorter than three months¹⁰⁰

- **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?**

One of the essential provisions of the tenancy contract is the agreement on who will pay for the apartment utilities (pursuant to Article 5 of Lease of Flats Act).

In the absence of an agreement, the utilities such as water, electricity, garbage removal, gas supply etc. are paid by the tenant. On the other hand, utilities such as fee for mandatory maintenance of the building (pričuva) and taxes are paid by the landlord (Article 554 of Civil obligations Act).¹⁰¹

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

Unless otherwise agreed, costs of regular use of the leased dwelling are borne by the tenant. All other costs are borne by the landlord.¹⁰² Small repairs are repairs of smaller importance and changes of smaller parts (light bulbs). Regular use includes costs such as: heating, electricity, use of water, garbage disposal fee and similar. In practice the division of costs between tenant and the landlord is usually specified in the tenancy contract¹⁰³. Otherwise, the rules of usual (standard) practice in the particular region apply¹⁰⁴. The fee for mandatory maintenance for apartment buildings is however paid by the landlord if no special agreement has been made. The parties may also determine a fixed price for the lease (lump-sum). In such cases the utility costs are included in the lump-sum rent.

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

All taxes are paid by the landlord.

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

Fee for mandatory maintenance (pričuva) is paid by the landlord unless otherwise agreed by the parties (Article 554 of Civil obligations Act).¹⁰⁵

It is a standing practice in Croatia that the landlord shifts the condominium costs (mandatory maintenance fee, pričuva) to the tenant. This is not illegal; however it has to be explicitly agreed upon in advance and in writing.

¹⁰⁰Article 130 of Execution Act.

¹⁰¹Gorenc and others:Komentar Zakona o bveznim odnosima, Prif plus, 2005, 838.

¹⁰²Gorenc and others: Komentar Zakona o obveznim odnosima, Prif plus, 2005, 838.

¹⁰³Gorenc and others: Komentar Zakona o bveznim odnosima, Prif plus, 2005, 838.

¹⁰⁴Ibid.

¹⁰⁵Gorenc and others:Komentar Zakona o bveznim odnosima, Prif plus, 2005, 838.

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

The Law does not prescribe the amount of the deposit. In practice, the usual amount of deposit in private rentals is between one and two monthly rents. The deposit is usually paid by the tenant at the moment of the conclusion of the agreement.

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

The tenant and the landlord agree upon the rules regarding the deposit. In practice no interest is owed to the tenant; the landlord does not open a separate account.

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

They are lawful, but are not used in practice.

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

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 neighbors; occupation by third parties)?**

The landlord must ensure a normal use of a dwelling during the period of tenancy contract. Next to that the landlord has the duty to maintain the dwelling or the apartment in an appropriate condition, to restrict himself from the use of the apartment and to guarantee the tenant that the apartment is free from material or legal defects.

If humidity level or mould in the apartment becomes potentially hazardous to the tenant's health, the tenant has the right to terminate the tenancy contract without any termination period. This applies even to cases when the tenant was aware of that situation at the time of entering into the tenancy contract.¹⁰⁶ The tenant may not waive this right¹⁰⁷.

Noise problem from a building site or problem with noisy neighbors seems not to violate the tenancy. In such cases the Police may fine the neighbors for breaching public law and order if the noise is too loud.

¹⁰⁶Article 576 (4) of the Civil Obligations Act.

¹⁰⁷Article 576 (5) of the Civil Obligations Act.

If a third party has a rightful claim that fully excludes the right of the tenant to use the dwelling, the tenancy contract is terminated *ex lege (ipso iure)* and the landlord is obligated to compensate the tenant for the damages he suffered thereof¹⁰⁸.

- **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)**

Article 13 of Lease of Flats Act defines that the landlord has to maintain the apartment in habitable condition in accordance with the lease agreement. The tenant is obliged to inform the owner of the necessary repairs in the apartment and common areas of the building, which are then borne by the landlord. Tenant and other occupants have to allow the landlord or a person authorized by the landlord to enter the apartment in relation to the control of the use of the apartment¹⁰⁹. According to Civil obligations Act, the landlord has to reimburse the tenant for any repair costs borne by the tenant, either because the repairs could not wait or because the landlord failed to make them in due time after being notified¹¹⁰. Costs of small repairs and costs of regular use of the dwelling are borne by the tenant¹¹¹. The tenant has a duty to notify the landlord without delay about any repair needed; failing that, he is liable for any damage¹¹². If, during the term of the lease, the dwelling deteriorates so it is no longer fit for the agreed use or where its use is significantly diminished over an extended period of time due to the needed repairs and the tenant is not responsible for that, the tenant has the right to obtain a reduction of rent from the court (unilateral reduction of the rent by the tenant is not allowed), or even terminate the contract if the dwelling is not made fit for use within an acceptable period of time¹¹³.

Regarding third party claim, the tenant having the real possession of the dwelling has the right to demand from the landlord that the second tenant (not in possession of the dwelling) does not disturb his use of the dwelling. A claim seeking remedy for any damage suffered is possible (if the conditions are met, the possibility to seek remedy for the entire damages will be possible). Lease contract between the landlord and the second tenant, not in possession of the dwelling, is terminated *ex lege (ipso iure)*. The second tenant will usually be able to prove fraud, deliberate non-performance or non-performance due to gross negligence on part of the landlord. Accordingly, the tenant is entitled to request from the landlord compensation for the entire damage (not only for the foreseeable) that was caused due to breach of the contract, regardless of the fact that the landlord did not know of the particular circumstances resulting in the damage caused¹¹⁴.

¹⁰⁸Article 560(2) of the Civil Obligations Act.

¹⁰⁹Or as defined in Civil Obligations Act Articleicle 554(1): to maintain the dwelling or the apartment in a condition fit for the agreed use, the landlord shall be obligated to make the necessary repairs in due time and at his own cost, and the tenant shall be obligated to allow that.

¹¹⁰Article 554(2) of the Civil Obligations Act.

¹¹¹Article 554(3) of the Civil Obligations Act.

¹¹²Article 554(4) of the Civil Obligations Act.

¹¹³Article 555 of the Civil Obligations Act.

¹¹⁴Article 346(2) of the Civil Obligations Act.

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

The landlord has to carry out major repairs; smaller repairs are born by the tenant.

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

The tenant has a right to make smaller repairs at his own expense. If no previous agreement with the landlord exists, the deduction of rent is not possible.

According to Civil obligations Act, the landlord has to reimburse the tenant any repair costs borne by the tenant, either because the repairs could not wait or because the landlord failed to make them in due time after being notified¹¹⁵.

- **Alterations of the dwelling**
 - **Is the tenant allowed to make other changes to the dwelling?**

No, the tenant may not make changes to the dwelling if the landlord does not agree.

- **In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

Such adaptations of the building have to be agreed with the majority of the owners of the building. The apartment may not be adapted without the landlord's prior consent.

- **Affixing antennas and dishes**

Affixing antennas and dishes is allowed.

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

These kinds of repairs and changes are allowed unless explicitly forbidden.

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

Keeping a domestic animal has to be agreed upon with the landlord.

- **producing smells**

Producing smells is not allowed.

- **receiving guests over night**

¹¹⁵Article 554(2) of the Civil Obligations Act.

Unless otherwise agreed by the landlord and the tenant, receiving guests overnight is allowed, as long as they stay less than 30 days in a row.

- **fixing pamphlets outside**

This would not constitute a breach of the tenancy contract.

- **small-scale commercial activity**

Even small-scale commercial activity is under Croatian law explicitly prohibited unless otherwise agreed by the parties. There are no mixed residence/commercial contacts under Croatian Law. Under the Lease of Flats Act, running a business without the landlord's approval may be a reason for a unilateral termination of the contract. If the landlord gives approval to a tenant to run business in the apartment, the contract will have to be amended to comply with the Law on lease and sell of office space (*Zakon o zakupu i kupoprodaji poslovnog prostor*¹¹⁶).

3.2. Landlord's rights

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

There are no restrictions on rent the landlord may charge.

- **Rent and the implementation of rent increases**
 - **When is a rent increase legal? In particular:**
 - **Are there restrictions on how many times the rent may be increased in a certain period?**

The only restrictions on the rent increase are prescribed for open-ended tenancy contracts, which are extremely rare in Croatia (almost non-existent). In accordance with Article 11 of Lease of Flats Act, a rent increase can be proposed by the landlord in case of the open-ended tenancy contracts, but not prior to the passing of the first year. If the new proposed rent exceeds the legal maximum, which is set at 120% of the average rent in that area for a similar dwelling, the tenant has the right, within the time period of 30 days, to demand from the court to define the rent in accordance with the law. Until the court's decision the tenant is to pay the contracted rent. This provision is not used in practice.

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

No, there is no such restriction.

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

¹¹⁶Official Gazette of RC, No. 125/11.

The landlord and the tenant have to agree on the rent increase. However in practice, due to mostly one-year tenancy agreements, the landlords are able to increase the rent at time of “prolonging” the tenancy agreements.

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

Tenant and other occupants have to allow the landlord or a person authorized by the landlord to enter the apartment in relation to the control of the use of the apartment¹¹⁷.

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

The landlord is not prohibited by any Law from keeping a set of keys to himself; however, he may use them only in accordance with the Law and the tenancy agreement.

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

No, such a situation would constitute a disturbance of tenant’s possession. The tenant can file a disturbance claim against the landlord in front of a court.

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

Yes, in such cases the landlord may seize and even sell personal property of the tenant in a public auction.

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?**

Pursuant to Article 23 of Lease of Flats Act, the tenant is allowed to terminate the tenancy agreement without any reason in cases of open ended agreements if he respects the obligation to notify the landlord in a written form, at least 3 months prior to the date on which he intends to move out of the apartment.

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

¹¹⁷Or as defined in Civil Obligations Act Articleicle 554(1): to maintain the dwelling or the apartment in a condition fit for the agreed use, the landlord shall be obligated to make the necessary repairs in due time and at his own cost, and the tenant shall be obligated to allow that.

moving for professional reasons)?

The tenant may not terminate a limited in time contract before its expiry. On the other hand, there are several reasons for the tenant to terminate the tenancy agreement due to landlord's "at fault" behaviour. The tenant may cancel the contract if the dwelling or the apartment is not in an agreed or appropriate state to be used (Civil Obligations Act Article 553 (2) and (3)). The tenant is also allowed to terminate the tenancy contract at any given time without termination period, if the leased dwelling or the apartment is hazardous to his health. This applies even to cases when the tenant was aware of that situation at the time of entering into the tenancy contract.¹¹⁸ The tenant may not waive this right¹¹⁹.

Finally, a mutual agreement between the parties is always possible. For example an agreement between the parties that a different (new) tenant will continue the tenancy contract is possible. Contracting parties may in theory agree upon any termination period and sanctions for their breach, including penalty provisions. Such agreements are not common in practice and there is no case-law on this issue. The landlord has no statutory right to compensation.

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

In such cases the landlord will have to explicitly agree upon such a change. In practice these situations in most cases do not present any problem.

4.2. Termination by the landlord

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

The landlord may terminate an open ended tenancy contract if he, his descendants, parents or persons he is obliged to support under law, intend to move into the apartment. The notice period has to be given in writing and at least 6 months in advance.¹²⁰

If the landlord wants to renovate and use the apartment differently in the future, he may not terminate the tenancy contract.

- **Must the landlord resort to court?**

In cases when the tenant does not voluntarily leave the apartment, the court eviction procedure is needed. In other cases of termination no court procedure is needed.

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

¹¹⁸Article 576 (4) of the Civil Obligations Act.

¹¹⁹Article 576 (5) of the Civil Obligations Act.

¹²⁰Article 22(2) of the Lease of Flats Act.

There are no social defences available for the tenant against an eviction.

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

Pursuant to Article 19 of the Lease of Flats Act (ordinary notice), the landlord has the right to terminate the lease if the tenant or other occupants of the apartment use the apartment contrary to the provisions of the Lease of Flats Act or the tenancy agreement, and in particular:

- if the tenant fails to pay within the agreed period of time the rent or other (contractual) costs in relation to housing,
- if the tenant subleases the apartment without the permission of the landlord,
- if the tenant or other occupants of the apartment disturb other tenants or occupants in peaceful use of the dwelling or of their business premises,
- if the apartment is used by a person who is not listed in the tenancy contract for more than 30 days without the permission of the landlord, except when such a person is a spouse, descendants or a parent of the tenant, a person the tenant is obliged by law to support, or the person who provides for the tenant or other occupant of the apartment with the necessary care and assistance until such a need exists,
- if the tenant or other occupants of the apartment do not use the apartment for housing, but use it in whole or in its part for other purposes.

The landlord may not terminate the tenancy contract without a written warning urging the tenant to eliminate the reasons for termination within 30 days. In case of non-compliance by the tenant, the landlord may terminate the tenancy contract with a 3 months' notice period¹²¹. The notice has to be given in writing and has to include the explanation of the reasons for the termination. The notice has to be handed over directly to the tenant (who has to sign to confirm the receipt), or sent to the tenant with registered mail¹²². If the tenant refuses to accept the mail, the termination period starts on the day when the notice was sent¹²³. The landlord however has the right to terminate the contract without any notice period if the tenant violates the contract or mandatory rules more than twice (third time no notice period is necessary).¹²⁴

Pursuant to Article 20 of Lease of Flats Act, the landlord may cancel (extraordinary notice) the tenancy contract if:

- the tenant or other users cause damage to the common areas, appliances and parts of the dwelling and do not remedy such a damage within a 30 days period,
- the tenant modifies the apartment, common areas and facilities of the building without the prior written consent of the landlord.

In these two cases the landlord may cancel the tenancy contract in writing, with an explanation and with the eviction date which cannot be shorter than 15 days.

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

¹²¹Article 22(2) of the Lease of Flats Act.

¹²²Article 19(2) of the Lease of Flats Act.

¹²³Article 22(3) of the Lease of Flats Act.

¹²⁴Article 19 (3) of the Lease of Flats Act.

The tenant may challenge the termination in a legal procedure before the Municipal court (court of first degree). Possible objections to the termination may include reasons such as:

- there is no legal or contractual reason on which the termination of the tenancy ^ contract could be given
- the termination notice was not given in a legally or contractually prescribed manner
- the tenant did not receive the termination notice
- the termination notice did not include legally prescribed dead-line in which the tenant has to stop with the breach
- the landlord has not respected the legally or contractually prescribed notice period
- the tenant was not given a moving-out time period

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

If the tenant does not vacate the apartment within the notice period, or within the time specified by the landlord in cases of Article 20 of Lease of Flats Act, the landlord may file a claim for eviction of the tenant before the competent court. The procedure is urgent, which means it has priority¹²⁵. After the decision of the court the tenant can be forcibly evicted in accordance with the rules of Execution Act.

4.3. Return of the deposit

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

When the tenant has paid all the rents and expenses he owes and returned the apartment in normal condition to the landlord, the landlord has a legal obligation to return the tenant's security deposit.

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

The tenant is not liable for fair wear and tear of the apartment resulting from its regular use or for any damages attributable to its ageing¹²⁶. Normal wear and tear of the furniture is a form of damage to the leased apartment which is borne by the landlord. The landlord may therefore not deduct from the security deposit.

4.4. Adjudicating a dispute

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

No specialized courts for adjudication of tenancy disputes exist in Croatia.

¹²⁵Article 22 (4 and 5) of the Lease of Flats Act.

¹²⁶Article 566(2) of the Civil Obligations Act.

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

In cases of tenancy disputes (under the Lease of Flats Act), an accelerated form of court procedure is used. However, in practice this still means that the procedures can take up to few months to be solved.

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

Alternative dispute resolution is not available for cases of tenancy disputes.

5. Additional information

- **How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?**

Social housing possibilities are very scarce in Croatia. A national programme of social rental housing does not exist. This problem is left to the local authorities. Local municipalities or Regions pass two sets of Rules in accordance with which Tenders on allocation of social housing and Rules guiding such future tenancies are made. A prospective tenant has to directly apply to Tenders by Local municipalities or Regions in order to be eligible for social housing. In accordance with the needs of future tenants, the priority list is made.

In extreme cases, such as homelessness, local Social care units have a right to directly contact Towns or Municipalities to arrange prioritized social housing (without applying to Tenders).

Housing allowance is a part of the social care system and is the responsibility of local authorities. Local and regional authorities subsidise the costs of heating. On the state level, the housing allowance system is in the competence of Ministry of Social Welfare Policy and Youth (*Ministarstvo socijalne politike i mladih*). To apply for housing allowance (state and local), the applicant has to fulfil a form at the local Social care unit.

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

The tenant may insure the apartment or house on the private market with any private insurance company. This would be advisable, since the insurance policies cover wide range of possible accidents to the apartment and its chattel (fire, earthquake, floods, minor accidents etc.).

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

The Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*)¹²⁷ defines two different kinds of legal aid: primary and secondary. Primary legal aid services include first legal information, representation in mediation and arbitration procedure, but exclude representation in court procedures. The applicant (the tenant) must fulfil criteria

¹²⁷ Official Gazzete of RC, No.143/13.

prescribed by the Free Legal Aid Act Art 10:

1. The applicant lacks legal knowledge
2. The applicant does not have a right to free legal help on the basis of any other Law or Act
3. The reasons for applying is not unreasonable
4. The applicant fulfils the census criteria- paying for legal help would undermine his or his family members living with him, the possibilities of vital maintenance

Primary legal service is offered by free legal aid offices, Associations, Local administrative units (in case of City of Zagreb; the local government unit) and Legal Clinics.

Secondary legal service is legal help awarded for court procedures and provided by Attorneys. In cases of tenancy law the legal aid will be awarded only in exceptional cases, as prescribed under Art 14 of the Law; among other criteria the applicant has to fulfil strict legal and census criteria. The applicant (the tenant in this case) submits the application for such a help directly at a Local administrative unit, where she or he resides.

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

The best option for a tenant to protect his or her rights is to get legal help from an Attorney.

In addition, there are three organisations which a tenant may contact as well:

1. Alliance of tenants' associations of Croatia (*SUSH – Savez Udruga Stanara Hrvatske*)¹²⁸,
2. Croatian association of tenants (*Udruga stanara Hrvatske*)¹²⁹, and
3. Association of co-owners of apartment buildings (*Udruga stanara -suvlasnika stambenih zgrada*)¹³⁰

¹²⁸See: <https://sites.google.com/a/pravonadom.com/public/contact-us>.

¹²⁹Web page of the Association: <http://www.ush.hr/USH.htm>.

¹³⁰See: www.udruga-stanara.hr/.

CYPRUS

Tenant's Rights Brochure

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1. Introductory information

- **Introduction: The national rental market**

- **Current supply and demand situation**

According to the 2011 national Census data, 56,375 Cypriot households, corresponding to 18.8 % of the total Cypriot households lived in rented dwellings. Moreover, according to the same data 54,651 dwellings corresponding to 12.6 % of the entirety all dwellings were found vacant and available for rent or sale

Based on the above, we can arrive to the conclusion that no actual problem in this field can be reported. The above is confirmed by common day experience.

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

There are no specific problems of Cypriot national rental market from the perspective of tenants that can be reported.

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

- **Private renting**

Private renting is the only possibility within Cyprus as Cypriot law does not provide for any possibility of housing with a public task in the rental sector.

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

Cypriot law does not provide for any rental housing with a public task.

- **General recommendations to foreigners on how to find a rental home**

Cypriot experience does not reveal any major difficulties as to foreigners' attempt to find a rental home, provided that such persons are equipped with the necessary residence permits (non-EU citizens). Therefore, foreigners should act the same way as a national, i.e. by checking the advertisement published in newspapers and on the internet, as well as address a professional real estate agent. Finally, despite the fact that most of Cypriot households do have a member who could communicate in English, it is, nevertheless, advisable for a foreigner who does not speak Greek to ask a native speaker to come along to the viewing of the dwelling in order to facilitate communication.

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

The only “major” problem which could be reported in this respect would be the fact that under Cypriot law, the conclusion of a tenancy contract for a period exceeding one year should be executed in writing with the presence of two witnesses. If above condition is not met, then the tenancy is deemed null and turns into a month-to-month periodic tenancy.

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

Greek	Translation into English
Μίσθωση (Misthosi)	Tenancy
Εκμισθωτής (Ekmisthotis)	Landlord
Ιδιοκτήτης (Idioktitis)	Owner
Μισθωτής (Misthotis)	Tenant
Μίσθιο (Misthio)	Dwelling
Μίσθωμα (Misthoma)	Rent
Μίσθωση ορίστου χρόνου (Misthosi aoristou xronou)	Open ended tenancy
Μίσθωση ορισμένου χρόνου (Misthosi orismenou xronou)	Tenancy for a fixed time
Εγγύηση (Egiissi)	Security Deposit
Καταγγελία (Katagelia)	Termination
Ελάττωμα (Elatoma)	Defect
Υπομίσθωση (Ipomisthosi)	Sublease/subletting

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?**

Cypriot antidiscrimination law is laid down on Law 42 (I)/2004 which mainly transposed the provisions of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Law 42(1)/2004 explicitly prohibits any discriminative practice is based on racial or ethnic origin, religion, beliefs, community, language, colour, special needs, age and sexual orientation. As to the sectors covered by the above law, it should be mentioned that pursuant to the provision of art. 6, housing makes part of the Law’s scope of application. Thus, it could be argued that a restriction on the choice of a tenant, which only relies on a discriminative basis, should be prohibited. However, above Law does not seem to provide any remedy in order for the potential tenant to oblige a landlord to conclude a tenancy contract

- **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?**

Cypriot law does not provide for any specific questions that a landlord is allowed or

prohibited to make to a potential tenant. Every question which could provoke the disclosure of tenant's personal data should be deemed unlawful.

- **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)?**

Cypriot law does not provide for any reservation fee charged by the landlord to allow the prospective tenant to participate in the selection process. On top of that, Cypriot residential rental market does not show any examples of such practices.

- **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)?**

There is no regulation providing any lawful check on the personal and financial status of a potential tenant that the landlord could betake to. Any such check, including the provision of a salary statement, would rely on the tenant's willingness to provide such data. On the contrary, if the landlord achieves by any means to gather such information, this action would directly violate the provisions of Law 138(I)/2001 on the protection of personal data, and would attract civil and criminal liability. Moreover, no kind of credit reference agencies accessible by private individuals operate within the Cypriot territory.

- **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?**

Pursuant to Law 71 (1) /2010 “*on real estate agents*”, which regulates the profession of a real estate agent, the main service a real estate agent provides consists in suggesting opportunities, or intervening in the drawing up of contracts on real estates, and especially sales, exchanges, tenancies, leasing, etc.

Thus, real estate agents undertake to find a potential tenant on behalf of the landlord, and subsequently to draw up the tenancy agreement based on their client's mandate. In this respect, estate agents usually advertise a dwelling for rent, show interested persons the dwelling, provide information regarding its facilities, negotiate the rent to be paid – in accordance with the landlord – and bring the parties into contact in order to sign the tenancy contract.

Finally, there are no other bodies or institutions assisting the tenant in the search for housing.

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

Cypriot Law does not provide for any “blacklists” or equivalent mechanisms of bad landlords/tenants. Moreover, there is no system for rating and labelling preferred landlords/tenants.

2.2. The rental agreement

- **What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?**

As a general rule, it should be mentioned that pursuant to the provisions of Cap. 149, formality is not a prerequisite for the conclusion of the contracts, which can, therefore, be validly concluded either in written, orally or following a certain behaviour of the parties.

However, pursuant to the provision of art. 77 (1) Cap. 149, if the tenancy refers to an immovable and is concluded for a term exceeding one year, then it should be executed in writing with the presence of two witnesses, otherwise the contract is void.

Moreover, art. 65B (1) of Cap. 224 affords the contracting parties with the right to register with the land registry tenancy contracts concluded for a term exceeding fifteen years. It is clear that art. 65B (1) Cap. 224 does not impose any kind of obligation for registration of a tenancy exceeding fifteen years. On the contrary, it only provides for an option in order for a type of time limited ownership right over the rented dwelling to be acquired by the tenant. The major advantage of such a registration is the transferability of the right afforded to the tenant. It is obvious that if the registration does not take place, then the landlord-tenant relationship remains purely personal. Finally, it should be pointed out that the registration should be performed within three months from the conclusion of the tenancy contract.

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

There is no special regulation regarding the mandatory minimum requirements of what needs to be stated in a tenancy contract. Thus, this question should be answered in reference to the conceptual definition of tenancy, according to which the essential elements of a tenancy contract could be stated. Given that tenancy is defined as a contract whereby one contracting party (landlord) assigns the other (tenant) the absolute use of a property for a certain period of time, while the tenant undertakes to pay the rent agreed, therefore, the **essential elements** that a contract must include to be qualified as a tenancy contract are the following:

a. Leasehold: The object of a tenancy contract is to hand over the use of a property, defined as the “leasehold”.

b. Rent: Rent is the fee owed by the tenant to the landlord for use of the dwelling. Rent usually consists in an amount of money; however, it can also, either totally or partially, be agreed as a non-pecuniary payment.

c. Agreement to hand over the exclusive use of the dwelling: Such an agreement distinguishes tenancy from similar contracts.

d. Certain time period: According to Cypriot law, a tenancy contract in which the duration is not defined by the parties, does not constitute a valid contract, and is therefore null and void. Moreover, according to the same law, the tenancy agreement must also include the start date of the tenancy.

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

Regarding contract duration, it should firstly be mentioned that the main aspect is the principle of freedom of contracts, giving the parties absolute freedom in terms of stipulating the duration of the tenancy contract they sign.

However, problems arise regarding whether an open-ended contract can be legally conceived under Cypriot law. On this issue, the Cypriot Supreme Court has ruled that an open-ended contract is not deemed a valid tenancy contract. Therefore, such a contract cannot be lawfully signed and is considered a periodic tenancy.

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

Regarding rent payment, the Parties are free to agree upon when rent is due. According to usual practice in case of tenancies of immovable, rent is paid in advance and on a monthly basis.

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

There is no statute regarding the question of who is responsible and for what kind of maintenance works and repairs. This should be agreed in the contract.

Generally speaking, it could be argued that the landlord's main obligation in the tenancy contract is to hand over the use of the dwelling to the tenant. Moreover, the landlord's obligation to ensure the dwelling is appropriate for the agreed use should always be understood to be an integral part of his main obligation. Thereby it is understood that the landlord is responsible for all essential maintenance works and repairs to keep the dwelling in a suitable state for the agreed use.

On the other hand, the tenant is also usually obliged to return the dwelling in the same condition he found it as per the residential tenancy contract.

The lack of any specific regulation on the above matter confirms the fact that the contract is the most crucial aspect of the relationship between tenant and landlord.

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

The Parties are free to agree upon who is expected to provide furnishings and major appliances. According to the vast majority of Cypriot tenancies, tenant is usually the party who brings in furnishings.

- **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)?**

It is highly advisable that the tenant has an inventory made in order to avoid future liability.

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

The author indicated no other clauses.

- **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.)?**

There is no special statute answering to the question of which persons are allowed to move in an apartment together with the tenant. Such issue should normally be stipulated in the tenancy contract. However, given the constitutional protection that art. 22 (1) of the Cypriot constitution affords to the institution of family, tenant's spouse and children should be always allowed to move in, even in the event of a contract stipulation to the contrary.

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

The law does not state any explicit obligation of the tenant to take over and make real use of the dwelling. Thus, any tenant who does not take over or use the dwelling is not found in default; nevertheless, he remains liable to pay the agreed rent.

However, such an obligation could, either explicitly or even tacitly, arise from the contracting parties' agreement. For example, in cases where the dwelling is damaged due to disuse, the tenant should be obliged to live in the dwelling.

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

Separation

In case of separation of a married couple, pursuant to art. 17 (1) of Law 23/1990 "*on Family Courts*" the court may concede the exclusive use of the dwelling used as the primary family residence, or part of it, to one of the spouses, independently of who the owner is or of who is entitled with the right to use the dwelling towards its owner. Evidently, problems arise when the court decides to concede the use of the family dwelling to the spouse who was not the contracting party to the tenancy agreement.

It should be firstly noted that even after such a judgment, there is no alteration as to the parties of the contract, which is still valid between the landlord and the initial tenant. Thus, the initial tenant remains liable towards the landlord for the execution of his obligations deriving from the tenancy contract. The tenant is also entitled with the right to terminate the contract upon expiry or to deny its renewal. In such a case, the

contract would be validly dissolved, and the spouse, to whom the court judgment conceded the use, should be liable to return the dwelling. However, the latter would most probably have a tort claim against the spouse-tenant, provided that the conditions of tort liability apply.

Divorce

Nevertheless, when the marriage is irrevocably dissolved by a divorce court judgment, the reciprocal obligations of spouses for cohabitation and joint contribution to the family needs cease to exist. Therefore, the spouse-tenant is entitled to demand the dwelling from the spouse to whom the use of the family residence was conceded; children notwithstanding.

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

Cypriot law does not provide for any possibility that the student/tenant moving out is replaced by another, without relevant permission of the landlord. However, this could be the object of an agreement between the contracting parties.

- **death of tenant;**

Should the tenant die, the same regulations apply as in the death of the landlord. Thus, due to the character of tenancy as a personal contract, the contract should be deemed terminated.

However, a significant exception to the above rule is inserted by the provision of art. 2 of Rent Control Law, which affords the protection of the tenant to the surviving spouse or the child of the deceased tenant. It is therefore obvious, that where the provisions of Rent Control Law 23/1983 apply, then the surviving family members of the tenant are considered tenants of the dwelling, which had been rented by the deceased.

- **bankruptcy of the landlord;**

Bankruptcy of the landlord has no effect on the tenancy, which continues to be valid.

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

There is no specific regulation regarding the tenant's right to sublet the rented dwelling. Therefore, the reference point regarding subletting depends on the will of the contracting parties. Thus, subletting is freely allowed should no opposing agreement be signed. It is, however, clear that in the case of subletting, the initial tenant is still liable to the landlord, for any default of the sub-tenant.

However, it should be stressed that the sub-tenant's position is clarified by art. 28 of Rent Control Law 23/1983, which regulates the validity of a court order for

repossession of the dwelling issued against the tenant. Thus, any order for repossession of the dwelling, does not have any effect on the sub-tenant unless the tenant did not have any right to grant a sub-tenancy or if the sub-tenant made illegal or immoral use of the dwelling.

And so it derives that not only the initial tenancy contract can lawfully contain a subletting clause in favor of the tenant, but that the sub-tenant is afforded considerable rights towards the landlord in case of an eviction order against the initial tenant

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

The question of whether a tenancy contract binds the new owner in the case of sale of the premises has been particularly observed by Cypriot Courts. Although the protection of the tenant seems imperative, however, the tenancy contract does indeed consist in a restriction to the new owner's right.

Cypriot courts have decided that anyone purchasing a dwelling aware that a tenancy contract has been signed on said dwelling is considered as a constructive trustee towards the tenant, and is consequently bound to respect the obligations of his predecessor.

- **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?**

Contracts of supply are concluded either by the tenant or by the landlord. However it is highly advisable that tenant concludes such contracts, in order for landlord not to be held liable towards the supplier in case of tenant's insolvency.

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

The question of distribution among the parties is subject to their will, as there is no specific regulation in this respect. However, it is accepted that utilities belong to the "expenses for the use" of the dwelling, which, under the principle of good faith, should be borne by the tenant.

Standard practice reveals that utilities are paid by tenants. The vast majority of tenancy contracts include a relevant term.

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

According to Cypriot law, landlord is liable for any kind of taxes imposed on the dwelling. However, the Parties may agree to the contrary.

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

Shifting condominium costs onto the tenant is absolutely lawful under Cypriot law as practice shows that the above constitutes a common and usual contractual agreement of the Parties.

- **Deposits and additional guarantees**

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

There is no regulation regarding the lawful amount of a deposit, and, consequently, the latter is fixed upon the contracting parties' agreement. It usually amounts to one or two monthly rents

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

There is no special regulation obliging the landlord to hold a special account for the deposit, although, the contracting parties can freely agree to such an action. Nevertheless, it is considerably rare, especially in cases of residential tenancies that the tenant requires from the landlord to create a special account only for the purposes of the deposit. On the contrary, tenant usually credits the agreed amount to the landlord's bank account, with the special reference that the deposited amount corresponds to the agreed guarantee deposit.

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

Although additional guarantees or a personal guarantor should be deemed lawful under Cypriot law, common day practice reveals that such practices are not usual in residential tenancies.

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

Deposit is mainly purposed to cover any damages that occur to the dwelling and which lie beyond to common usage. As well as that, landlord very often covers unpaid expenses for utilities which were to be borne by the tenant (such as water and electricity supply etc.). Finally, landlord may cover every monetary claim he may be entitled to against the tenant, and which derive from the tenancy contract

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)?**

Cypriot law does not provide any general definition for the notion of defects, while there is no relevant statute providing for legal consequences in the event of defective dwelling. Thus, the question should be answered again based on the stipulations of the contract.

As a general definition, it could be said that every condition which partially or totally obstructs the agreed use of the property by the tenant should be considered as a defect of the dwelling. The main characteristic of a defect is the property's incomplete nature, which has a negative effect on the value or usefulness of the property. In order to ascertain whether a property is defective or not, reference should be made to every specific contract; the specific will of the parties i.e. "as what" or "for what purpose" was the property leased is a crucial part of this. Should such a defect exist, the landlord will be liable for breach of contract.

Therefore, cases such as mould and humidity should be considered as defects of the dwelling. Moreover, despite the fact that Cypriot jurisprudence lacks of any relevant case law in this field, the exposure of the house to noise from a building site in front of the house or noisy neighbours do not seem to constitute a defect under the Cypriot legal system, which could create legal obligations deriving from the tenancy contract. Such cases should mostly be dealt applying the provisions of tort law. Moreover, the occupation of the house by third parties such a squatters should be considered as constituting a breach of landlord's obligation to hand over the use of the dwelling to the tenant and not as a defect in legal terms.

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

The legal consequences of the existence of a defect would be the same with the one's deriving a breach of contract by the landlord. Thus, the tenant should have the right to terminate the contract and claim damages for not fulfilment.

As well as that, the tenant could file an action claiming specific performance of the contractual term imposing on landlord the obligation to keep the dwelling in the proper condition for the agreed use, by demanding the cure of the defect

- **Repairs of the dwelling**

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

Landlord's main obligation deriving from the tenancy contract is to hand over the use of the dwelling to the tenant. Moreover, landlord's obligation to maintain the dwelling appropriate for the agreed use makes part of the above main obligation. It clearly derives from the above that landlord is responsible for all kind of maintenance works and repairs that are essential in order for the dwelling to be maintained appropriate for the agreed use.

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

Whether or not the tenant may replace the rent payment by a performance in kind or make repairs at his own expense and deduct the repairs costs from the rent payment relies exclusively on the provisions of the tenancy contract. Cypriot law lacks of any specific regulation in this field.

- **Alterations of the dwelling**

- **Is the tenant allowed to make other changes to the dwelling?**

In order to give an answer to the question of whether the tenant is entitled to make alterations to the dwelling, reference should be made to the agreed use of the dwelling, as resulting from the contract.

- **In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

If it was agreed that the dwelling would be used as a handicap's residence, it is obvious that tenant would not only be allowed to build a special elevator, but he would also be entitled with the right to claim relevant expenses from landlord

- **Affixing antennas and dishes**

Affixing antennas should also be considered as an allowed alteration for a residential dwelling.

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

Repainting and drilling the walls in order to hang pictures, should be considered as allowed alterations. However, tenant should be considered liable for reinstating the dwelling in the condition he received it.

- **Uses of the dwelling**

The point of reference as to the allowed uses of the dwelling relies upon the will of the contracting parties.

- **Are the following uses allowed or prohibited?**

- **keeping domestic animals**

Provided that no agreement to the contrary has been made between the Parties, then keeping domestic animals should be considered as an allowed use. However, special attention should be drawn to the statutes of the condominium, which may prohibit such use.

- **producing smells**

Producing smells should be considered as a prohibited use of the dwelling if such smells disturb the respective use of neighbouring dwellings.

- **receiving guests over night**

Receiving guests overnight should be considered as a prohibited uses of the dwelling if such practices disturb the respective use of neighbouring dwellings.

- **fixing pamphlets outside**

Reference should be made to the contracting parties' agreement.

- **small-scale commercial activity**

If the tenancy is concluded exclusively for residential purposes, then even small-scale commercial activity should be considered prohibited.

3.2. Landlord's rights

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

The Cypriot Tenancy Law does not control the rent agreed upon by the parties in the initial tenancy contract. Therefore, the amount of rent premiums is freely fixed based on the will of the parties, pursuant to the general clause of contractual freedom. Furthermore, Cypriot law does not seem to provide any statutory remedy should the agreed rent be excessive. As already stated above, the content of a contract cannot naturally be deemed unfair, due to the acceptance of the contracting parties.

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

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

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

Distinction should be made between free market and statutory tenancies under the scope of application of Rent Control Law 23/1983.

Regarding free market tenancies, the general rule is that the contract should determine when, how and the level by which the landlord is entitled to increase the rent.

However, regarding statutory tenancies, it should be mentioned – at the outset – that a tenancy becomes statutory when the tenant remains in possession of the dwelling after expiry or termination of the first tenancy. Moreover, the rented dwelling should be located in ‘a controlled area’ specified as such by a special presidential decree and should be built before 31 December 1999. Rent control Law 23/1983 allows for an agreed increase of no more than 14 % of the existing rent, but not within two years from the date of the last application or the date of the last voluntary increase. If the tenant refuses, the Rent Control Courts will determine a “reasonable rent”, taking into account the official value, and factors such as age, size, location and condition of the dwelling.

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

As mentioned above, regarding free market tenancies, there is no cap or ceiling fixed either by statute or jurisprudence which determines the maximum rent that may be charged lawfully.

On the contrary, regarding statutory tenancies, Rent Control Law 23/1983 allows for an agreed increase of no more than 14 % of the existing rent, but not within two years from the date of the last application or the date of the last voluntary increase.

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

Regarding free market tenancies, there is no special procedure to be followed for rent increases. On the contrary, as far as statutory tenancies are concerned, if tenant refuses to pay an increased rent charged by the landlord, then he may address the Rent Control Court which will determine a ‘reasonable’ rent pursuant to the provisions of Rent Control Law 23/1983.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

There is no special regulation on the conditions under which the landlord may enter the premises. This matter should be dealt with by the contractual provisions between the parties. However, the tenant should always tolerate any visits by the landlord that are absolutely essential for confirming a defect or any kind of malfunction of the dwelling, in order to find out whether the tenant makes good use of the dwelling as well as for a new potential buyer or tenant to be able to examine the dwelling. Such visits should not be deemed as violating the tenant’s right to the absolute possession of the dwelling

Finally, it is clear that the landlord may freely enter the dwelling if the tenant consents to it.

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

There is no special provision of the law that regulates the question of whether or not the landlord can keep a set of keys to the rented apartment. Thus, such an issue relies upon the free will of the contracting parties

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

Under no circumstances may the landlord lock a tenant out of the rented premises due to default in paying rent. This would directly violate the law, constitute a civil tort as well as a criminal offence of trespass to another's property. The landlord should address the competent judicial authorities in order to enforce his claims against the tenant

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

Cypriot law does not provide for any statutory right of the landlord to take or seize tenant's personal property in case of rent arrears.

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?**

Cypriot law does not provide for any periods or deadlines to be respected in order to validate the termination of a tenancy contract on behalf of the tenant. Such issues should derive from the contractual stipulations between the parties.

However, an exception to this rule applies to periodic tenancies. As has already been mentioned above, periodic tenancies are created in the void of tenancy contracts. The reason that tenancy is invalid can be attributed to non-observance of the formal requirements imposed by art. 77 (1) Cap. 149 (i.e. they are either not concluded in writing or witnessed by two competent witnesses) as well as to the fact that they are concluded for an indefinite period of time. According to Cypriot courts, such tenancies are considered as month-to-month, year-to-year or even day-to-day, depending on the periods that the tenant owes the rent. Periodic tenancies do not expire at the end of each period, but are automatically renewed for the same period, until their termination through proper notice. Regarding proper notice, such notice should be given one full period in advance, and should expire at the end of a period. Thus, in the case of a month-to-month tenancy, a proper notice for termination should be given one month in advance, and should expire on the last day of the month before the new periodic tenancy would normally begin. For example, if a month-to-month periodic tenancy began on the 12th of January, then it is renewed the 12th day of any subsequent month. If a party wants to validly terminate the tenancy on the 12th of July, then the notice should be given on or before the 11th of June.

- **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)?**

Although break clauses in favour of the tenant are rarely inserted into tenancy contracts, nevertheless, the tenant does seem to have a statutory right to terminate the tenancy agreement before the agreed date of termination, should the landlord breach the contract. Thus, if a landlord fails to comply with his obligation to the contract, then the tenant is entitled to terminate the contract before its expiry. In that case, the landlord is not entitled to compensation, since he is at fault for the non-execution of the contract.

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

Cypriot law does not provide for such a right of the tenant, however, this could be validly agreed between the contracting parties.

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)?**

As was already mentioned above, a distinction should be made between free market tenancies and statutory tenancies.

Regarding free market tenancies, Cypriot Law does not make any distinction between ordinary and extraordinary notice for termination. The admissible grounds for notice should be considered pursuant to the provisions of the contractual agreement. However, the landlord should normally be afforded with the right to terminate the contract in cases such as massive rent arrears, pursuant to the contractual terms

Moreover – and as explained above – the same rules on notice of periodic tenancies equally apply to landlord's termination.

Regarding statutory tenancies, Rent Control Law 23/1983 affords statutory tenants with special protection against eviction. However, this does not mean that above protections pertains to any restrictions on notice. On the contrary, the proper termination of the contract is a prerequisite for the tenant to be considered as a statutory one.

Thus, according to art. 11 (1) of the Rent Control Law, no eviction judgment or order can be issued against a statutory tenant, except in the following cases:

- a) When rent is in arrears for more than 21 days after a written notice demanding payment is given to the tenant, should he fail to pay the amount

due within 14 days from the service or should the tenant constantly default the rent.

b) In the event the tenant proves a nuisance to neighbours, or uses the dwelling for illegal or immoral purposes, or permits such use

c) If the Court finds that the condition of the dwelling has worsened due to the destructive actions or gross negligence of the tenant. However, in that case the Court will not order the tenant to be evicted if, within two months after being served the claim for eviction, he repairs the damage

d) If the tenant, despite the explicit obligation not to sublease the property, does so and the Court considers this reasonable cause to issue an eviction order.

e) If the tenant exploits the dwelling in a way that the profit gained is disproportionately high compared to the rent owed.

f) Should the owner use the property as residence for himself, his spouse, children or dependent parents. However, in such a case the Court will not issue an eviction order if it is proven that such an order would cause serious damage.

g) When the owner reasonably requires the dwelling in order to demolish it and construct a new building, or to make substantial changes or alterations which will lead to the development of the property or to execute works in a preserved building. In this case, the tenant should be given four months' notice.

h) When the dwelling is required for planning law purposes.

i) When the landlord has been expropriated by law.

j) When the dwelling is reasonably required for public law purposes.

k) If the tenant has given prior notice declaring his intention to vacate the dwelling, and the landlord concluded a sale or tenancy contract

- **Must the landlord resort to court?**

If tenant refuses to return the dwelling despite the fact that landlord has given a proper notice, then the latter should file an action asking for the return of the dwelling.

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

Tenant's defences against an eviction should rely either upon the contractual provisions of the contract or upon the special protection afforded by Rent Control Law in case of a statutory tenancy.

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

The circumstances under which the landlord may terminate a tenancy before the end of the rental term would rely upon the contractual provisions. Admissible grounds for termination which are usually included in tenancy contracts are the following:

- Failure to pay the rent
 - Commitment of nuisance to neighbours.
 - Subletting the dwelling, or part, without relevant authority.
 - Deliberately causing damage to the dwelling.
 - Failing to vacate the dwelling on expiry of the tenancy.
- **What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?**

If tenant does not leave after the regular end of the tenancy, then the tenancy becomes a periodic tenancy, as explained above.

4.3. Return of the deposit

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

Landlord is obliged to return the tenant's security deposit when he regains possession of the dwelling and provided that he has no claim against the tenant deriving from the tenancy contract and which can be lawfully covered by the deposit.

- **What deductions can the landlord make from the security deposit?**

Security deposit is mainly purposed to cover any damages that occur to the dwelling and which lie beyond to common usage. As well as that, landlord very often covers unpaid expenses for utilities which were to be borne by the tenant (such as water and electricity supply etc.). Finally, landlord may cover every monetary claim he may be entitled to against the tenant, and which derive from the tenancy contract.

- **In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?**

In case of a furnished dwelling, landlord should not be entitled to make a deduction for damages, if such damages result from the ordinary use of the furniture.

4.4. Adjudicating a dispute

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

Jurisdiction to adjudicate a tenancy dispute is distributed between District and Rent Control Courts of the location of the dwelling. The general rule is that the District Court is competent for such disputes. However, when Rent Control Law 23/1983 applies, then pursuant to its art. 4, Rent Control Courts are the only competent courts to adjudicate such disputes.

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

Cypriot procedural law does not provide for any 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?**

Mediation and other alternative dispute resolution are rarely used, mainly due to their recent introduction into the Cypriot legal system. As a matter of fact, mediation was instituted by the provisions of Law 159 (I)/2012.

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?**

Cypriot law does not provide for any social subsidized housing possibilities in the rental sector.

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

It should be in the first place cited that there is no provision of Cypriot Law which imposes an obligation either to the owner or to the tenant of a dwelling to conclude insurance contract in respect to the dwelling. The conclusion of such a contract is, therefore, subject to the personal will of the interested person. The dangers that are most commonly insured regarding the buildings are against fire and other natural catastrophes such as earthquakes, floods etc., while third party liability insurance of the tenant is not that commonly used. Finally, it should be noted that the tenancy contract is permitted to contain a similar insurance clause, although this is not that usually met in common day practice.

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

Cypriot law does provide for legal aid measures. However, they are rarely used in common day practice.

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

Cypriot law does not provide for any institutions to which the tenant may refer in order to have his rights protected.

CZECH REPUBLIC

Tenant's Rights Brochure

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1. Introductory information

The Czech Republic is a democratic, independent country based on the rule of law, free trade and human rights protection. The state provides protection of minorities but decisions are made by the majority. Czech Republic consists of three lands – Bohemia, Moravia and Silesia, with the capital city in Prague. There are 10.5 million inhabitants living in the Czech Republic. The structure of trade is well developed and focused on engineering, agriculture and education. There are over 26 public and 47 private universities. The political system is based on parliamentary democracy with bicameral parliament (The House of Commons and the Senate).

- **Introduction on the national rental market**
 - **Current supply and demand situation**

Based on the data from the 2011 census the housing stock includes 4,104,635 permanently occupied dwellings, of which 35.8% are flats in family houses and 55% in blocks of flats. Rental apartments accounted for 22.4% of the permanently occupied dwellings. The total number of existing dwellings is 4,756,572. 55.9% of the Czech households live in their own house or flat, 17.6% of them lived in rental flats.

The data demonstrates the increase in the proportion of owner-occupied dwellings housing, especially at the expense of rental housing. Regionally, the smallest proportion of households living in their own house is in Prague; the highest is in the Central Region (Středočeský kraj). 9.4 % of households in the Czech Republic live in cooperative housing, which is by its nature close to owner occupation. 35% of all households live in rental flats in Prague. 3.4% of flats are used for free (usually by relatives).

Comparing the 2001 and 2011 census data, the number of households equipped with a personal computer increased to 60.5%, while the proportion of dwellings equipped with internet is now 56.6% (it was not observed in 2001). Finally, the proportion of all occupied dwellings equipped with a bath or a shower (or both) increased from 95.5% to 97.4%. Availability of flush toilets in occupied dwellings increased from 93.7% to 96.5%. This data shows that the neglect of housing stock has declined in recent years, but even so the Czech Republic still ranks the 10th among European countries. The average age of flats is 42.5 years. It is estimated that further 21.6 billion EUR worth of funding is required for repairs. The housing stock is owned predominantly by natural persons and developers. The developers do not own the apartments for long time since their objective is to sell them to individual owners.

The construction of new housing stock is mainly financed by mortgages. Banks usually insist on a minimum equity requirement (15% of the value of the loan). A quarter of housing stock was privatized (a privatization *lato sensu*, see further) under the Apartment Ownership Act. Restitutions of apartments were usually handled by payment in kind instead of financial compensation of the owners.¹³¹

¹³¹ Martin Lux & Martina Mikeszová. 2011. „Restituce majetku a transformace soukromého nájemního bydlení v České republice.“ Pp. 7-18 in Martin Lux (ed.). *Standardy bydlení 2010/2011: Sociální nerovnosti a tržní rizika v bydlení*. (Praha: Sociologický ústav AV ČR, v.v.i.). 205 p.

There are 651,937 vacant dwellings (2011 Census, the Czech Statistical Office) which represent approximately 13.7% of the housing stock. There are over 461,000 vacant dwellings in family houses and approximately 176,000 in apartment buildings. The highest number of vacant dwellings could be found in the central Bohemia. Vacant dwellings appear mainly in regions with high levels of unemployment - especially in the regions of Czech borderlands. But there is a huge amount (169,468) of dwellings that are vacant because they are used for recreation only. There are no data on the reason of vacancy of 399,000 of vacant dwellings.

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

Currently, a new problematic black market phenomenon has arisen. It is connected with the intermediate tenure (based on the accommodation contract). Low income persons receive subsidies from the state to ensure an accommodation. There is no limit on the amount of the accommodation payments. This culminated into a practice, where groups called "social housing entrepreneurs" provide living in hostels for low income people. Several people live in a small room and pay the entrepreneurs excessive "rents" with the subsidies.

There is also a black market phenomenon connected with subleasing. If a person wants to rent out an apartment, there are two legal ways to do it. One is based on a lease agreement, the second on the sublease. A sublease requires a lessee who is a party to a lease contract with a third person, the owner. What happens in practice is that the home owner pretends to have signed a lease agreement with a lessee (who is usually a person related to the lessor in some way, e.g. a sister, brother, or a friend), but such a lessee does not in fact pay any rent to the owner and serves only to further sublease the apartment to another person. The reason behind this deception is to secure more favourable terms to the original home owner, since the sub-lessee is in a legally weaker position than a lessee (i.e. the one who signed a proper lease agreement). The sublease contract is more favourable to the lessor in comparison with a proper lease agreement (it is easier to terminate the contract, etc).

Another phenomenon is a repeated fixed period contract conclusion (usually one year) and its regular renewal, as well as frequent subleases of municipal flats not used by their original lessees.

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

An intermediate form of tenure is the accommodation contract. This contract is an agreement between the provider of accommodation services (with a special licence) and the client (a person who wants to use a room, apartment or even a house for a temporary period). This contract is used by hotels, hostels and some charity organizations to secure temporary accommodation. The main difference between the accommodation contract and the lease contract is that in the former, the client is not protected against eviction. The provider may terminate the accommodation from day to day with no compensations to the client. The client does not have to pay the utility costs, because they are already included in the price of the accommodation.

A particular form of tenure is renting an apartment owned by a cooperative (e.g. the lessee is always a shareholder in the cooperative). It is not usual for the tenant to buy a share in a housing company (other than cooperatives). Living in cooperatives is widespread in the Czech Republic. The essence of securing housing needs through cooperative form of housing is based on individual property of a cooperative share, which is linked with the exclusive right to live in a particular apartment under a lease contract concluded between the shareholder and the cooperative.

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

The area of social housing is not very developed in the Czech Republic and is based primarily on rent allowance. Larger municipalities usually run programmes aimed at providing housing opportunities to low-income citizens. The conclusion of a lease contract is in most cases conditional on permanent residency in the town or village.¹³²

Social housing is also provided by non-governmental, non-profit organizations, charities, reception centres, night shelters, Salvation Army houses and halfway houses aimed at social re-integration of ex-convicts. The main flaws of the Czech approach to social housing are considered to be:

- 1) the absence of a definition of the target group for social housing;
- 2) the failure of the government housing policy to sufficiently cover or provide alternative forms of housing other than dormitories.

- **General recommendations to foreigners on how to find a rental home**

In the Czech Republic there are real estate agencies, which will help foreigners find a flat to rent or to purchase. Foreigners can also consult or post advertisements on notice boards and the Internet.

To avoid problems choose an international brand name agency which you know even from your country. Ask the rental agent to prepare a non-exclusive agency contract, so if you find an apartment on your own, you will not be obliged to pay commission to the real estate broker. Ask the real estate broker to prepare the contract in your native language and if this is not possible, at least in English, so that you are sure of what are you signing. If this request cannot be met, it would be prudent to look for another real estate agency.

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

- Ask the landlord to show you proof of his/her property (or obligational) right to

¹³² Private lessors are usually reluctant to allow the lessee to establish the apartment as their place of permanent residence used by the public law. This is mostly due to their fear that the lessee will not be willing to log out the registration after the rent agreement expires. The public law uses the place of permanent residence for court summons delivery. The court restrains execution upon the debtor's property in his place of permanent residence, even if he does not actually live there.

- the apartment (the cadastre record; valid contract with the cooperative etc.);
- Ask the landlord about the exact amount of the rent and utility costs. Be aware that utility costs are just a deposit which must be balanced annually.
- Sometimes it will be necessary to pay additional money if the use of utilities exceeded the paid deposits.
- Make all payments via bank accounts and do not pay in advance.
- Ask the landlord to prepare the lease agreement in accordance with the new Civil Code (in force as of 1 January 2014) and in a written form.
- Do not pay a reservation fee higher than one rent.

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

Byt - apartment

Nájemní smlouva – lease agreement

Kauce/jistota – deposit (maximum 6 rents)

Nájem - lease

Podnájem – sublease

Nájemce – tenant

Pronajímatel – landlord

Společný nájem – mutual lease

Nájem/nájemné – rent

Jiné platby za služby – utility costs

Družstevní byt – apartment owned by cooperative

Byt v osobním vlastnictví – apartment owned by private individual

Služební byt – service apartment (owned by your employer)

Smlouva o ubytování – accommodation contract

Věcné břemeno – easement

Spotřebitel – consumer

Společenství vlastníků jednotek – owners association

3+1; 2+1 – it means an apartment with 3 or 2 rooms and kitchen (+1)

Ubytovna – hostel

Příspěvek na bydlení – housing allowance

Výpověď - notice

Výpovědní doba – notice period

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?**

Discrimination is undoubtedly linked to the issue of minorities and their disadvantages in society. The oldest existing provision in the legal system of the Czech Republic, which covers discrimination, is article 14 of the European Convention on Human Rights and Fundamental Freedoms. A similar message is expressed in the Charter of Fundamental Rights and Freedoms, which creates a part of the constitutional order. The most common reasons for discrimination of interested

persons in renting an apartment are ethnicity or nationality. Some flat owners ordinarily refuse smokers, families with children or with domestic animals.

For example: Home owners and flat owners do not want, for various reasons, to lease their property to foreigners. Real estate agents ask the interested person about this information already at the primary stage of the negotiation. Some owners lease apartments to foreigners but charge them higher prices.

There is a high standard of human rights protection, even in the field of discrimination. The landlord may choose the lessee upon his freedom of contract, but he cannot refuse to sign the contract because of race, nationality, sexual orientation and other discriminatory reason. If the landlord does not want to enter into agreement because of the nationality of the other party, the latter can sue the former for damages and demand an apology.

- **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?**

On the other hand, the landlord can ask about anything he is interested in. But the lessee is not required to answer and a possibly "undesired" answer from the lessor's point of view (e.g.: "Yes, I am gay.") could not be the reason for not entering the lease agreement. Questions concerning sexual preferences and other sensitive issues are a possible violation of the personal right to privacy and may justify an action against the landlord. Unfortunately, this is hard to prove, so there are no records on successful claims focused on discrimination. The facts must be proven beyond reasonable doubt even in the civil procedure.

- **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)?**

A Reservation Fee is legal in the Czech Republic (also known as an option fee / deposit) and it is an amount of money (usually no more than one month's rent) received from the tenant to reserve the premises, while you process the application for tenancy.

- **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)?**

There are no special checks on the personal and financial status of the tenant in the Czech Republic. An important role in the selection of lessees is a recommendation of a person that the lessor knows and trusts. Additionally, the lessor may check the Central Register of Debtors. However, this register is only a private information system. Data obtained from this register are not recognized by the financial institutions as an acknowledgment of indebtedness.

- **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?**

Real estate agents do not have a good reputation in the Czech Republic due to the vague legal regulation of their activities. It falls under the so-called free (notifiable) trades which require no special licence. It is prudent to distinguish well-established real estate agencies adhering to their internal codes of ethics or the rules of the Czech Chamber of Real Estate Agencies. Real estate agents are usually paid with a fee for brokerage of a lease contract or sale. The brokerage fee is usually equivalent to one monthly rent of the leased property.

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

There are no official black lists of bad tenants in the Czech Republic. If you want to obtain such information, you have to ask the neighbors.

2.2. The rental agreement

- **What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?**

The requirements for a valid conclusion of a rental contract are as follows: written contract, full legal capacity of contractors, the obligation to specify the structure of rent payment (rent + utility costs), specification of the apartment, and specification of its usage.

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

The Civil Code provides that the agreement has to contain:

- 1) identification of the apartment,
- 2) identification of the object of the agreement,
- 3) extent of use,
- 4) rate of rent (if not stated, there are provisions to define it (see article 2264 section 2 of the Civil Code))
- 5) rate of fees for services connected with use of the apartment,
- 6) way of their calculation (amount of payment),
- 7) description of appurtenances and fixtures in a flat (recommended),
- 8) description of the flat conditions (recommended).

The lease agreement may contain also other contractually agreed requirements, e.g.:

- 1) deposit,
- 2) the extent of repairs carried out by the lessee
- 3) persons who will live with the lessee in the apartment,
- 4) approval for building alterations
- 5) approval for the transfer of flat lease,
- 6) a notice period to terminate exceeding three months,

- 7) the term of the lease,
- 8) consent to sublease.

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

Both types of duration are legal. If there is no time limit in the contract we assume that the contract is open-ended. There are also special conditions if the lessee uses the apartment at least three months after the termination of the contract. It is automatically (after three months) prolonged for the same period as it was concluded.

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

The amount of the rent, the utility costs, the date of payment, the form of payment.

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

Rent must be paid usually monthly in advance to the fifth day of the month. There are special provisions concerning which repairs are paid by the landlord and by the lessee (e.g. dripping faucet). The apartment can be furnished or completely empty equipped just with the usual amenities. The landlord is not allowed to shift the costs for certain kinds of repairs to the tenant. But if there are any major improvements to the apartment, the rent can be risen up to 20% but with the approval of the lessee.

- **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)?**

It is recommended to write a description of appurtenances and fixtures in a flat. It is also recommended to conclude a household insurance contract (not expensive – circa 60 EUR a year).

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

Deposit is usually a part of the contract clauses as well as conditions on automatic rent rising according to the increasing inflation.

- **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.)?**

The lessee has a right to invite and take into his household whomever he chooses. Should the lessee accept a new member to his household, he will declare an

increase in the number of persons living in apartment to the lessor without undue delay. Should he fail to declare this within two months after the day the change occurred, it is considered a serious breach of his duties (Section 2272 of the Civil Code).

The above denotes, that members of the tenant's household are allowed to move into the apartment. The tenant is obligated to inform the landlord about this within two months. The tenant is entitled – without landlord's consent – to share an apartment with any person with whom he/she forms a common household (consumer community in which the persons jointly pay their expenses, alternatively, one person is dependent on the other, such as a child or parent).

The lessor may reserve the right for approval of accepting new members into the lessee's household in the contract. This does not apply in the case of close persons or in other cases warranting special consideration. Written form is required for the lessor's approval of accepting a person other than a close person as a member of the lessee's household.

According to Section 2272 par. 3 Civil Code, the lessor has the right to request that only such number of persons that is appropriate considering the size of the apartment live there, in order to make sure certain of them live in standard comfortable and sanitary conditions.

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

No, tenant is not obligated to occupy the dwelling.

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

After a divorce of a married couple, there are special conditions under the § 766 of the Civil Code. The court is able to cancel the lease right of that of spouse who may reasonably be expected to be the one to leave the household. There are no special conditions on what occurs when non-married couples separate.

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

No

- **death of tenant;**

No. If a tenant dies and there has not been a joint apartment lease, the rights and obligations of subletting are transferred to a person who was staying in the apartment with the tenant in the household until the date of his/her death and who does not possess his/her own flat.

- **bankruptcy of the landlord;**

Change of parties is not allowed in this case. According to the bankruptcy act it is only the bankruptcy administrator authorized for dealing with the apartment.

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

A sub-lease is a temporary accommodation in a flat, which is rented by the lessee who does not require it at that time period. It is possible to sub-lease the whole flat. The lessee, who wishes to sublet the flat, must have written approval of the owner of the flat. If the owner of the flat does not give his approval, the sublease contract is invalid. A different situation occurs when the lessee is living in the flat and sub-lease concerns only part of the flat. In this situation, the owner's approval is not necessary.

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

According to § 2221 of the Civil Code if there is a change in ownership of the apartment, the obligations of the landlord follows the new owner according to the lease contract even if it is open-ended.

- **Costs and Utility Charges**

- **What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?**

The fees for services connected with the use of the apartment must be included in the residential lease agreement. The list of services can be extensive and mainly depends on the will of the lessor. The services are provided together with housing, and their basic list is included in the price assessment of the Ministry of Finance No.01/2013.

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

The services that are associated with the dwelling provided by the lessor are:

- heating,
- lighting and cleaning common areas in the house,
- supply of hot water,
- supply of drinking water,
- removing waste water by sewerage,
- inspection and cleaning of chimneys,
- use of lifts (elevators),
- equipping the flat with joint television and radio antennas,
- disposal of sewage and cleaning septic (all services must be included in the lease agreement)

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

The person who will be responsible for taxes levied by local municipality should be specified in the lease agreement.

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

Specification of services provided together with the use of an apartment depends on the technical facilities of the house and therefore sometimes it is possible to provide some extra services (e.g. sauna, guarding the house, pool, etc.). On average, the list of services incorporated in the lease agreement shall be modified without limitations (the extent depends only on the facilities of the house and the will of the lessor). The range of services provided in particular house is reflected in the rent amount. Extra subsequent payments cannot be charged.

- **Deposits and additional guarantees**

According to § 2254 Civil Code, the parties can stipulate that the lessee gives the landlord a financial deposit which ensures that former will pay the rent and meet other obligations under the lease. The deposit shall not be more than six times the monthly rent. At the end of the lease, the landlord is obliged to refund the deposit to the lessee; possibly the lessor will counterbalance a sum of money which the lessee owed to him on rent. The lessee shall be entitled to the interests on the deposit at least at the statutory rate.

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

The usual and lawful amount of a deposit is maximum 6 rents.

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

Following a written notification, the lessee is obligated to supplement the deposit to its original extent within one month if the lessor rightfully used the deposit. Following the end of the lease, the lessor is obliged to return any undrawn deposit money with interest within one month since the date the lessee vacates the apartment and yields it up to the lessor, unless they agreed otherwise.

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

Additional guarantees are unlawful.

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

The lessor is authorized to use the deposit to settle claims on rent or payment of services, unless his or her agreement with the lessee stipulates otherwise.

3. During the tenancy

3.1. Tenant's rights

- **Defects and disturbances**

Should the lessee find the apartment damaged or defective in such a way that the defects must be rectified without undue delay, he will immediately notify the lessor. Other damage or defects which prevent the usual use of the apartment will be reported to the lessor without undue delay. The lessor is required to repair damage or rectify the defect within a reasonable period after notification by the lessee. Should the lessor fail to do so without undue delay and properly, the lessee may rectify the problem himself and request reimbursement for the incurred costs or else a reduction in rent, unless the damage or defect are not of substantial nature.

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

The neighbourhood protection against noise, smell, vibrations etc. is provided by the article 1013 of the Civil Code. The owner (user) is obliged to avoid everything what can annoy other owners (users) of apartment. When somebody breaks this legal prohibition, that person can be sued. If the violation occurs again after the court ruling, there can be fines granted up to the amount of 2500 EUR repeatedly.

The right for an adequate rent reduction may result from:

1. The problem of worsening conditions of usage
2. No provision of utilities connected with a flat usage
3. Building work in a house

Therefore, all defects which may influence the agreed use of the flat will be legally relevant.

- **Repairs of the dwelling**

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

The basic duty of the landlord is to hand over the apartment in a suitable condition for proper use. Generally, a tenant cannot carry out any construction work in the apartment without the landlord's consent. The landlord is not obliged to grant him any permission. In the opposite situation (the landlord wants or needs to perform repairs) the landlord must have the tenant's consent, but the latter may refuse only when a compelling reason (typically an illness) occurs.

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

The parties may, however, agree that the flat is handed over without the necessary improvements and that the tenant is permitted to execute the necessary repairs, for example, because of his/her skill. In return, the tenant will receive a discount on rent. Minor home repairs are required to be done – unless otherwise agreed – by the tenant. These repairs are defined by legislation, which ranks among them for instance replacement of handles, locks, blinds, circuit breakers, bells, lights, faucets, sinks, etc. On the other hand, radiator repairs, or the replacement of a gas cap for an apartment (not cooker) does not belong to minor repairs.

- **Alterations of the dwelling**

The existing Civil Code accepts the principle that small repairs and everyday maintenance of the apartment are performed by the lessee at his own expense. The extent of small repairs borne by the lessee at his expense and risk are specified by Government Decree No. 258/1995 Coll. Maintenance of the apartment is understood in the decree as painting of the apartment including repairs of plastering, wallpapering, floor and floor-cloth cleaning, cleaning of sinks, regular inspections and cleaning of fixtures and fittings. Should the lessee not perform small repairs and everyday maintenance in a timely manner, the lessor has a right to carry them out at his expense upon prior notice and subsequently request reimbursement from the lessee.

- **Is the tenant allowed to make other changes to the dwelling?**

Minor home repairs are required to be done by the tenant. These repairs are defined by legislation. The tenant is allowed to even perform reconstruction to the dwelling if the landlord agrees.

- **In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

If the landlord does not agree, he can be sued for an approval only in cases of some necessary reconstruction or changes according to the health of the tenant (e.g. enlargement of doors due to wheelchair access).

- **Affixing antennas and dishes**

The tenant is allowed to affix antennas and dishes.

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

The tenant is allowed to repaint and drill into the walls.

- **Uses of the dwelling**

- **Are the following uses allowed or prohibited?**

- **keeping domestic animals**

Keeping animals is allowed due to the provision of article 2259 of Civil Code. Keeping animals may not bother (smell, noise) other neighbours.

- **producing smells**

The neighbourhood protection against producing smell is provided by article 1013 of the Civil Code. It means one can produce common smells (cooking), but the producing activity cannot be inappropriate according to local circumstances (which are different in city and villages).

- **receiving guests over night**

This is allowed according to article 2272 of the civil code.

- **fixing pamphlets outside**

Same case as producing smells (see above). The neighbourhood protections are aimed against all sorts of violations breaking the appropriate local circumstances level.

- **small-scale commercial activity**

The tenant may run a business in the apartment, provided that no increased burden on apartment will occur (damage caused by excessive visits, such as broken doors).

3.2. Landlord's rights

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

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

The abolition of the government regulation No. 567/2002 Coll. *de facto* abolished rent control. The level of rent for a flat was defined in a contract, and while setting the amount of the rent it was only good morals that needed to be considered (§ 39 Civil Code). The contractual parties were also negotiating the possibility of a unilateral rise of rent. It should be emphasized that a unilateral rent increase must not depend on the will of just one contractual side. The rules concerning the increase of rent and its manner must be included in the contract. Inflation clauses are very common. The same can be applied to agreements concerning changes of rent.

Currently the rent is based upon the agreement between the parties. But if the rent is not agreed, it is assumed (according to §2246 section 2 of the Civil Code) that the rent is on the level which is comparable (same size and location of apartment) in place and time with rents arranged in this location.

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

Regulation of § 2246 Civil Code states that the level of rent should be equal to similar ones on the day of the contract formation at the place usual for the rent defined by similar contractual conditions. If it is not stipulated by the parties, defining the rent level would not be an obligatory part of the lease contract. In case of a situation where the rent differs from the usual price, the Civil Code defines the procedure for its alteration. Rent would be negotiated for 1 month, and its price would be fixed by the parties to contract (§ 2246).

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

The annual rent increase will also be the competence of the parties to contract. The rent increase proposal, according to the New Civil Code clearly specifies formal and contextual conditions. Any increase must be agreed by the parties; just few exceptions are allowed such as major reconstruction (see article 2250 of the Civil Code).

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

In case the parties to contract do not stipulate the rent increase or do not directly exclude it, a situation may come in which a lessor suggests in written form a rent increase up to the level comparable to the usual rent in a certain location. This, however, is possible when a suggested increase applied in the last 3 years would not be higher than 20% according to article 2249 of the Civil Code.

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

Article 2249 section 2 of the Civil Code states details and procedure for finding similar rent usual for a certain location. If the lessee agrees with the rent increase proposal, they will pay the increased rent starting with the third calendar month after delivery of the notice. If the lessee does not agree with the proposal (and does not voice within 2 months after the delivery of the proposal) the lessor has a right during the next 3 months to ask a court for setting the rent height. The court will not take into consideration a proposal (if suggested by a lessee) made after the expiration of this period. The court, based on the lessor's proposal, set the level of the rent. Regulation § 2249 section 3 states that the rent level set by court would be usual for time and location, and in force from the day of the proposal. The procedure is similar in case of the rent decrease.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

Without the consent of the tenant, the landlord is not entitled to enter the apartment. The Civil Code therefore contains provisions that allow the landlord entry into the apartment only for serious reasons and with the participation of the tenant. This includes the following cases: the landlord is entitled to request access to the apartment in order to check whether the lessee uses the thing in a proper manner, the tenant must allow the landlord, after written notice, installation and maintenance of equipment for the measurement and control of heat, cold and hot water, and the deduction of the measured values.

The tenant is also required to provide access to additional technical equipment, if they are a part of the apartment belonging to the landlord tenant must allow the landlord make repairs.

The landlord is also entitled to enter the apartment during the last three months of the contract duration, while showing the apartment to new possible tenants. Also this right is connected to the participation of the actual tenant.

If the tenant knows that he will be absent for more than two months, he is obliged to ensure a person who will be able to open the apartment if necessary. If an emergency occurs (fire, flood etc.) the landlord can enter the dwelling even without a permission while acting with respect to the property and privacy of the tenant.

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

Yes, the landlord is allowed to keep a set of keys (e.g. in case of emergency).

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

No, he is not allowed to change locks or to lock the doors. Non-payment of rent is a breach of contract and it must be solved according to its provisions (e.g. termination, eviction etc.).

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

Yes, the landlord is entitled to retain tenant's personal property in case of rent arrears (see article 2234 of the Civil Code).

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?**
- **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 has the right to terminate the tenancy contract unilaterally even without giving any reasons.

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

Since the tenant always has the right to terminate the tenancy contract, it is possible for him/her to leave after proper notice is given. Actually he has no duty to live in the apartment. His only duty is to pay the rent. Nevertheless the lease relation is terminated not immediately after the notice is given but after the period expires (at least three months'). The period starts to run next month after the notice is properly delivered to the other party of the contract. The reason for having the period is to protect the tenant against the unlawful termination of the contract from day to day, without having a serious reason (rent arrears, violation of good manners etc.). This adoption is regulated because of the protective function of the law. Because there is also equality as a principle of civil law, the period has to be the same for the tenant and the landlord as well.

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)?**

While the landlord may give notice of tenancy termination only due to the reasons enumerated by the law, the tenant does not have to specify any reason for giving notice. Written notice shall specify the deadline of the tenancy. The notice period shall not be shorter than three months and shall terminate at the end of the calendar month. The notice period begins on the first day of the month following the month in which the notice is delivered to the second party.

- **Must the landlord resort to court?**

The landlord may cancel the agreement without court approval if the tenant or those

who live with him, despite previous written warnings, violate good manners in the house; the tenants grossly violate their obligations stated in the tenancy agreement, in particular by not paying the rent and not paying for services bound with the use of an apartment in the amount of triple monthly rent; if the tenant has two or more dwellings, except cases when he/she cannot be fairly required to use only one apartment.

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

The landlord may terminate the contract without the consent of the court when the landlord requires the apartment for himself/herself, his/her spouse, children, grandchildren, son-or daughter-in law or their parents or siblings; if the tenant ceased to work for the landlord and the landlord needs the staff flat for another tenant who will work for him; if it is necessary in public interest so that the apartment cannot be used or the apartment or house requires renewal, during implementation of which the flat or house cannot serve its purpose for longer time; if it is an apartment architecturally related to areas designated to operate a business or other entrepreneurial activities and the tenant or owner of the non-residential premises wants to use the apartment.

- **Are there any defences available for the tenant in that case?**
- **What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?**

The tenant is entitled to petition the court to assess whether the landlord has legally terminated a tenancy. There is a preclusion period of two months to instigate this special action. If the tenant does not leave the dwelling after the end of the contract, the landlord is obliged to ask the court for the execution of this duty. It is usually the executors who realize the eviction at the expense of the tenant.

4.3. Return of the deposit

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

At the end of the lease, the landlord will have the obligation to refund the deposit to the tenant; possibly the lessor will counterbalance a sum of money which the lessee owed to him on rent. The lessee shall be entitled to the interests on the deposit at least at the statutory rate.

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

The landlord is not entitled to deductions for damages due to ordinary use of

furniture. He/she is entitled only for deductions on rent arrears or actual damages (broken chair, broken light etc.).

4.4. Adjudicating a dispute

The Czech Republic has a four-tier system of courts comprising district courts, regional courts, two high courts (seated in Prague and Olomouc) and the Supreme Court (seated in Brno).¹³³ There is a two-instance proceedings system, meaning that one can appeal the decision of a lower-tier court in a higher-tier court. Regional courts deal with appeals against decisions of the district courts. First-instance decisions of the regional courts can be appealed against in one of the two high courts.

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

Special “lease” courts do not exist in the Czech Republic. Lease disputes are decided exclusively by a single judge. Lay judges are only used in the court of first instances in cases of labour disputes. The possibility of deciding lease-related disputes by an arbitrator or an arbitration court cannot be omitted.

Unless the law stipulates otherwise, all first-instance proceedings take place before district courts. The Czech system of courts does not include special courts for deciding in the matters of lease.

From the territorial jurisdiction point of view, it is necessary to separate the matter into more than one category. If rent or any other performance resulting from the lease is the object of the lawsuit, it is a case of ordinary performance and the general territorial jurisdiction is applied – § 84, § 85 (corresponding paragraphs according to the nature of the defendant – judicial or natural person, etc.). If the legal relation of the lease itself is concerned, i.e. its existence and continuation or termination, exclusive territorial jurisdiction according to § 88 letter i) is applied, that is the court in whose district the real property lies.

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

In tenancy cases, the same procedures apply as in classic civic legal proceedings. In accordance with § 6 of the Civil Procedure Code, the court proceeds in the proceedings predictably and in coordination with the parties so as the protection of the rights of the parties is fast and efficient.

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

¹³³ The Constitutional Court is not a part of the system of general courts; it is considered a part of a special system of courts comprising only the Constitutional Court itself.

Parties may agree that property disputes arising from a lease will be decided by one or more arbitrators or a permanent arbitration court.¹³⁴ A valid arbitration clause is a prerequisite. It cannot be arranged as a part of the lease agreement, only as a special agreement.

The arbitration proceedings in relation to the consumers (including lessees) are endowed with certain particularities:

- a) the arbitration agreement must be concluded on its own and not as part of conditions in the main contract; otherwise it is invalid.
- b) the entrepreneur is obliged to provide, with a sufficiently long period of time in advance, the consumer with an adequate explanation, in order for the consumer to be able to determine, what consequences the arbitration clause may bring about. An adequate explanation is understood as an explanation of all the consequences of the arbitration clause.
- c) a concluded arbitration clause must include truthful, accurate, and complete information about:
 - the arbitrator or the fact that a permanent arbitration court decides,
 - the way of initiation of the arbitration proceedings and its form,
 - the reward for the arbitrator and the expected kinds of expenses, which the consumer may incur as result of the proceedings, as well as about the rules for their declaration,
 - the place where the arbitration proceedings takes place,
 - the manner of delivering the arbitration findings to the consumer,
 - the fact that a legitimate ruling is executable.

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?**

The social housing system in the Czech Republic is based on housing allowances. The Ministry of Labor and Social Affairs administers two types of subsidies in the area of housing (both of them are intended for people in material need). The first one is the „Housing allowance”¹³⁵. Property owners or tenants registered as permanently resident in that property are entitled to a housing allowance if 30% (in Prague 35%) of the family income is insufficient to cover the housing costs and at the same time this 30% (in Prague 35%) of household income is lower than the relevant prescriptive costs set by law.

The prescriptive housing costs are set as average housing costs based on the size of the municipality and the number of members in the household. In the case of rentals, the rent is calculated in accordance with the Rent Act, and similar costs are

¹³⁴ “Arbitrable” denotes those legal relations in which the state power did not reserve the right to decide exclusively by state courts (or by its other organs) and thus conceded that some disputes can be judged also by arbitrators if the participants stipulate so. It is an area where the state committed to recognize and enforce arbitration awards in dispute resolution that were achieved in a special procedure, which takes place at the initiative of the parties and with their participation in a way that the state allows – arbitration proceeding.

¹³⁵ The state social support is regulated by Act no. 117/1995 Coll., on State Social Support, as amended.

recognized for residents of cooperative flats and flat owners. Prescriptive costs include additionally the bills for services and energy. They are calculated for reasonable flat sizes for the number of permanent occupiers. The amount of housing allowance is set as the difference between prescriptive housing costs and the actual family income multiplied by the coefficient of 0.30 (in Prague 0.35). The period for which the benefit is granted is limited to 84 months during the last ten calendar years. An exception applies to households exclusively consisting of people over 70 years of age and the disabled living in flats specially adjusted for them.

The second benefit, the “Supplement for housing”¹³⁶, tackles cases where the income of the person or family, including the entitlement to a housing allowance from the system of state social support, is insufficient to cover the justified housing costs. The benefit is provided to flat owners or tenants entitled to a social benefit and a housing allowance. In exceptional cases, a supplement for housing can be provided to a person not eligible for the housing allowance or to a person using a form of housing other than rental, e.g. an easement. The amount of the supplement for housing is determined with the sum of payment on justified housing costs (i.e. rent, services related to housing and energy costs). An exception applies to households exclusively consisting of people over 70 years and disabled living in flats adjusted for them.¹³⁷

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

The tenant may enter voluntarily into household insurance. This insurance covers almost all the things that make up household equipment – from furniture and electrical appliances to valuables and money (to a limited extent). The insured persons buy financial compensation for the damage, destruction or theft of the things that they have in their apartment.

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

Free legal aid services are provided by non-profit and non-governmental (mostly regional) organizations, which obtain funds for their activities from grants and donations. Free legal aid services are also provided by some Faculties of Law (e.g. Palacký University) which establish the Student Legal Clinics.

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

- 1) Ministry of Labour and Social Affairs
Address: Na Poříčním právu 1/376, 128 01 Praha 2
Telephone: +420 221 921 111
Email: posta@mpsv.cz, <http://www.mpsv.cz/cs>
- 2) Czech social security administration
Address: Křížová 25, 225 08 Praha 5
Telephone: +420 257 061 111, Fax: +420 257 063 360
Email: posta@cssz.cz, www.cssz.cz

¹³⁶ Regulated by Act no. 111/2006 Coll., on Assistance in Material Need.

¹³⁷ Ministerstvo pro místní rozvoj ČR, *Státní fond rozvoje bydlení: Koncepce bydlení ČR do roku 2020* (Praha, KPMG Česká republika s.r.o., 2011), p.21

- 3) The association of tenants CZ
Address: Dům odborových svazů, Náměstí W. Churchilla 2, 113 59 Praha 3
Telephone: +420 234 463 343, Fax: +420 234 463 344
Email: son@cmkos.cz, www.son.cz

- 4) Association of Citizens Advice
Address: Sabinova 3, 130 00 Praha 3
Telephone: +420 284 019 220
Email: aop@obcanskeporadny.cz, www.obcanskeporadny.cz

- 5) Student Legal Clinic (Faculty of Law – Palacký University)
Address: Tř. 17 listopadu 8, Olomouc, budova A
Telephone: +420 585 637 616
Email: lucia.valentova@upol.cz, <http://www.pf.upol.cz/menu/struktura-pf/centra/centrum-pro-klinicke-pravni-vzdelavani/informace-pro-klienty-studentske-pravni-poradny/>

DENMARK

Tenant's Rights Brochure

Jakob Juul-Sandberg

Team Leader: Per Norberg

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1. Introductory information

- **Brief introduction on the national rental market**
 - **Current supply and demand situation**

The approximate number of households in Denmark today (2012) is 2.5 million. There were 465,210 private rented dwellings in 2010. There are also a total of approx. 595,000 social rented dwellings.

There is no general shortage of housing in Denmark. In the major urban areas, particularly Copenhagen, there is strong demand for attractive rented housing and for low-cost rented housing, but does not mean that there is no general shortage of housing. Studies say that in some areas there might be an increasing rental demand from more persons of higher ages who need rental dwellings. Furthermore, increasing rental demand from earlier separation of children from their parents and an increasing tendency towards more single living has emerged. As a result there might be a demand for more rental housing in the future. Declining building activity in the recent years could also cause demands for more rental housing in general on a longer perspective.

This also means that in general it is not possible to rent out homes in low standards or otherwise very poor quality.

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

The main current problems for the tenant in general might be finding a dwelling close to where he is working or studying – at an affordable price. Especially students wanting to live in the biggest cities close to the universities can face problems finding a good apartment of a decent size, that they are able to pay for.

Also unemployed people and people with low incomes in general might find it difficult to find a place to live at a price they can afford.

The legislation regarding the rental market can be difficult to understand. The rules on rent regulation/rent control are in many ways difficult to understand and interpret. It is not possible for lay people to properly calculate the maximum rent applicable to a particular tenancy. This is the cause of many legal disputes, which must be resolved by the judicial system. The same problem arises as a result of contradictory and inadequate statutes – including a number of troublesome transitional rules – many of which have been in operation for a long period of time.

The courts (and to some extent the Rent Tribunals) play an important gap-filling role and solve some of the problems arising out of inadequate and sometimes contradictory rules. This also causes problems for tenants in general, because it can be difficult to find out what their actual right and obligations are. This often causes problems in the relationship between the tenant and the landlord.

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

- **Private renting**

The private renting sector is defined as not directly subsidized properties owned mostly by private landlords or investment companies. Regardless of property type or the number of residential tenancies (and other factors in general), private sector rental housing is regulated by the Rent Act and the Housing Regulation Act.

The private rental housing stock encompasses housing in three main types of property:

- 1) Housing in actual private sector rental properties owned by professional landlords,
- 2) Rented owner apartments (condominiums) and single-family detached houses of various sizes owned by not professionals
- 3) Rented cooperative housing

A quarter of all private sector rented housing consists of rented owner apartments (condominiums) often owned by a non-professional landlord.

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

Within the rented housing market, there are also a total of approx. 595,000 social rented dwellings. These dwellings fall under a category of rented houses that can be called “social housing”. Social housing is found in the non-profit rental housing sector that takes approx. 45 per cent of the rental market. Non-profit housing covers more than “pure” social housing though. It is supposed to be subsidized housing for the low and middle-income groups, and was one of the gems of the post-war “Danish Social Democratic welfare state”.

The Danish social housing sector comprises a total of approx. 700 social housing organizations with 7,500 divisions (estates) in total, all of which are run on a non-profit basis. These organizations and divisions own and run the houses on the basis of a residents’ democracy. In 2012, 488,000 social dwellings were family dwellings, while 77,000 and approximately 30,000 were dwellings for the elderly and dwellings for young people, respectively.

- **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)**

Finding advertising for free rental homes in Denmark is not difficult. Landlords in general use the internet to find tenants (and vice versa). Some websites offer help (in English) on what to do and how – e.g.:

<http://www.boligportal.dk/en/>

<http://studyindenmark.dk/live-in-denmark/housing-1/how-to-find-housing>

<http://www.justlanded.com/english/Denmark/Denmark-Guide/Housing-Rentals/Rental-agreements-in-Denmark>

As stated above it can be difficult to find a rental home at an affordable price in some parts of Denmark. Foreigners must be aware of the fact that some flats are fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong. Especially in the largest cities in the summer when a lot of young people including foreigners are looking for a place to live – often because they are going to study at the university or other education institutions. A typical example is where a person pretending to be a landlord, after showing an apartment to a potential tenant, demands a deposit in cash or into a bank account before a contract is being signed. Often the “landlord” makes this deal on the same apartment with a lot of desperate potential tenants.

Discrimination of foreigners on the rental market is not documented as a common problem.

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

- The main difficulty for a tenant in Denmark (no matter whether you are a Dane or a foreigner) is to figure out the rent regulation system. It is very hard to determine if the rent which the landlord demands is in accordance with the regulation in the Rent Act and/or the Housing Regulation Act. Even the landlord might not know if he is charging the rent in accordance with the regulation.
- Payment for no other utility than specifically stated in the Rent act can be claimed by the landlord. Some landlords (and tenants) are not aware of this, and this often causes disputes, when the tenant refuses to pay after seeking advice from legal experts or going to the Rent Tribunal.
- Some landlords are not willing to maintain their properties regularly. This means that some tenants have to live in dwellings that are not maintained properly, which might cause health problems for the tenant in some way. The only way for the tenant to force the landlord to maintain the property is by taking his claim to the Rent Tribunal, and this might take some time before the case is handled, which can be unsatisfactory for the tenant who has to live in a dwelling with defects for a longer period of time.
- A landlord’s right to terminate contracts is (very) restricted. Only when stated specifically in the Rent Act, the landlord can terminate the contract. Cases on rightful or wrongful termination are often tried before the Housing Court, sometimes because it can be very doubtful whether the landlord has an actual right to terminate the contract.
- Some tenants also face problems with the landlord when moving out. Often the tenant and the landlord have disagreements on the tenant’s right to get his deposit back. This is often due to the fact that it is not always easy to state from the tenancy contract to what extent the tenant must pay for maintenance or breach of contract, when moving out. Sometimes the tenant even faces problems getting his deposit back just because the landlord is not willing to pay back the money.

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

English term	Danish (original) term
Administration of Justice Act	Retsplejeloven
Bailiffs Court	Fogedretten
Bankruptcy	Konkurs
Compulsory purchase	Ekspropriation
Condominium	Ejerlejlighed
Cost-based rent	Omkostningsbestemt leje
Consumer protection	Forbrugerbeskyttelse
Deposit	Depositum
Energy performance certificate	Energimærke
Energy saving measures	Energibesparende foranstaltninger
Estate Agent	Ejendomsmægler
Eviction	Udsættelse
Fixed-term tenancy agreement	Tidsbegrænset lejekontrakt
Free legal aid	Fri process
Housing Court	Boligretten
Housing co-operative	Andelsboligforening
Household	Husstand
Housing Regulation Act	Boligreguleringsloven
Improvements	Forbedringer
Landlord	Udlejer
Maintenance	Vedligeholdelse
Mandatory	Præceptiv
Market rent	Markedsleje
Mixed properties	Blandede lejemål
"Money liability"	Pligtig pengeydelse
Period of notice	Opsigelsesperiode
Pre-emption	Fortrinsret
Regulated municipalities	Reguleret kommune
Rent Act	Lejeloven
Rent regulation	Huslejerregulering
Rent Tribunal	Huslejenævn
Retention rights	Tilbageholdsret
Rules of proper conduct	God skik og orden regler
Set off	Modregning
"Small properties"	Små huse
Social Housing Act	Almenlejeloven
Stepwise rent increase	Trappeleje
Sub-letting	Fremleje
Tenant	Lejer
Tenancy Agreement	Lejekontrakt
"Thoroughly improved" apartments	Gennemgribende forbedrede lejemål
Unregulated municipalities	Uregulerede kommuner
Urban renewal	Byfornyelse
Value of the premises	Det lejedes værdi

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?**

The landlord in the private renting sector is free to choose whoever he prefers as a tenant. He can reject anybody as a tenant out of a general antipathy towards the person in question, his choice of domestic animals, appearance etc., provided that the rejection cannot be qualified as discrimination.

If the landlord rejects any tenant e.g. because of his religion or ethnic origin, this may constitute a breach of the Discrimination Act and may further be contrary to the Act on equal treatment of persons irrespective of racial or ethnic origin. It will be difficult for the tenant to prove that a rejection is caused by discrimination issues, because the landlord has no obligation to give the tenant any reason for the rejection.

- **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?**

There is no direct legislation on these issues. Agreements between landlords and tenants must not violate the fundamental rights laid down by the Constitution, the Discrimination Act or the Equal Treatment Act. This also means that the landlord cannot ask questions that might cause a violation of these rights before entering in to a contract with a potential tenant. Questions on sexual orientation etc. are therefore prohibited, but it will be difficult for the tenant to prove that there has been a violation. The best advice to tenants is not to answer the questions (and find another place to rent).

If the tenant lies when asked these questions, it will not be considered as a breach of contract.

- **Is a “reservation fee” usual and legal (i.e. money charged by the landlord to allow the prospective tenant to participate in the selection process)?**

No. This is not legal.

No fee for either being part of the selection or for the conclusion can be charged. In connection with the letting of premises for residential purposes, the provision of such tenancies or the exchange of flats, it is not permitted to receive or charge a fee from the tenant, nor to require the tenant to enter into another contract which is not part of the tenancy agreement. If a fee is charged, the tenant can make a claim to get it back. The landlord can even be punished in court for charging such fees.

- **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)?

Some landlords try to “screen” potential tenants on the internet or ask the potential tenants (directly or indirectly) for information about their financial status, and some landlords probably try to keep some sort of registration of former tenants as well.

The landlord could in principle ask for a salary statement, this is legal but it is not common. Most tenants would find it intimidating, but if the tenant refuses to give the potential landlord the information, he risks not getting the apartment in question.

- **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?**

The role of estate agents in relation to the letting of apartments is limited. In some cases, however, the agent will act as mediator for the landlord and be in charge of negotiations with potential tenants. Some landlords advertise through estate agents and in such cases, the tenant can contact the estate agent, who most likely will be interested in helping the tenant. But the tenant must be aware of the fact that the estate agent is representing the landlord, and the agent therefore tries to get a contract that is attractive for the landlord.

Some websites live from advertising of rental homes. A potential tenant will be able to buy services (access) from these sites. This is often the easiest way to gather information on vacant apartments and it is not expensive.

In Social Housing the dwellings are allocated on the basis of waiting lists administered by the owners of the properties. There might be restrictions on who can get on this waiting list, and the lists are very long when it comes to the most attractive apartments. The best advice is to contact the owner of the property to find out whether it is possible to get on the list and to find out for how long it will last before it is possible to get an apartment offered.

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

The landlord can gather and keep information about his tenants until they move. It is not legal to share information about tenants or former tenants electronically or otherwise. This is due to data protections grounds.

In general the tenants’ only way to get knowledge about landlords is through word of mouth. There are no registries on (former) “swindler” landlords. If a tenant becomes a member of a tenants’ association, the association will give the tenant advice on bad landlords who they know off, but they do not keep “official” lists or labelling systems. Through general searches on the internet, potential tenants might also be able to find information on tenants who has good or bad experiences with their (former) 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)?**

There are no general requirements. All kinds of written or even oral agreements are binding and valid as long as they give sufficient evidence of the existence of a tenancy agreement; then, nothing else is required. To get a contract in writing is recommendable though.

If the agreement is not in writing, the Rent Act applies. This means that a tenancy agreement shall be deemed to have been concluded subject to the provisions of the Rent Act unless otherwise provided in the agreement.

No fee for the conclusion has to be paid. It is not permitted to receive or charge a fee from the tenant, or to require the tenant to enter into another contract which is not part of the tenancy agreement.

Registration in the Land Registry is not obligatory. Under the Rent Act, the fundamental rights of tenants are enforceable against anyone without registration. If the landlord sells the property, the new owner will be the landlord automatically and the contract cannot be changed. This means e.g. that if the (former) landlord has charged a higher rent than allowed, the tenant can make his claim against the new landlord – even if the new landlord is in good faith. It makes no difference whether the tenant has moved away before the property is sold. But on termination of the tenancy contract, any proceedings to enforce the tenant's claims shall be commenced within 12 months from the date of termination.

If the tenant has been granted special rights – better than what is stated in the Rent Act e.g. a prolonged period of notice or an agreement on no rent increase – the tenant has to register the tenancy agreement in the Land Registry in order to be protected against any new owners and the creditors of the landlord.

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

There is no mandatory content. A tenancy agreement does not require a specific form or content. The only formal (mandatory) requirements are found in the Rent Act sections 4 to section 7, and some of the rules only apply to contracts on certain premises.

This also means that if a contract is only oral, the tenancy agreement will be deemed to have been concluded subject to the provisions of the Rent Act unless what is otherwise provided in the agreement can be proved by the landlord. If the Rent Act gives the opportunity to choose between different possibilities or if the Rent Act (or the Housing Regulation Act) demands certain specifications in the contract, the contract will be interpreted to the benefit of the tenant, or the specifications not mentioned will not be part of the contract – e.g. this can have the effect that the landlord cannot raise the rent.

If there is a contract in writing (which is generally the case), it will most often – to the benefit of both parties involved – contain information on the address of the rented home; whether the dwelling is an apartment, a house or a single room; the area and how many rooms are included; the rent and where it has to be paid including any other costs; deposit; regulation on who has the obligations on maintenance; and other generally important features. No description of the interior will be included. The standard contract (most often used) also leaves the possibility for the landlord to mark up whether the dwelling has been renovated before the tenant is moving in.

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

Tenancy contracts can be entered into for a limited (if it is warranted by the landlord's own situation) or for an unlimited period, which is the general rule if nothing else is agreed upon.

That the reasons for a time limited contract must be warranted by the landlord's own situation means that the landlord e.g. is not able to sell the property at the moment, or if he has to move abroad for a time limited period. It is difficult to state all valid reasons, and often the courts will set aside time limitations due to this.

There is no mandatory minimum or maximum duration for limited periods of a tenancy contract. It is possible to prolong a limited contract if it is still warranted by the landlord's own situation at the time of the prolongation. Automatic renewals without due course will almost certainly be overruled.

In principle, a time limited tenancy agreement implies less extensive rights for the tenants than under the general rules in the Danish Rent Act. Regardless of the landlord having a valid reason to lease on a fixed-term basis, any provision for a fixed term may be set aside in municipalities with housing regulation, if it is assessed that, overall, the tenancy agreement contains terms and conditions that are more onerous for the tenant than the terms and conditions that apply to other tenants in the same property.

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

There is no mandatory regulation on this. The Rent Act states, however, that if the rent is not set in the contract or in any other way (e.g. by oral agreement), the standard rules apply. This means that the tenant can go to the Rent Tribunal to have the rent set correctly. This is a theoretical situation though due to the fact that almost every contract is in writing and will include indications of the amount of the rent which must be paid.

The landlord decides where and how the rent and related bills shall be paid. Payment can, however, always be made to a bank, including, if applicable, through the postal service. The rent is normally due on the first day of each month, but the parties are free to agree upon any another date. Where the due date for payment falls on a public holiday, a Saturday or the Danish Constitution day, the due date shall be

deferred to the next following weekday.

The contract will most often contain information on where and when the tenant must pay the rent. It is the obligation of the tenant to pay the rent even if he does not get a demand for collection from the landlord every month. The landlord may terminate the tenancy agreement without notice in case of default in the punctual payment of rent (or other money liability).

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

In general the answer is no. But if the tenant breaks something (this is then a breach of contract), he has to pay for it.

It is directly stated in the Rent Act that the landlord shall keep the property and the premises in proper repair at all times. All installations for drainage, supplies of light, gas, water, heating and cooling shall be maintained in a good and serviceable repair. The landlord shall likewise be responsible for keeping the premises clean, for usual lighting outside and inside the property, and for the means of access to the premises; also, the landlord shall be responsible for keeping pavement, courtyard and other communal facilities clean.

Papering, painting, plastering or other repairs occasioned by deterioration due to wear and tear shall be carried out as often as necessary in view of the character of the property and the premises. The landlord may do this, but it is legal to make an agreement stating that the tenant is responsible for whitewashing, painting and papering. Then the tenant must pay for this. The tenant and the landlord may also mutually agree on a different distribution of the maintenance obligations, e.g., so that the tenant assumes the responsibility for maintaining and, if necessary, renewing toilets, water taps, refrigerators, kitchen tables, mixer taps, window panes, floors, floor covering and the like. Arrangements, in accordance with which the tenant takes on the responsibility to maintain anything other than locks and keys, must be stated in the tenancy agreement.

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

It is the landlord's obligation to provide major appliances. The standard of housing in Denmark is generally high, and so there is no general problem on lack of major appliances in rented apartments.

There is no specific regulation on which appliances that must be provided. In accordance with the Rent Act, from the agreed commencement of the tenancy and throughout the term thereof, the landlord shall make the premises available to the tenant in a reasonable state of repair and condition. From the date of possession the premises shall be clean, window panes shall be intact and all external doors shall be provided with locks in good working order and fitting keys. This also means that the rented apartments must be equipped with all normal household appliances – e.g. heating and water supply.

It is not normal that a rented apartment is equipped with furniture, and the tenant cannot demand it. It is legal to make such arrangements though

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

Yes. The tenant must be aware of list of inventory (if the contract does not include one). The tenant might be liable for breaking the furniture and other inventory, and so the tenant must make sure that the contract and list of inventory is very precise on the descriptions on what furniture the landlord will provide and what, if any, furnishings are in the apartment besides that, as well.

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

A standard contract is used in the main part of all agreements in the private rented sector. This contract has all relevant clauses included, and it leaves space to fill any special agreements between the landlord and the tenant.

It is relevant (and usual) to state in the contract who is responsible for what kinds of maintenance works and repairs which must be done inside the apartment. This is also relevant when the tenant is moving out (to find out whether the tenant is liable for any damage on for not maintaining the rented apartment in proper condition). It cannot be agreed that the property shall be in better condition at the termination of the tenancy than it was at the commencement of the tenancy.

Whether the contract is time-limited must be stated in the contract.

- **Parties to the contract**
 - **Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?**

Members of the tenants "household" are allowed to live in the apartment with the tenant. A "household" can consist of the tenants spouse, girlfriend/boyfriend (if not married), children and in some cases other persons as well – e.g. cousins or other family members who do not have their own household, and close friends.

The term "household" is not stated exactly in the Rent Act. Therefore, the definition can be subject to some uncertainty when not talking about spouses, girlfriend/boyfriend (if not married) or children. When determining whether a person is a household member, one must look at the way the persons live together. Sharing rooms, cooking and eating together, and having some sort of joint economic relations are all indication of a "household". A guest or a sub-lessee is not a member of the household.

When it comes to other persons, the tenant must be aware of the fact that if this person cannot be considered as a member of the tenants' household, the tenancy contract can be terminated if the person in question does not move out.

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

As the main rule, the tenant has an obligation to fulfill the tenancy agreement by living in the rented dwelling. The landlord may terminate the tenancy agreement without notice where the tenant has vacated the premises out of time without any agreement with the landlord.

The tenant is not obligated to live in the dwelling at all times all year. The tenant can live at a holiday home or similar for the summer or another place – maybe caused by temporary work obligations – for a longer period. However, if the tenant leaves the dwelling permanently to live another place it may be a breach of contract.

There are no specific rules regarding holiday homes. Tenancy agreements regarding holiday homes will most often be fixed termed. If they are not fixed termed, the same rules as for permanent homes applies in principle.

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

In case of the tenant's separation, divorce or annulment of the tenant's marriage, the grant or decree thereof may specify, if necessary, which of the spouses shall be entitled to continue the tenancy. This also means that the tenant and his/her spouse can make an agreement on who can stay in the apartment. The same rules apply for same sex couples. The landlord cannot object to this.

When parties separate, who have been living together in the same household for no longer than two years, they may agree which of them will be entitled to continue the tenancy of their joint home. In the absence of such agreement, and on special grounds including in particular the welfare of any minor children, it may be decided by court order which of the parties will be entitled to continue the tenancy.

The rules apply for tenants who were married or living together as married persons. If e.g. parents and their grown up children living at home “separate”, these rules generally do not apply.

Where the tenant has deserted his or her spouse, the said spouse is entitled to continue the tenancy.

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

No specific rule applies on this subject. This means that no tenant can move out and be replaced without permission of the landlord. If some of the tenants move (consecutively) they will still be jointly liable for the rent until the landlord accept otherwise – even though another tenant moves in.

- **death of tenant;**

On the death of a tenant, a surviving spouse is entitled to continue the tenancy. Where the tenant dies without leaving a spouse, any other person with whom the deceased tenant had cohabited for a period of not less than 2 years preceding the death may continue the tenancy.

In case of the tenant's death, both the landlord and the estate of the deceased tenant are generally entitled to terminate the tenancy, giving the usual period of notice, whether or not the tenancy was entered into for a fixed longer term or subject to a longer period of notice.

- **bankruptcy of the landlord;**

If the landlord goes bankrupt, the general rights of the tenant – as stipulated in the tenancy laws – have validity without registration against the landlord's creditors and assignees in good faith. Tenant's rights are therefore ensured if, for example, the property is resold or inherited. The new owner of the property must respect the general rights of the tenant under the tenancy laws. The same applies to agreements on advance payment of rent, deposits, and the like within the terms of the law.

This also means that the tenant is still bound by the contract even if the landlord goes bankrupt. No new contract has to be negotiated and no change of tenant is allowed without permission from the estate of the landlord or a new owner.

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

The tenant of a house or an apartment (not of a single room) is always entitled to sub-let up to one-half of the rooms of the flat for residential purposes. The total number of occupants of the house or apartment shall not exceed the number of rooms though.

A tenant is also entitled to sub-let his house or apartment which is let exclusively for residential purposes for a period not exceeding 2 years where the absence of the tenant is temporary and is due to illness, business, studies, placement, etc.

The rules are mandatory: They cannot be derogated from to the detriment of the tenant. The landlord may (only) object to the sub-letting if his property comprises less than 13 apartments or if the total number of persons in the flat will exceed the number of rooms; furthermore, the landlord may object to the sub-letting on any other reasonable ground.

Sub-letting agreements shall be made in writing, and the tenant shall submit a copy of the sub-letting agreement to the landlord prior to the commencement of the sub-letting period. Otherwise, sub-letting is considered a breach of contract in the relationship between the landlord and the tenant. This also means that the sub-lessee will have to move out.

The Rent Act regulates sub-letting on the same conditions as "normal" letting. The

tenant who is sub-letting will be considered as the landlord in relation to the sub-lessee. This means in general, that there are no grounds for speculating in offering the tenant not an ordinary lease contract but a sublease contract only.

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

Yes. The general rights of the tenant, as stipulated in the tenancy laws, have validity without registration against the landlord's creditors and assignees in good faith. Tenant's rights are therefore ensured if, for example, the property is resold or inherited. The new owner of the property must respect the general rights of the tenant under the tenancy laws. The same applies to agreements on advance payment of rent, deposits, and the like within the terms of the law.

- **Costs and Utility Charges**

- **What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?**
- **Which utilities may be charged from the tenant by the landlord? What is the standard practice?**

The landlord may (only) make the tenant pay for power, heating, water, wireless signals and cable-TV. No other utilities are under the authority of the Rent Act. In properties, where the landlord supplies heating and hot water, and in properties where payment for water is made in accordance with consumption meters, the tenant, as a general rule, pays an amount on account to cover the landlord's expenses. The costs of the heating and hot water supply of the property cannot be included in the rent. The same applies to the water consumption expenses, if these are apportioned on the basis of meters. This, however, does not apply to separate rooms for residential purposes, where the costs of heating and water consumption may be included in the rent. Where the landlord does not provide the supply of electricity, the tenant shall enter into an agreement with an electricity supplier and pay for this separately.

It is sometimes arranged for the tenant to pay the supplier directly. This may be possible where the rented property is a single house or a condominium. If so, the supply of utilities does not form part of the tenancy agreement. It is legal to make such arrangement if it is possible. This will primarily be in single houses and not in larger dwellings with several rented apartments.

Otherwise, the landlord shall forward accounts for the actual expenses and amounts paid on account during the accounting period upon the expiry of the accounting period for water and heating consumption. Where the landlord does not provide the supply of electricity, the tenant shall enter into an agreement with an electricity supplier.

Where a defect relates to the supply of light, gas, heating, cooling, etc., to the premises, the tenant may gain access to the installations with assistance from the bailiff in order to remedy the defect.

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

In general the answer is no. The landlord may (only) make the tenant pay for power, heating, water, wireless signals and cable-TV. No other utilities are under the authority of the Rent Act. This means that the landlord cannot make the tenant pay for other public services directly.

It is possible to announce increases in the rent in consequence of increases in the property taxes. Waste collection is often levied by local municipalities as a part of public services. If taxes are dropped or reduced, the landlord shall, effective from the time of reduction, reduce the rent by a matching amount for the flats and premises, in whose rent the expense has been included.

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

No, this is not legal. The landlord may (only) make the tenant pay for power, heating, water, wireless signals and cable-TV. No other utilities are under the authority of the Rent Act. This also applies to condominiums.

- **Deposits and additional guarantees**

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

The landlord may demand payment of a deposit held as security for the tenant's obligations upon vacating the premises. This includes rent that has not been paid as well as any claims against the tenant regarding maintenance or breach of contract. The deposit corresponding to up to 3 months' rent is usual, but it can be negotiated. If the landlord finds it difficult to find a tenant, he might agree to a lower deposit.

At the time of the signing of the agreement, the landlord may further demand an advance payment of rent equivalent to up to 3 months' rent. Such advance payment of rent can cover the rent of the 3 final months of the period of the tenancy.

In case of rent increases, an adjustment of deposit and advance payment of rent may be required. The increase may be charged in equal monthly instalments over the same number of months as the proportion of the amount and the rent at the commencement of the tenancy. It should be specified in the charges of rent what amount constitutes the actual rent and what amounts constitute regulations of advance payment of rent and deposit.

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

The landlord does not have to manage the deposit in any special way or register it anywhere. He can put the amount in to his bank account or use as he pleases. No interest will be owed to the tenant. The only obligation is that the landlord is able to pay back the deposit when tenant moves – if the deposit is not used in accordance with the contract.

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

Additional guarantees can be lawful if the tenant is allowed to make changes to the rented apartment. Where the tenant e.g. places an antenna on the property or install a dishwasher, the landlord may require the tenant to pay a reasonable deposit by way of security for the cost of removing the antenna, dishwasher etc. and reinstating the premises upon vacation by the tenant. This is only lawful though if the tenant does not have insurance covering damages from such appliances.

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

In cases stated just above, a guarantee/deposit must cover loss or damage to the system in question (e.g. water supply to the whole building or damage to floors, ceiling, roof etc.) as well as for the society to pay the cost of removal of the system and reinstatement upon discontinuance.

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 neighbors; occupation by third parties)?**

It is not easy to state clearly which defects are legally relevant for a tenant.

This is a legally relevant issue in cases where the premises are not in such a state of repair and condition at the time of possession or during the continuance of the tenancy agreement as the tenant is entitled to expect due to the nature of the legal relationship with the landlord. This could be e.g. when the premises are exposed to significant noise or other inconveniences caused by a building site in front of the house or in other apartments inside the house. In this way, noisy neighbors could also be a defect because the landlord shall ensure that there is peace and order in the property. If the landlord does not take the relevant steps to keep the peace in the property (by e.g. terminate the contract of the tenant that makes the noise), it could be a breach of contract under which the (other) tenants could claim a reduction of the rent and/or claim damages.

- **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 the premises are defective – and where the landlord fails to repair the defect immediately or where it cannot be repaired within a reasonable time – the tenant may terminate the agreement without notice if the defect is deemed to be material and the landlord is deemed to have acted fraudulently. Where the defect has been repaired before the tenant terminates the agreement, the tenant may not subsequently rely on the defect as a ground for termination.

The tenant may claim a proportionate reduction of the rent for any period during which a defect reduces the value of the premises to the tenant. The tenant may also claim damages where, at the time of the agreement, the premises did not contain certain qualities which must be assumed to be warranted, or where the landlord has acted fraudulently. The same shall apply where the premises are subsequently damaged due to the landlord's negligence, or where any other obstacle or impediment to the tenant's right of use arises on grounds for which the landlord is responsible.

Where the use of the premises is wholly or partly contrary to legislation, other government rules or regulations, easements, covenants or other interests affecting the property in force at the time of the agreement, the tenant may claim a proportionate reduction of the rent as well as damages. In addition, the tenant may terminate the agreement where the use is being significantly restricted, or where the landlord has acted fraudulently.

Where a tenancy is terminated prematurely owing to other interests in the property – apart from the cases listed just above – the tenant may claim damages from the landlord. Where the tenancy is terminated prematurely due to an order issued by public authorities prohibiting the use by the tenant on grounds of health etc., the tenant is only required to pay rent until the effective date of the prohibition. If the prohibition only restricts the use in a non-material way, the tenant may claim a proportionate reduction of the rent.

- **Repairs of the dwelling**

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

The landlord must keep the property and the premises in proper repair at all times both inside and outside. All installations for drainage, supplies of light, gas, water, heating and cooling shall be maintained in a good and serviceable repair. The landlord shall likewise be responsible for keeping the premises clean and for usual lighting outside and inside the property and the means of access to the premises; also, the landlord shall be responsible for keeping pavement, courtyard and other communal facilities clean.

Papering, painting, plastering or other repairs occasioned by deterioration due to wear and tear shall be carried out as often as necessary in view of the character of the property and the premises. The landlord's duty to maintain the apartment by whitewashing, painting and papering shall be deemed to be discharged upon payment from time to time by the landlord. The tenant may require the landlord to whitewash, paint and paper the flat as and when required, and any costs incidental thereto may be paid out of the balance available on the "maintenance account" which is held for every apartment – unless it is agreed upon in the tenancy contract that the tenant is responsible for the internal maintenance. Such agreement is legal.

When the landlord is responsible for carrying out the internal maintenance of the property, the tenant shall be met with demands to paint etc., only if the tenant has caused damage to the property.

- **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 premises are not in such a state of repair and condition at the time of possession or during the continuance of the tenancy agreement as the tenant is entitled to expect due to the nature of the legal relationship with the landlord, and where the landlord fails to remedy the defect upon being given notice requiring such remedy, the tenant may remedy the defect at the landlord's expense. But in general this does not mean that the tenant can deduct the cost from the rent payment. The tenant must be very careful with this because the landlord can terminate the tenancy agreement if the rent is not paid in full and the landlord does not agree to the size or the purpose of the cost of the repair.

Instead the tenant must take his claim to court. If the tenant gets a court decision stating that the cost of the repairs may be held at the landlord's expense, then the tenant can deduct the repair costs from the rent payment.

- **Alterations of the dwelling**

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

The tenant of a flat or a room for all-year accommodation is entitled to install aids for the disabled or elderly etc. under the provisions of the Act on Social Services if the municipal authority guarantees the payment of reinstatement costs upon vacating the premises. The tenant shall notify the landlord prior to any such installation

- **Affixing antennas and dishes**

The tenant is entitled to mount antennas or dishes on the property – subject to the landlord's instructions – for the reception of radio and television programs. Likewise, the tenant is entitled to establish a cable connection for the supply of radio and television programs or access to electronic communication services for the property if

the option for connection to cable TV or a similar shared network is available in the area. The landlord may require removal of the tenant's antenna and reinstatement upon the tenant vacating the premises. The tenant's right to place radio and television antennas etc. shall not apply where the landlord proves that the positioning would damage the property or the tenants. Also, the right shall not apply where the tenant may have access to a desired program either by way of the landlord's common television supply or through a shared antenna system established by the tenants.

Where the tenant places an antenna on the property, the landlord may require the tenant to pay a reasonable deposit by way of security for the cost of removing the antenna and reinstating the premises upon vacation by the tenant.

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

The tenant is allowed to repaint walls, ceilings and windows, drill walls, make holes in ceilings to put up lighting etc. unless specifically stated otherwise in the tenancy agreement. Changing the dwelling – e.g. by removing an internal wall – would be considered a breach of contract where the tenant has neglected the premises and fails to repair the premises without delay upon notice by the landlord requiring the tenant to do so.

In all circumstances the tenant is liable for any damages caused by such actions. If the tenant for example paints the walls in an odd colour, the tenant will be liable for the cost of repainting when moving out of the apartment.

- **Uses of the dwelling**

In general the tenant shall observe the general rules and regulations applicable to the property and shall comply with any other reasonable directions intended to preserve the state of repair and proper use of the premises.

- **Are the following uses allowed or prohibited?**

- **keeping domestic animals**

The tenant is allowed to keep animals if agreed upon in the tenancy agreement. Keeping animals without permission can be a breach of contract that will allow the landlord to terminate the agreement. If no agreement has been made the tenant would probably not be allowed to keep animals besides smaller fish tanks and other small animals that makes no smells or noise.

- **producing smells**

It is not easy to give a direct answer to this. The tenant shall use the premises in a proper and reasonable manner with respect to the landlord, the building and other tenants. Producing smells that do not bother the other tenants – e.g. if the smell only

appears now and then when cooking – is allowed. This means that producing smells also can be prohibited if they bother the other tenants on a more regular basis.

Smoking is a different situation: Smoking can be prohibited. If smoking is not prohibited by terms of the tenancy agreement – then smoking is allowed on the tenant's own premises. It could be argued that the smell from smoking is a bother, but no tenant has been evicted for smoking yet.

- **receiving guests over night**

Receiving guests overnight is allowed. The tenant should be aware of the fact that he is liable for any damage caused by improper conduct by any third party he has admitted to the premises.

- **fixing pamphlets outside**

No regulation on this exists. The same rules apply as stated above and just below: The tenant must not use the property for other purposes than stipulated in the agreement without the landlord's consent. The tenant shall use the premises in a proper and reasonable manner with respect to the landlord, the building and other tenants.

- **small-scale commercial activity**

The tenant must not use the property for other purposes than stipulated in the agreement without the landlord's consent. This means that if the tenancy agreement states that the dwelling shall be used for residential purposes only, the tenant cannot use the dwelling in total or in part for any other purpose e.g. business purposes. Where the premises are being used otherwise than agreed and the tenant fails to discontinue such use despite the landlord's objection, there will be a breach of contract and the landlord may terminate the contract without further notice.

3.2. Landlord's rights

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

Yes. There is contractual freedom in connection with the establishment of tenancy agreements. However, the rent legislation contains a number of mandatory invalidity rules which mean that the rent may be reviewed at any time if the agreed rent has been determined in accordance with the legislation.

Four different rent control systems exist simultaneously. All types of rented dwellings in Denmark are as a general rule subject to rent regulation. Of the four types of rent regulation, market rent is the only one which actually relates to market forces and therefore supply and demand.

As stated above, the rules on rent regulation/rent control are in many ways difficult to understand and interpret, and it is not simple to give a short overview on the principles. This also means that it is not possible for lay people (tenants as well as landlords) to properly calculate the maximum rent applicable to a particular tenancy. No statistical devices are available.

The tenant can in some cases use the rent stated in other tenancy agreements to try to prove that his rent is too high. However, such information is not publicly available, and the involved parties will have to find the information themselves. This is done by contacting other tenants (through an association or directly). This applies to landlords as well. Often, it is the attorneys involved who find comparable agreements through their networks.

After the contract is concluded, the tenant – if he or she wishes to – can go to the Rent Tribunal the day after the contract is signed and adjust the rent which had been agreed upon in accordance with the Rent Act or the Housing Regulation Act. The decision of a Rent tribunal can be referred to a court by either party. If the rent is reduced, the tenant may claim repayment of the excessive amount paid. In some cases proceedings for a rent reduction shall be filed within one year from the initial date of payment of the rent or the increased rent. If the tenant fails to make proceedings in these cases in time, he may lose his right to a rent decrease.

- **Rent and the implementation of rent increases**
 - **When is a rent increase legal? In particular:**
 - **Are there restrictions on how many times the rent may be increased in a certain period?**

As far as tenancies are concerned to which the Housing Regulation Act applies, the rent can be raised when the running costs exceed the existing rent and when improvements have been made. There are no restrictions on how often it is possible to demand an increase.

The rent of most other tenancies can be raised when the value of the tenancy significantly exceeds the existing rent and similarly when improvements have been made. Such rent increase can be demanded every second year.

As an exception to those rules on regulation of the rent described above, rent increases by specific amounts at specific dates – so-called “stepwise rent increase” (Rent Act section 53 subsection 2) – may be agreed, in both regulated and unregulated municipalities. The period in which an agreement on stepwise rent increase is valid and the specific dates on which the rent increases will become effective shall be laid down at the commencement of the tenancy. The rent increases shall be specified as specific amounts, so that the tenant gets a clear picture of the development of the rent. In the case of tenancies subject to the rules on rent not exceeding the amount required to cover the necessary operating costs for the property, the stepwise rent increase must not, at any time, exceed the said amount. For other tenancies the stepwise rent increase, as a principal rule, must not, at any time, substantially exceed the value of the property.

If an agreement on free regulation of the rent has been made (where applicable), it may be agreed that the rent in the period of the tenancy shall be regulated either in accordance with the net retail price index or by specific amounts on specific dates (stepwise rent increase). The agreement must be stated in the tenancy agreement; otherwise, it is not valid.

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

As mentioned above four different rent control systems exist. These systems also have an effect on demands for a rent increase. This means that the rent – after the increase – may not exceed the maximum rent in accordance with the rent control system that applies. In other words, this means that the landlord may only demand a rent increase when the actual rent is somewhat below the maximum.

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

A demand for a rent increase must normally be made in writing, it cannot come into effect until three months after the demand has been received by the tenant, and it must state the reasons for the increase and contain information about the tenant's right to raise an objection. The demand for an increase in rent is void if it fails to comply with these requirements.

The tenant is always entitled to raise an objection. The objection must be raised in due time. This is generally 6 weeks after receiving a demand for a rent increase. If the tenant does so, the landlord shall make a claim to the Rent Tribunal if he wants to maintain the demand. If the objection is not made in due time, the rent increase stands, and the tenant will have to pay the higher rent (but the tenant can at all times make a claim for a rent reduction to the Rent Tribunal himself).

A rent increase may be demanded notwithstanding any contractual security of tenure where the landlord has reserved the right to adjust the rent.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

The landlord or the landlord's agent may be admitted to or enter upon the premises as and when the situation so requires. This means that the landlord must have a specific reason to get admission e.g. if he is selling the property and he needs to show the premises to potential buyers or a real estate agent. Another example could be if the landlord has received complaints from other tenants stating that there might be something wrong in the premises (smelling, noises etc.).

The tenant is entitled to 6 weeks' prior notice to start work on the premises where such work does not constitute a major inconvenience to the tenant. For example if the landlord is renovating the property and he needs to go into every apartment to change pipelines, windows, heating systems etc.

The tenant is entitled to 3 months' prior notice before the start of any additional work. However, the landlord may always carry out urgent repairs to the premises without notice – for instance, if water is pouring out of a pipe causing damage to the whole building and the tenant is away on holiday.

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

No, not without an agreement with the tenant. But a lot of landlords have it anyway. The tenant has no protection against this other than reporting it to the police (intrusion) – and only if the landlord actually uses the key.

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

No, under no circumstances. That would be considered as unlawful self-help. Upon termination by the landlord, the tenant shall vacate the premises immediately. If this does not happen, the landlord may start proceedings at the Bailiffs Court at once and thereby evict the tenant. Upon termination by the landlord, when the tenant has not paid the rent, the tenant shall vacate the premises. If this does not happen, the landlord may start proceedings at the Bailiffs Court at once and thereby evict the tenant. This is the only way for the landlord to physically get the tenant out of the rented premises and deny him further access.

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

No, this would not be legal before termination of the contract. If eviction procedures have begun and the tenant has not moved out his personal property from the rented dwelling, the landlord has to take care of the tenant's personal property. If the tenant has been set out of the rented dwelling by enforcement proceedings, the landlord must remove the tenant's property from the rented dwelling and out in front of the dwelling ("to the pavement"). The Police then must make sure that the property is taken care of – e.g. in a storage building.

The landlord can claim the resulting expenses from the removed tenant, but he may not sell the property and keep the money to cover his expenses. The police can decide to sell the property after some months have passed without a reaction from the (former) tenant. The tenant cannot claim the property without paying the expenses held to store it. The tenant will have to pay the costs for keeping the personal property in storage before he can get it out.

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?**

Open ended (unlimited) contracts exist, and they are the most common contracts, because there are some restrictions on when a time-limited contract is legal.

Unlimited tenancies may normally be terminated by the tenant giving three months' notice. A longer period of notice is legal but not common.

The notice given by the tenant should be in writing. The tenant should be aware that it is not always possible to give notice by email. Only when it has been agreed upon between the landlord and the tenant to exchange information through email it is legal to give notice by email.

- **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)?**

Where the premises are defective and where the landlord fails to repair the defect immediately or where it cannot be repaired within a reasonable time, the tenant may terminate the agreement without notice if the defect is deemed to be material and the landlord is deemed to have acted fraudulently. Where the defect has been repaired before the tenant terminates the agreement, the tenant may not subsequently rely on the defect as a ground for termination.

The right to terminate the contract goes for all reasons where the tenant can prove that the rented place is so defective that he cannot live there anymore, but it is doubtful whether noise from neighbors is enough – often due to the fact that it is hard to prove. In such cases the tenant instead must try to make the landlord terminate the contract with the noisy neighbors. If the landlord will not do this, the tenant might be able to terminate the contract, but he still has to prove that he cannot live in the rented dwelling because of the noise.

If there is no defect as stated just above, as far as fixed-term tenancies are concerned, neither party can give notice to terminate the contract unless otherwise agreed. The agreement must be stated in the tenancy agreement. If it has been mutually agreed by the parties that the tenancy during the period of the tenancy should be terminable, the rules of the Rent Act apply. Then the tenant has a three month notice period.

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

No. The landlord is free to choose a new tenant as he wants to. The landlord can reject any new tenant during a fixed term or even after.

But if the tenant vacates the rented premises before the end of the notice period, the

landlord shall seek to re-let the premises. Any amount recouped by the landlord, or any amount which the landlord ought to have recouped by such re-letting shall be deducted from his claim against the tenant. This means that if the tenant finds a suitable tenant that the landlord rejects, the landlord might not be able to charge rent from the tenant who is moving out for some of the remaining rental term. But this is uncertain, so the tenant should be aware that the starting point is that the landlord cannot leave without the landlord's acceptance in this situation.

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)?**

Ordinary period of notice also for the landlord is 3 months (expiring on the first working day of a month, not being a day preceding a public holiday).

Tenancies cannot be terminated with notice by the landlord except in the circumstances mentioned in the Danish Rent Act section 83. The conditions under which such termination may be allowed are stated in section 84.

Where the landlord intends to use the premises for his own purposes, he may terminate the contract with 1 years notice. Where the tenancy relates to a flat, it is a condition that it is the landlord himself (not his children e.g.) intends to occupy the flat. Where the property is jointly owned by several persons, the owners may only give a residential tenant notice of termination (where the flat is owner-occupied not previously occupied by the landlord, it is a further condition that the tenancy agreement was entered into prior to 1 July 1986).

Termination must be reasonable in view of the circumstances of both parties. In determining this factor, the duration of the landlord's ownership of the property and - for the purpose of terminating a residential tenancy - the tenant's possibilities of finding suitable alternative accommodation should be considered. The tenant's age eventual illnesses etc. may be taken into consideration. This rule also applies where landlord has inherited the dwelling or bought it after sale including public auction.

Where the premises are owner-occupied, the tenancy shall not be subject to the right of termination except where the tenancy agreement has been entered into after conversion of the property into owner-occupied flats, and where the tenant was made aware at the commencement of the tenancy that the premises are an owner-occupied flat and that termination is subject to section 83.

Where the landlord is occupying a flat in the property when giving notice of termination, the landlord shall at the time of such notice offer the tenant to take over such flat.

There is no separate regulation on extraordinary termination (with notice) in the Rent Act. In terms of breach of contract by the tenant the landlords may terminate the contract without notice (in accordance with the Rent Act section 93).

The landlord's notice of termination shall be in writing, disclosing the tenant's right to object. The landlord's notice of termination shall further specify the ground for termination. If the notice does not state the said particulars, it shall be void.

- **Must the landlord resort to court?**

If the tenant refuses to accept the notice of termination, he shall object in writing within 6 weeks from the date of receipt of the notice.

In that case, the landlord shall commence proceedings before the Housing Court within 6 weeks from the expiry of the time limit applicable to the tenant – if the landlord insists on the termination.

In cases of termination without notice, the landlord can go to the Bailiffs Court – if the case is about failing rent payments – or the Housing Court on any other reason for termination.

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

There are no rules in the Rent Act on protection from eviction. In some cases, due to social legislation the local authorities has an obligation to help the evicted tenant to get a new home, e.g. if it is a family with children and/or with social problems.

The tenant may stay in the rented apartment for as long as proceedings before the court are in progress. No rules on possible extension of the contract etc. apply. But the tenant shall pay rent for as long as he is living in the premises and until the expiry of the usual period of notice after he has moved out – if the termination proves to be valid. Also, the tenant shall indemnify the landlord from any loss, including the cost of recovering possession of the premises.

Where the matter for which the tenant is blamed is deemed to be immaterial, the landlord is not entitled to terminate the tenancy agreement without notice. This protection of the tenant can only be pleaded in very few cases under special circumstances, e.g. when the tenants' bank forgot to transfer the amount to the landlords accounts or if the tenant has been hospitalized and unable to make the transfer on time. Even if the amount in question is very small (less than a month' rent or even just a few DKK) this is not a valid reason alone to find the matter immaterial.

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

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

No. As stated just above there are no rules on protection from eviction in the Rent Act.

- **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?**

On termination by the landlord, the tenant shall vacate the premises immediately. If this does not happen, the landlord may start proceedings at the Bailiffs Court at once and thereby evict the tenant. This applies when rent or other money liability has not

been paid on time as stated above. Both formal and material objections will be tried by the Bailiff's Court. The court's decision can be brought before the High Courts.

On any other reason for termination without notice the landlord may start his proceedings the Housing Courts that will try the tenants' formal and material objections against the termination. The court's decision can be brought before the High Courts.

If and when the landlord gets a verdict that the termination was valid, the landlord may proceed through the Bailiff's Court and get the tenant evicted with no possible objection from the tenant.

4.3. Return of the deposit

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

There is no regulation on this, but usually 1-2 months is normal. Then the landlord has time to gather information on cost from the craftsman etc.

This also means that the only thing the tenant can do – if the landlord refuses to pay back the deposit – is to make a claim to the Rent Tribunal. This might take more than 3-4 months.

- **What deductions can the landlord make from the security deposit?**

The landlord may demand payment of a deposit held as security for the tenant's obligations upon vacating the premises. This includes rent that has not been paid as well as any claims against the tenant regarding maintenance or breach of contract.

- **In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?**

In general the answer is no. If it is agreed in the tenancy contract that the tenant is liable for deterioration due to wear and tear, the tenant might be liable. But this is not a common clause in contracts on furnished homes.

4.4. Adjudicating a dispute

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

Disputes arising from tenancy agreements are brought before special divisions of the County Courts called the Housing Courts. The only difference between the Housing Court and an ordinary court is that the Housing Court consists of three judges instead of one. Two of them are lay judges nominated by tenants and landlords associations, respectively. Most decisions made by the Housing Courts can be brought before the High Courts, and their decisions are only rarely brought before the Supreme Court.

Most disputes must be brought before the Rent Tribunal before they can be brought before the Housing Court. If the tribunal has jurisdiction, the dispute cannot be brought before the courts before the tribunal has made a decision. The Rent Tribunals consist of three members. The chairman must be someone legally qualified, but not a lawyer in private practice. Two lay members are nominated by tenants and landlords associations respectively. The decisions made by the tribunals can be referred to by the courts.

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

No, not specifically. If the claim is less than DKK 50.000 it can be brought through a small claims procedure, which is often cheaper and faster. There is no specific regulation on such claims regarding tenancy disputes, but the Housing Court is also competent to rule in these cases.

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

When a dispute is brought before the Housing Court, the involved parties are often offered court-based mediation, but it is not used very often. There will be no mediation or alternative dispute resolution if the parties have not made an agreement on this.

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?**

As regards ordinary social family dwellings, there are essentially no requirements concerning tenants for them to be taken into consideration in connection with the dwelling. The dwellings are allocated on the basis of a waiting list. The general rule for the letting of social family dwellings is that they are let according to seniority on the waiting list. Some groups of individuals have a right of pre-emption on the waiting list: Families with children have a right of pre-emption concerning larger apartments, and the elderly and disabled have a right of pre-emption concerning certain dwellings that are suitable for the elderly and disabled. People who already have a dwelling in the housing organisation have a right of pre-emption ahead of external applicants (right of promotion).

For housing-related/social purposes, the municipal council may take decisions concerning allocation rights concerning 25% of vacant dwellings for families and young people. The right of allocation takes precedence over the waiting list. Furthermore, rules have been established which are aimed at strengthening the composition of residents in social housing areas, encompassing combined letting, letting in specially designated housing areas and flexible letting rules.

All tenants (either in private or in social rented housing) may be subsidised directly should their income not exceed a certain level. Tenants can receive housing support to help them pay their ongoing housing expenses. Housing support is calculated on the basis of the housing expenses, the size of the dwelling, the household's income and the size of the household.

Housing support for everyone other than those on a state pension is called *boligsikring* ("housing security"). Housing security is paid only for rental properties, and these properties are generally required to have a separate kitchen. Housing security is paid to non-pensioners and those granted an early retirement pension in accordance with the regulations concerning early retirement pension following the early retirement pension reform.

Housing support for those on an early retirement pension is known as *boligyldelse* ("housing benefit"). In some cases, tenants can obtain loans to pay the deposit that is required when they move into a new property. Loans for tenant deposits are generally paid only for social housing and certain older dwellings. For refugees and certain other groups, loans may however also be granted for other dwellings.

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

The tenant's personal property should be insured through housing contents insurance. The tenant should make sure such insurance also covers damages from claims regarding any installations in the rented premises (e.g. dishwashers, antennas).

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

Consulting a lawyer might be expensive in Denmark, but the Courts however have an obligation to provide guidance on how to fill in forms e.g. to file a complaint before the court or file a defence and how to obtain legal aid and free legal aid and on how to claim under a legal expenses insurance.

If a tenant earns less than DKK 294,000 (2012) and lives alone – or lives with another person and they earn a total of less than DKK 374,000 – he might be able to get free legal aid if some conditions regarding the case are fulfilled. If the tenants' yearly earnings are below the amounts mentioned and the landlord files a complaint to the Housing Court regarding a case that the tenant has won before the Rent Tribunal, the tenant will always be entitled to free legal aid.

Legal aid insurance is not obligatory. This type of insurance goes with a lot of different other insurance types but typically tenants with only a small income do not have such insurance. If a tenant has legal aid insurance the coverage includes as a minimum all cases where the tenant could obtain free legal aid.

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

The largest tenants' association is called "*Lejernes Lands Organisation*". This association gives advice to tenants (also in social housing) who are members of the organization and seeks to influence the political agenda in favour of tenants.

Tenant associations have offices throughout the country, and they can be very active locally, for example providing extensive assistance to tenants who are experiencing problems with their landlord. There are also many smaller umbrella organizations and associations for both tenants and landlords.

www.llo.dk – Lejernes Landsorganisation (nationwide – offices in several cities)

www.dklf.dk – Danmarks Lejerforening (umbrella organization – offices in several cities)

www.kbhlejer.dk – Københavns Lejerforening (Copenhagen)

www.rlf.dk – Randers Lejerforening (city of Randers)

ENGLAND & WALES

Tenant Rights Brochure

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1. Introductory information

- **Introduction: The national rental market**

- **Current supply and demand**

The housing market in England and Wales is dominated by owner occupied dwellings (65%), slightly below the EU average 71%. Both the number and proportionate share of owner occupied dwellings increased steadily throughout the twentieth century and continuing until 2006. Since then the number has remained relatively static, but the inexorable increase in the proportion of owner occupiers went into reverse as a result of the impact of the financial crisis on the housing market. Almost all of the remaining dwellings are rented. The rented sector falls into three components:

Renting without a public task		
Private renting	18%	4.3 million
'Social' renting/renting with a public task	17%	4.3 million
consisting of:		
Housing associations (social)	(10%)	(2.4 million)
Local authorities (public)	(7%)	(1.9 million)

The private rental sector is largely unregulated and is increasing its share of the market, to such an extent that 2012-13 is the first year that private rentals have exceeded the combined total of rentals in the public/social sector. There is a significant under supply of dwellings to rent, particularly in the larger cities, and this has resulting in sharply rising rents in many areas (as of spring 2014, but predicted to continue for many years). There are also long waiting lists for the allocation of public/social housing.

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

These are:

- gross under supply of public/social housing and associated long waiting times;
- strong demand for private rented accommodation;
- rising rents;
- lack of private sector security under shortholds leading to a large churn of tenants;
- poor condition of rental properties;
- high and sometimes illegal fees for handling lettings;
- rent arrears;
- antisocial behaviour; and
- disputes about the return of deposits.

- **Private renting**

The sector

Private landlords operate in a regime of market rents and grant assured shorthold tenancies which lack long term residential security. Private landlords are predominantly individuals: these make up nine in ten of landlords and are responsible

for seven in ten of all private lettings. A further 5% of landlords are companies collectively responsible for 15% of dwellings, including rentals linked to employment. More than three quarters (78%) of all landlords own a single dwelling for rent, and few landlords are full time. A small proportion of housing association stock is also let out at market rents.

The private rented sector has a wider and more varied stock of accommodation than the public/social sector. There is more defective housing, central heating is present in only 81% of the stock and boilers tend to be older and less efficient; indeed energy efficiency is considerably worse in the private rented sector than any other type of housing. Although there are excellent homes to rent, there is a shocking 38% that are not classed as decent, including 9% experiencing damp problems.

Private renters are predominantly young, the largest group being aged 25-34, the majority of whom are working either full time or part time, with a significant subsector of students in full time education. Typical tenants are single or couples without dependent children, so that the typical size of household is one or two, though some families do also rent privately. Ethnicity of tenants is as diverse as within the wider population. Tenants renting privately move far more often than the average.

Outlay on housing is highest in the private rental market. Currently (2012-13) the average private sector rent in England and Wales is £646 per month. This average conceals major regional variations, with average rents in London up to twice as high, followed by the south east of England. Average rents in England and Wales are rising quicker than the rate of inflation. It is forecast that average monthly rents will rise to £800 by the middle of 2015. Private renters typically spend in excess of 40% of gross income on rent.

Assured shorthold tenancies

Assured shorthold tenancies are the most common form of private residential tenancy provided in the private rented sector. This applies where:

- accommodation is let as a separate dwelling (even if some facilities are shared);
- as the tenant's principal home; and
- no exclusion applies.

Their characteristic is that security is limited to an initial period of six months. In England and Wales (unlike Scotland) the assured shorthold is the default form of tenancy granted by a private sector landlord, so no warning notice needs to be served in advance of the creation of the tenant. As a result, assured shortholds account for virtually 100% of the private rented sector. During the initial six month period the grounds on which the landlord can recover possession will be severely limited. It is usual to grant an initial fixed term of six months or a year, and it is possible for a shorthold to be much longer, though a shorthold may also be periodic from the outset. The tenant will be protected during this period and it will be followed by a periodic continuation. However, when contractual rights are ended the landlord will have an automatic right to possession (Housing Act 1988 section 19A).

Rents are subject to market negotiation. The landlord can only increase the rent during the fixed-term using an express rent review provision. Normally, rent increases are taken care of on renewal, the landlord ending the tenancy and giving the tenant notice to renew at an increased rent. This will reflect prevailing market conditions.

However long the tenant remains in possession his tenancy will remain an assured shorthold; beyond his contractual rights there is no additional security of tenure and, to obtain a possession order, a landlord need only serve an appropriate notice and will then have an automatic entitlement to repossession. As a result shorthold tenants generally leave under a notice to quit.

Much more generous rights are available to those few ageing tenants, called 'Rent Act tenants' whose tenancy was first granted before 15 January 1989.

Advice

These notes are intended to assist potential shorthold tenants, but it is important to get up to date authoritative guidance; good places to start are the official government website www.gov.uk which has a guide to 'Private renting for tenants: tenancy agreements' and the website for Shelter in England (<england.shelter.org.uk>).

- **Occupation agreements lacking assured shorthold status**

A wide range of tenancies and licences are not assured:

Sharing arrangements:

- Property held on a (non-exclusive) licence;
- Accommodation that is not self-contained;
- Resident landlord lettings;
- Serviced accommodation;
- Tied accommodation of employees.

Not principal home:

- Company lets;
- Second homes;
- Holiday lets and out of season holiday lets; and
- Student lets and out of term lets.

These will operate as contractual arrangements, as either tenancies or licences. If the arrangement does create a tenancy there will be minimum periods for notices to quit but little other regulation. In some cases there is protection against eviction, i.e. the requirement to obtain a court order before evicting the occupier. Some of the above lack even this guarantee of due process.

- **Housing with a public task**

This is the way the TENLAW project describes the public and social sectors.

Tenants who are renting publicly or socially tend to be middle aged or elderly, with housing associations particularly housing many of those aged over 65. Although there are many tenants in employment, they are proportionately more who are economically inactive, either unemployed or retired, with fewer childless couples and more conventional families and lone parents, but people living alone the largest single group. Social/public tenants tend to be rather static.

Stock in the sector includes a lot of purpose built flats and the property is newer, on average, than that owned by private landlords. They are on the whole in better

condition with central heating, more modern boilers, better insulation and better all-round energy efficiency than private rental stock. Around 15% of homes in the sector did not meet the decent homes standard, but good progress in dealing with these is being made in the social and public sectors.

Average rents paid in the public/social sector in 2012-13 was £354 a month, just over half the private sector average. This reflects both the subsidies paid to public/social providers and also the types of property in each sector. Rents are increasing and for new build homes in future can be set at up to 80% of market rents. Housing benefit is paid to two thirds of those renting publicly or socially, including a third of those in the sector who are working.

- **(Fully) Assured Tenancies granted by housing associations (social sector)**

Housing associations are the second largest group of landlords. They continue to be called Registered Social Landlords in Wales and are commonly known as social landlords, even if in England they are properly known as Private Registered Providers of Social Housing. They are expected to grant (fully) assured tenancies in normal circumstances. Private sector landlords may confer full residential security by notice but this would be very unusual.

A tenancy under which a dwelling-house is let as a separate dwelling is an assured tenancy if the landlord is a social sector landlord (as described above) and the tenant is an individual who occupies the dwelling-house as his only or principal home (Housing Act 1988 section 1). The exceptions listed above also lack full assurance.

Rents in the social sector are 'low cost' that is below market rates, the exact basis depending upon the regime for public subsidy of housing through which the home was built or acquired. Social tenants pay less, the average net rent in this sector being £83.20 per week in March 2012, around 30% of their gross income on rent.

A (fully) assured tenant has long term residential security. The tenancy can only be brought to an end by the landlord against the wishes of the tenant by obtaining a possession order. The grounds on which possession can be obtained are limited, especially during the good behaviour of the tenant.

- **Secure tenancies granted by local authorities (public sector)**

Large scale public sector housing dates from the First World War, with large scale redevelopment after the Second World War and in particular during the 1960s and 1970s. The status of being a secure tenant was important as the passport to having the Right to Buy, though this could only be relevant to a new tenant taking today after serving a qualification period of five years. The sector has declined in size since 1980 partly as a result of council tenants exercising their Right to Buy and partly as a result of the government policy of subsidising housing associations and encouraging large scale voluntary stock transfers to housing associations. Few homes have been built recently in the public sector.

A secure tenancy is one granted by a local authority or other public sector landlord under the Housing Act 1985. The basic requirements are similar to those in the private sector, that is

a house (a technical term also including flats);

let (a term also including public sector licences);
as a separate dwelling (with no accommodation shared);
to an individual;
who occupies as his principal home; and
no exclusion applies.

Full residential security is conferred on the tenant. So long as the tenant behaves himself he should have accommodation indefinitely, and if he is asked to move (for example to enable the landlord to carry out work to the property) he should be offered suitable alternative accommodation. When the tenant dies, a secure tenancy may be inherited on two occasions. Tenants have information rights and some rights to be consulted. Social landlords are expected to charge rents that are reasonable. Where the landlord opts to increase rent and the tenant disagrees then the tenant has the right to apply to challenge the fairness of the proposed increase.

- **Limited security in the public sector**

There are a number of circumstances where a tenant who would otherwise be a secure tenant has limited security usually a fixed term. Examples are:

- introductory tenancies granted to those new to the social sector;
- flexible tenancies – fixed term tenancies for a period usually of at least five years;
- temporary accommodation to homeless people;
- demoted tenancies after antisocial behaviour; and
- family intervention tenancies granted after domestic violence.

There is no right to buy, no possibility of succession and strictly limited security of tenure.

- **Recommendations to foreigners on how to find a rental home**

1. The first thing to check is that the potential tenant has the right to live in the United Kingdom, since it would be unwise for a person liable to be removed from the country to sign up for a lease. EU/EEA citizens may have the right to live here either because they are economically active or job seeking or because they are self-supporting.
2. Foreigners should avoid the black market in severely overcrowded low-quality rental properties and 'beds in sheds'; these very basic dwellings are illegal. There is also a considerable market in unauthorised sub-letting of social sector housing, whereby the tenant charges sub-tenants a significantly higher rent than he is paying. New offences were introduced in October 2013 in respect of subletting without consent. These practices are likely to attract the attention of the immigration authorities.
3. Also avoid squatting in residential buildings as this has recently been criminalised and conviction generally leads to a custodial sentence.
4. EU/EEA citizens are likely to be eligible to apply for public/social housing provided they are not self-supporters; details are complex and are set out in outline below (point 5) and in more detail in the National Report for England and Wales (para 6.2). However, in practice it will be very difficult to secure an allocation of housing in a short time scale. It may be wise for an immigrant from another EU state to sign up on the waiting list of a public or social landlord (see 5 below), but realistically they need to turn to the private rental market.

5. Most lettings agents operate online and particulars of property to rent can be obtained by searching. This can readily produce an indication of realistic rent levels. Potential tenants should not be charged for particulars nor for registering as a person seeking accommodation. In many areas there is very strong competition for private rental property.
6. Property should be inspected before agreeing to a rental. It is advisable for a foreigner to ask a native speaker to accompany them to a viewing of a dwelling in order to avoid possible communication problems or misunderstandings. Students should contact the international office of the university they will attend. Foreigners coming to England or Wales for work may ask their employer or colleagues how to find an apartment or whether the company has special dwellings for their workers.
7. Tenants will be offered an assured shorthold tenancy. Unless a longer period is agreed this gives a minimum period of security of six months. Usually there is an initial fixed term of six months and if so the tenant will be liable for rent for the whole of the six months even if they leave earlier.
8. Landlords will invariably offer a written agreement and it is important that the tenant understands this fully. This guide is intended to assist potential tenants but is not a substitute for proper advice. Although landlords are unlikely to agree major changes to the draft form supplied, some details are usually negotiable.
9. A charge can be made for the tenancy agreement and for checks such as credit reference checks.
10. It will almost invariably be necessary to pay rent in advance and in addition to pay a deposit (probably two months). It is important to ensure that the scheme for the protection of tenants' deposits (see 2.2, 4.3 below) is implemented.

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

1. Finding affordable but legitimate accommodation.
2. Lack of understanding that security of tenure under a shorthold is limited; conversely commitment to rent for a fixed period which the tenant afterwards wishes to break.
3. Commitment to a joint tenancy which the other joint tenant(s) wish to break; the person who wishes to remain has no legal right in this situation.
4. Ensuring that the standard of the property is satisfactory and that all installations are working; it is much easier to arrange these matters in advance.
5. Ensuring that the deposit is lodged in a proper tenancy protection scheme and that landlord and tenant sign an inventory of the contents and condition of the property which the tenant has checked.

○ **Important legal terms related to tenancy law**

Assignment	the transfer of an existing lease or the document that effects the transfer.
Common parts	property that all tenants may use although the landlord retains control and responsibility over it; tenants often pay a service charge for the upkeep of common parts.
Commonhold	a freehold flat in a multi-unit building in which the owner has a common interest in the common areas along with the building's other owners (called condominium in America). These are rare since most flats are leasehold.
Deposit	tenant's money placed with the landlord as security for rent and damage.
Dwelling	a unit of residential accommodation; if in a building this is called a dwelling-house.
Freehold	an absolute ownership interest in land.
Habitable	a dwelling in which inhabitants can live free of defects that might harm health and safety.
Housing association	a private, non-profit organization providing low-cost housing; they commonly receiving public funding and some of their housing is allocated to people entitled to state assistance with housing.
Housing with a public task	provision of housing that is not determined by the free market, but through some form of state intervention; (also public/social housing).
Intermediate tenure	a form of tenure that is between ownership and renting, which allows a tenant over a period of time to become the owner of the property.
Joint tenancy	holding of property by two or more persons, each having the right of survivorship.
Landlord	a person or company which lets out property.
Lease	a contract by which the owner of land grants the exclusive right to occupy and use the property in exchange for a rent; (when short in duration, the usual term is tenancy).
Leasehold	ownership of a house or flat under a long lease (i.e. longer than 21 years in duration), with payment of a ground rent.
Let	to grant possession of land in return for a rent.
Licence	an agreement (between the licensor and licensee) granting non-exclusive use of land.
Mortgage	a charge on land created as security for the payment of a specified debt (equivalent to the civil law hypothec).
Notice to quit	a written notice ending a tenancy agreement (usually given by the landlord, less often by the tenant).
Nuisance	a condition, activity or situation interfering with the enjoyment of land.
Occupation	factual possession of land of land (contrast possession).
Overcrowding	more people living in a single dwelling than are allowed by law.

Periodic tenancy	a tenancy that automatically continues for successive periods unless terminated at the end of a period upon notice.
Possession	the right to exercise exclusive dominion over land (contrast occupation).
Private	housing provided for by private landlords, for which the free market determines the rent.
Public	housing provided by a local authority.
Rent	periodic consideration paid under a lease for the use of land.
Repair	returning property to a state of repair; this does not require the curing of inherent defects.
Repossession	(legal) action by a landlord to take back property let.
Residential	related to a residence; non-commercial.
Service charge	a charge for keeping residential property or common parts in repair.
Social	low cost housing provided by a housing association.
Sublease	a lease by a tenant to a subtenant.
Surrender	termination of a lease when the landlord accepts the return of possession.
Tenancy	a lease of land, usually short term.
Tenancy agreement	the document by which a short term tenant holds.
Tenant	one who pays rent for the possession of land under a lease.
Wear and tear	deterioration caused by ordinary use; the tenant is not liable for fair wear and tear.

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?**

Discrimination in relation to a number of protected characteristics is prohibited by the Equality Act 2010; these are age, race, religion or belief, sex, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity and disability. A landlord may not discriminate against any person on the terms on which accommodation is offered for 'let' (a term here including granting a licence) in relation to any of these protected characteristics. This also applies to the activities of letting agents. The leading authority is *Preddy v. Bull* [2013] UKSC 73 concerning Christian hoteliers who policy was only to let double rooms to married couples; these hoteliers discriminated directly against two homosexual men in a civil partnership when they refused to let them a double room. The same would apply to a landlord or letting agent. An example of discrimination on sexual grounds is *Ghaidan v. Godin-Mendoza* [2004] UKHL 30 concerning the provision of the succession regime in the Rent Act 1977 allowing succession rights to surviving spouses and those who 'lived together as husband and wife'; this had to be interpreted to include same sex couples so that a homosexual partner could also succeed.

There is an exception for small premises where the landlord or a family member is resident in another part of the premises and shares some accommodation. Public and social landlords are subject to more onerous equality duties, though there are very limited circumstances where accommodation can be provided to people of one sex exclusively.

It is illegal for a landlord or other service provider to discriminate because a person is disabled. Disability is defined as a physical or mental condition that has a long-term, adverse effect on a person day-to-day life. Disability discrimination occurs when a disabled person is treated less favourably than a non-disabled person, and they are treated this way for a reason arising from their disability, and the treatment cannot be justified. A letting agent would be treating a disabled person less favourably if they refused to serve them when providing a service, offered a reduced service or a worse standard of service or made an offer on poorer terms.

Aside from statute there is also a Code of Practice on Racial Equality in Housing 2006 which provides guidance. Landlords are quite entitled to satisfy themselves as to the immigration status of potential tenants.

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

Questions asked by a landlord about protected characteristics under the equality legislation (including both sexual orientation and maternity) are not prohibited but may demonstrate discriminatory behaviour. Refusal to let to someone intending to

have children would represent direct discrimination. Indirect discrimination occurs where a person adopts a criterion placing another at a disadvantage because of their protected characteristic which amounts to an unlawful discrimination unless justified as a proportionate means of achieving a legitimate aim. An example is a term precluding a tenant allowing any occupier to make a noise that can be heard outside the flat, which might be a proportionate way of preventing nuisance to neighbours.

- **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)?**

An accommodation agency may not charge a tenant for supplying the tenant with lists of accommodation nor for registering a person as someone seeking accommodation (Accommodation Agencies Act 1953).

A non–returnable ‘holding deposit’ is often required when a tenant agrees to rent a property, to cover the period until he signs the tenancy agreement. This deposit is usually deducted from the security deposit when the tenant moves in. If the tenant changes his mind, his holding deposit will not be returned. There may be circumstances when a tenant is not able to move into the property for reasons beyond his control, but it will be unfair for the agency not to return the holding deposit if the landlord chooses not to go ahead with the tenancy, as Office of Fair Trading Guidance states that the tenant should then receive a refund of all pre-payments.

A letting agency can charge a fee, often called an ‘administration fee’ once a contract has been agreed to accept a tenancy, covering matters such as the cost of preparing the tenancy agreement, checking references, making up the inventory and any other costs of setting up the tenancy. Administration fees in London average £220 (2013) and can be as high as £600.

- **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)?**

Prior to letting a dwelling, the landlord will often be concerned as to whether or not the tenant will be able to honour the tenancy agreement. Checks usually include credit referencing, bank referencing, employment referencing, and landlord referencing as well as personal referencing. A landlord may ask for a salary statement and, although he cannot compel the prospective tenant to produce one, a refusal may adversely affect the tenant’s standing. In addition to direct enquiries from the tenant, the landlord may resort (after securing the permission of the tenant) to a credit information agency.

- **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?**

Estate agents involved in connecting landlords to potential tenants are called letting agents. Their tasks include advertising properties available to rent, showing tenants round available properties, drawing up tenancy agreements and inventories, checking references and renewing tenancy agreements. Letting agents usually operate either through high street offices or online sites, or both. Those operating in a local area are easily traced by an internet search.

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

No. The private rented market has developed a sophisticated tenant referencing industry with a number of operators offering swift service. Landlords would have to pay to use these services. A tenant who would fail a credit reference may effectively be blacklisted. There are no corresponding checks on landlords, though the Welsh government is proposing (2014) to introduce registration of private landlords in the principality.

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)?**

A residential shorthold tenancy can be created informally provided that the initial term of the letting is ‘not exceeding three years’. If it is to be a legal tenancy it should take effect in possession and otherwise it will operate as a contract for a tenancy. In practice, though, all tenancies are granted in writing, not least to ensure that the landlord is able to enforce terms that are clear.

What is the mandatory content of a contract?

A tenancy agreement can only be concluded by an agreement to grant exclusive possession of self-contained accommodation containing agreement on the parties, property and price (ie the rent). A lease must have a term, either a fixed term or periodic, but if none is specifically agreed this will be implied from the payment and acceptance of rent. These matters can be agreed orally, but they should be recorded in writing. It is necessary that the object of the letting is for residential purposes, so that the tenancy is assigned to the private sector, but it is not necessary to state that the tenancy will be an assured shorthold as this is the default for a private sector letting.

- **Which data and information should be contained in a contract?**

Landlords invariably insist upon a written tenancy which should cover the mandatory terms stated above, and also:

entry date and term - usually a fixed term followed by a periodic continuation (either weekly, fortnightly, four weekly or calendar monthly);

rent - how often it is to be paid, and whether the advance; a weekly tenant must be provided with a rent book giving the name and address of the landlord and certain other details.

services - such as heating and payments for them;

common parts – use, maintenance and service charge;
use – residential use and other terms about use and respect for others;
subletting and assignment – usually an outright prohibition;
condition – repairs (other than those within the landlord's responsibility by statute), any obligation to redecorate, and usually an outright ban on alterations; and
ending the tenancy; etc.

○ **Duration: open-ended v. time limited contracts**

The tenancy agreement should state the date from which the term is to run, though it may be implied that this is immediate if nothing else is specified. It is unusual for a residential tenancy to be preceded by a contract and much more common for the term to run immediately from the grant.

A shorthold granted by a private sector landlord does not require a fixed term in either England or Wales, so it may be a fixed term or periodic. (In the past it was necessary to grant a six month term, but this requirement was dropped in 1996.) Either way the landlord will not be able to secure possession simply by serving notice to quit within the first six months unless there is a major breach of contract by the tenant. It is usual to grant at least an initial fixed term of six months (which binds the tenant) though of course the tenant may wish to negotiate a longer deal; year-long deals are common in university towns. There is a small segment of the market where terms of several years are granted in return for a premium.

○ **What terms regarding rent payments must be contained in the tenancy?**

Terms to be included are:

the amount of rent;
the intervals when this is payable; rent days will be stated in the tenancy agreement and are usually the same as the period of a periodic tenancy.
payment in advance; this is invariably required by landlords, and since the law presumes that rent is payable in arrears if no other arrangement is made, it is necessary to include this term expressly;
a method of payment, usually by electronic transfer or standing order;
any other payments for utilities, service charge and/or council tax.

A weekly tenant will have a rent book basically containing information about the tenancy, and rent demands also require contact details of landlords. There is no objection to the landlord taking a premium when granting an assured tenancy, but this is only usual if a rather longer term than the usual year is granted.

● **Repairs, furnishings, and other usual content of importance to tenant**

Section 11 of the Landlord and Tenant Act 1985 imposes on the landlord the obligation to carry out the major repairs if the term is for seven years or less. The landlord may not contract out of these obligations. The obligation attaches to the

landlord under a lease but not to the licensor under a licence. A tenant may apply to the court for an order for specific performance of the landlord's repairing obligations, and he may also claim damages. An obligation to repair only arises when notice has been given to the landlord.

The landlord is responsible for all things which relate to the structure and exterior of the building, including the roof, guttering, chimneys, plasterwork, walls, windows and doors. The landlord is responsible for ensuring that installations within the flat for the supply of key services utilities are kept in good condition. This includes installations for space heating and hot water. It also includes the pipes supplying gas, electricity or water, flues for gas boilers and ventilation, and drains. Problems can arise with pipes outside the flat. The landlord is responsible for ensuring any gas appliances are safely-installed and working properly and securing regular inspections by a qualified CORGI inspector.

The repairing covenant in the Landlord and Tenant Act 1985 is limited because it only relates to defects which are the consequence of disrepair. It does not apply to inherent defects arising from the method of construction of the dwelling. A requirement to secure fitness is implied in furnished lettings, which may explain why many are unfurnished, but otherwise (in unfurnished lettings) there is no implied term as to fitness for human habitation.

Some tenancy agreements impose more onerous obligations on the landlord, for example a requirement to keep the premises in 'good condition'.

- **Is it legal for the landlord to shift the costs for certain kinds of repairs to the tenant?**

The tenant is usually responsible for minor repairs and internal decorations unless the disrepair is caused by disrepair within the landlord's sphere or wear and tear, then it becomes the landlord's responsibility (*Warren v. Keen* [1954], CA). Tenants do not have to redecorate a property unless they have damaged the decoration, or it is specified in the tenancy agreement. In these cases, the landlord may want to keep all or part of the deposit unless the tenant makes good any damage before he leaves.

In furnished rental apartments, the tenant is usually responsible for keeping furniture in good condition, but the landlord may be responsible for replacing furniture worn out by natural wear and tear.

Tenants often have responsibility for the upkeep of a garden, but tenants are not required to improve a garden already in a bad state. If there is a garden it is wise to agree what needs to be done during the negotiation of the agreement.

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

Residential property can be let furnished, partially furnished or unfurnished, but the latter is probably commonest. If furnished there is an implied condition of fitness for human habitation, which may explain why landlords tend to prefer unfurnished lettings.

The landlord is obliged to maintain installations existing at the outset for space heating and water heating. There is no further liability to maintain or replace electrical

appliances such as fridges, freezers, washing machines and cookers, unless stated in the tenancy agreement. What is to be provided should be agreed before the flat is taken. The tenant should keep a copy of the advertising material which may well vary this basic position and may be helpful in case of any dispute.

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

Yes, this is an essential precaution; an inventory will be important evidence in any dispute about retentions from the deposit. Most landlords provide an inventory as a matter of course, but the condition of items on it needs to be checked and agreed between the parties.

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

The tenant should make it clear what rights he has over common areas shared between tenants, such as hallways, lifts and stairs. These are outside the statutory repairing covenant, so it is wise to ensure that the landlord accepts responsibility for their upkeep. It may often be possible to imply a term that the landlord has to carry out major works, such as the maintenance of lifts in a block of flats.

- **Parties to the contract**

An assured shorthold arises when the tenant is an individual who will use the property as his principal residence. It is commonly the case that a home is rented by a couple and it is usually appropriate for them to rent together as joint tenants. A legal tenancy can only arise when the tenant is aged at least 18, so special steps would be needed if the potential tenant was 16 or 17.

- **Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?**

In the private sector, this is a matter of contractual negotiation between landlord and tenant. A spouse has a common law right to live with his or her spouse. It is usually assumed that a tenant is allowed to occupy residential property with his or her spouse or registered partner or cohabitee (of whatever gender). It is usual also for children to live with their parents and for the tenant to share with other family members, but this should be negotiated with the landlord. Tenants should tell their landlord who is in occupation, and landlords may require tenants to disclose this information. Occupancy of the apartment will be limited to a certain number of people by the overcrowding rules and any House in Multiple Occupation licence. Action may be taken to deal both with over occupancy and under occupancy, the latter through caps on Housing Benefit.

- **Is the tenant obliged to occupy the dwelling (as his primary home)?**

This may be an express term of a tenancy agreement. A tenancy will only be a shorthold if the tenant occupies the property as his principal home, and otherwise the tenancy will operate contractually.

○ **Is a change of parties legal in the following cases?**

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

This depends, first, upon whether the couple are joint tenants or not.

If they are joint tenants, a notice to quit can be served by any one of the co-tenants and it will bring the tenancy to an end. This will occur despite the objection of the other tenant, as held in *Hammersmith and Fulham London Borough Council v. Monk* [1992], HL. Local authorities use this rule to end the tenancy of a violent partner and to relet the property to the victim of the abuse even though in doing so they do not give the party being excluded a right to be heard in court. The court has power to make an occupation order in all cases involving married or unmarried couples, with or without children, and this includes power to exclude one party from all rights of occupation.

If a property is vested in one party, the effects of relationship breakdown can be capricious. The correct thing to do here is to apply to the family court which can order a transfer of a tenancy on divorce (and its equivalents) and also under the jurisdiction over children. The limited security under a shorthold should always be considered when weighing up options.

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

Students sharing a house may either be a group of licensees or they may be joint tenants, depending largely on whether they approached the landlord collectively or separately. It appears that legal tenants are limited to four. If they are joint tenants, a notice to quit can be served by any one of the tenants and this will bring the tenancy to an end, despite the objection of the other tenants, the principle in *Monk* (above). This can also be used where there are, say, four students renting a flat if one of the four decides to end the tenancy against the wishes of the other three. The issue can be avoided by contractual provision, but landlords are reluctant to cede their power to control who becomes a tenant. In practice landlords are often willing to accept a replacement tenant put forward by a person wishing to leave.

- **death of tenant;**

Where a tenancy is held jointly, necessarily by joint tenants, death of one party will effect a survivorship, by which the estate is passed to the survivor who will continue as the tenant automatically after the death. Most private sector assured tenancies will be shortholds, so after the death of the tenant the landlord will be able to obtain possession unless he agrees to accept a partner or family member as a shorthold tenant. Occasionally though a longer tenancy may have been granted in return for payment of a capital premium and in this case the leasehold term has some value and will vest in the personal representatives of the tenant who will pass it on to the beneficiaries entitled under the tenant's will or on his intestacy.

- **bankruptcy of the landlord;**

Payment of rent will be diverted to the trustee in bankruptcy. The trustee in

bankruptcy is likely to want to sell the property and will be able to do so at a higher price if vacant possession is offered, so it is likely that the tenant will be asked to move.

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

With private rentals the position varies according to whether a premium has been paid and the length of the term. In a relatively long lease for which a capital premium has been paid, the tenant will need to ensure that the term is saleable. This may be achieved by allowing assignment or by requiring the consent of the landlord to an assignment but providing that the consent of the landlord is not to be withheld unreasonably, and this qualification will be implied. In all other cases a private landlord will invariably introduce an absolute bar on all dealings with the lease; this should include assignment, subletting, and parting with possession (e.g. to a mortgagee). It will usually be provided that any fixed term can be forfeited if this term is breached since without such a term, a landlord risks ending up with a assignee who cannot pay the rent. The term against assignment or subletting without consent will be implied into assured tenancies which are periodic or statutory.

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

In general if a borrower grants a tenancy of the mortgaged property, the tenancy will be unauthorised, though this will not be the case if the mortgage envisages letting (as in Buy to Let financing) or if the mortgagee has given consent. In such circumstances if the mortgagee is able to obtain possession against the borrower it will be able to secure possession against the tenants. However a recent statute gives the tenant the right to two months' notice of repossession.

- **Costs and Utility Charges**

- **What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities? Which utilities may be charged from the tenant by the landlord? What is the standard practice?**

The utilities would include water, sewerage, electricity, gas, and telephone. In most cases the supply contract would be concluded between the utility provider and the tenant directly. In some cases the landlord might, for example, supply a pre-payment meter for electricity.

If, exceptionally, a landlord concludes a contract for a utility the cost may be recovered from the tenant, usually along with the rent. A landlord must provide the services which are reasonably required the tenant, including, as appropriate, the supply of gas, electricity and water. The tenant must pay for the fuel and water used, usually paying the bill himself. If the landlord pays the fuel or water company's bills, the cost can be included in the rent. Protocols are designed to prevent supplies of services (other than water) being disconnected for arrears of payments, though this remains an ultimate possibility.

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

Council tax is the local tax which helps pay for services such as waste collection. It is chargeable on the occupiers of residential property and will usually be billed to the tenants directly; alternatively the landlord may collect the tax and pay it over to the council. There is one bill for each home, whether it is a house, flat, bungalow, maisonette, mobile home or houseboat, and whether owned or rented. Homes were banded by value in April 1991, band A being lowest and band H highest. Bands are not affected by changes in general house prices, though homes will be banded when newly built and rebanded after major improvements. Each year the local council sets the level of council tax for each band.

Dwellings are charged on the basis of two adult occupiers, and there is a reduction for a single occupier. Students are ignored, so any property occupied exclusively by students will not be charged. Common areas shared between tenants, such as hallways, lifts and stairs, are outside the statutory repairing covenant, but it may often be possible to imply a term that the landlord has to carry out major works, such as the maintenance of lifts in a block of flats.

Help with council tax bills is available, the amount of any reduction reflecting individual circumstances including income, savings and number of children. The former council tax benefit is now subsumed into the Universal Benefit Scheme.

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

Yes, except for structural repairs.

- **Deposits and additional guarantees**

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

Deposits would be usual in the private sector. The landlord under an assured shorthold tenancy will routinely require the payment of a deposit by the tenant as security for the performance of the obligations of the tenancy. The average deposit is just less than £1,000.

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

Since April 2007, all landlords have been required to pass any deposit paid by a tenant at the commencement of an assured shorthold tenancy to an authorised tenancy deposit scheme (Housing Act 2004 ss 212-215). The original regime gave some unsatisfactory results to which substantial changes were introduced with effect from April 2012. There are two types of scheme, custodial schemes and insurance schemes, the choice lying with the landlord. In each case the landlord must comply with the initial requirements of the scheme within thirty days of receiving the deposit, providing information and handing over the deposit. Failure gives rise in each case to a claim that the tenant receive three times the deposit. A custodial scheme requires a

landlord to pay any deposit received to a scheme administrator, who keeps it in a separate account until such time as it falls to be paid to the landlord or repaid to the tenant. Interest is payable. The tenant or the landlord may apply, at any time after the tenancy has ended, for the whole or part of the deposit to be paid to him, and, if satisfied that the parties have agreed that the payment should be made or that the court has so decided, the scheme administrator will pay out the relevant amount in accordance with the agreement or decision.

- **Are additional guarantees or a personal guarantor usual and lawful?
What kinds of expenses are covered by the guarantee/ the guarantor?**

A surety as a personal guarantor is often required by the landlord if the prospective tenant has only low-income due to education or study, the parents of the tenant being asked to stand surety. The guarantee will be made by deed and will generally cover rent and other liabilities under the lease.

3. During the tenancy

3.1. Tenant's rights

- **Defects and disturbances**

- **Which defects and disturbances are legally relevant?**

There is no single definition but the legal principle depends upon the particular problem.

- **mould and humidity in the dwelling**

Unless the property is let furnished, there is no implied term requiring the property to be fit for human habitation. So, the question is what is the cause of the damp problem; if it comes from disrepair of a structural item (such as the roof or damp proof course) the landlord will be liable to correct the problem, but if it comes from an inherent defect in the construction of the property, the tenant will have no remedy.

- **exposure to noise e.g. from a building site in front of the dwelling;
noisy neighbours**

The tenant may have an action in nuisance against the person creating the noise, but it is unlikely that a residential tenant will litigate. The question is what rights the tenant has against the landlord and here the case law is not encouraging. This may be a breach of the implied term for quiet enjoyment ('quiet' here including but by no means restricted to freedom from noise). So the landlord may be obliged to take action to secure a cessation of the nuisance. However, a tenant must always remember when pressing a complaint that he has virtually no security of tenure and the landlord may find removing the tenant an easier solution. A better solution may be to contact the local authority to make a complaint about noise nuisance.

In terms of neighbours, the landlord may be obliged to take action for the same reason against antisocial behaviour causing noise. However, the possibility of action does depend upon the cause of the noise nuisance. A landlord is not liable for inherent defects in the construction of a dwelling and a tenant must take the property as it is and not claim to have a better dwelling. *Southwark London Borough Council v. Mills* (1999, HL) shows the unsatisfactory nature of that rule: tenants living in an

inadequately soundproofed block in south London had to put up with being able to hear all the day to day activities of their neighbours, including ‘their televisions, their babies crying, their comings and goings, their quarrels and their lovemaking’. No remedy was possible.

- **occupation by third parties**

This concerns the covenant or implied term for quiet enjoyment which is implied in all leases and tenancies. A landlord must grant the tenant exclusive possession of the property let, free from any external interference, and any interference authorised by the landlord will be a breach of that implied obligation. The landlord would need to take action to remove third parties. It will usually be possible to make use of the criminal law since residential trespass has recently been made a crime (Legal Aid, Sentencing and Punishment of Offenders Act 2012, commonly called ‘LASPO’) and the police can be asked to remove someone who has displaced a residential occupier (Criminal Law Act 1977).

- **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)**

Theoretical remedies might include injunctions, damages and a set off against rent and in an extreme case the tenant might have the right to repudiate the lease. Withholding rent is not to be recommended and certainly not before notice of disrepair has been given. As ever a shorthold tenant will bear in mind his own very limited security. It may be easier to move than to argue.

- **Repairs of the dwelling**

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

In short-term leases, the primary source of repairing obligations is the Landlord and Tenant Act 1985. Section 11 imposes on the landlord the obligation to carry out the major repairs in a term of seven years or less, and in flexible tenancies of whatever length. The obligation attaches to the landlord under a lease but not to the licensor under a licence. The landlord may not contract out of these obligations. A tenant may apply to the court for an order for specific performance of the landlord’s repairing obligations. In addition, he may claim damages. The obligation to repair only arises when notice has been given to the landlord.

The landlord is responsible for all things which relate to the structure and exterior of the building, including the roof, guttering, chimneys, plasterwork, walls, windows and doors. The landlord is responsible for ensuring that installations within the flat for the supply of key services utilities are kept in good condition. This includes the pipes supplying gas, electricity or water, flues for gas boilers and ventilation, and drains. The landlord is responsible for ensuring any gas appliances are safely-installed and working properly. The landlord should be able to produce a gas safety certificate upon request completed after a regular inspection by a qualified CORGI inspector. The landlord is also responsible for the hot water supply.

Some tenancy agreements impose more onerous obligations on the landlord than those implied by the 1985 Act. For example an obligation to keep the premises in 'good condition' obliges the landlord to cure condensation problems which did not fall within the concept of repairs.

The repairing covenant in the Landlord and Tenant Act 1985 is limited because it only relates to defects which are the consequence of disrepair. It does not apply to inherent defects arising from the method of construction of the dwelling. A requirement to secure fitness is implied in furnished lettings, which may explain why many are unfurnished.

Common areas shared between tenants, such as hallways, lifts and stairs, are outside the statutory repairing covenant, but it will often be possible to imply a term – which in practice has to be imposed on the landlord – to carry out major works; so for example the landlord will be responsible for maintaining lifts in a block of flats.

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

As already stated, a private tenant has the right to repair and deduct the cost incurred from the rent; however, the landlord only becomes liable under a repairing obligation when notice has been served on the landlord, so it is essential that notice is given and a reasonable time is allowed to elapse before the tenant takes matters into his own hands. This course of action is not to be recommended; indeed one should counsel strongly against it because it is easy to make a mistake and end up in arrears with rent.

- **Alterations of the dwelling**

- **Is the tenant allowed to make other changes to the dwelling?**

Private tenants are most likely to be subject to an absolute obligation not to make any structural changes to the property they are letting, though it is of course possible for the landlord to agree to a particular change. Sometimes the tenant will be restricted from carrying out improvements or alterations without the landlord's prior consent. Should the agreement remain silent in this area there will still be an implied common law condition not to commit 'waste' a concept which includes all changes, whether harmful or beneficial. Where the tenant makes an unauthorised alteration he will be liable for breach of contract and to return the dwelling to its original condition.

- **In particular,**

- **adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

If adaptation is needed of the demised property, this should be negotiated with the landlord before the property is let. A right to make an adaptation may be implied, or it may be possible to use the equality legislation to secure such rights.

When dealing with persons with a disability a landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants. There was no discrimination where a landlord had

refused to install a stair-lift in a block of residential flats since none of the reasons for the landlord's refusal related to the tenant's disability and so the tenant was not treated any less favourably than any other potential tenant.

- **Affixing antennas and dishes**

A dish fixed to a property must comply with planning rules. Provided this is so a tenant could usually fix a dish but would be required to remove it and make good any damage at the end of the lease. However, tenancy agreements will commonly bar any alteration that requires physical alteration of the fabric. There is a risk that the ownership of the dish could pass to the landlord and thus accrue to future tenants. Under the common law a thing affixed to a rented property will become the property of the landlord (*Elitestone v. Morris* 1997, HL). The test is based partly on the degree of physical annexation and partly on the purpose of annexation. Ornamental fixtures can be removed but otherwise the landlord could claim things fixed to the property by the tenant. More often the landlord will require the removal of things fixed with damage being made good.

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

A tenant will generally be entitled to redecorate the property but not to drill holes; any structural change will require the landlord's consent.

- **Uses of the dwelling**

- **Are the following uses allowed or prohibited?**

What uses can be made of the property turns mainly on the express terms of the tenancy agreement. Antisocial behaviour by tenants and their families and visitors is a huge issue, the main controls being antisocial behaviour orders against tenants or family members. A landlord can be forced to address antisocial behaviour by a notice requiring the landlord to control the activities of other tenants. The most likely approach to a shorthold tenant behaving antisocially is eviction.

- **keeping domestic animals**

This will be allowed unless (as is very common) the tenancy agreement says otherwise.

- **producing smells**

The tenancy agreement will generally require the tenant not to cause a nuisance or annoyance to neighbours. Many landlords prohibit smoking in rented flats and require tenants to confirm that they are non-smokers.

- **receiving guests over night**

This will be permitted subject to the terms of the tenancy agreement and the overcrowding rules. All residential tenancy agreements will bar immoral and illegal use ie for prostitution or drug dealing.

- **fixing pamphlets outside**

This would usually be a breach of planning control, but if not may well be prohibited by the tenancy agreement.

- **small-scale commercial activity**

Whether a tenancy is residential or commercial will be determined from the purpose of the letting; anything beyond merely ancillary commercial use will attract either the Landlord and Tenant Act 1954 part 2 for business lettings or the Agricultural Tenancies Act 1995. However, once the residential character of the letting is established, subsequent changes of use that are not authorised by the landlord will not change the character. Landlords are generally very keen to avoid residential shortholds turning into business lettings (which are generally renewable) so the tenancy agreement will contain a promise not to use for business purposes. (Extensive commercial use might result in business rates becoming payable). None of this is affected by minor commercial use, such as working from home or engaging in internet selling on a small scale, but it is wise to agree with the landlord in advance of the letting what use is to be made of the property.

3.2. Landlord's rights

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

Market rents apply in the private residential sector.

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

Assured shortholds give limited security of tenure, so in practice if the landlord wishes to increase the rent it is difficult for the tenant to object; eventually he will have to move out if he is not prepared to agree to an increase. During any fixed contractual period, the landlord can only put the rent up if the tenant agrees, but otherwise the landlord will have to wait until the fixed term ends before he or she can raise the rent. It follows that longer fixed terms will commonly include a rent review provision, which will typically take the form of an annual percentage increase. Otherwise, the landlord must give at least a month's notice of the proposed increase if the rent is paid on a weekly or monthly basis (more if the rent period is longer). The form is 4B (enter 'Assured Tenancy Forms' in www.gov.uk).

A private sector tenant who disagrees with a proposed rent or rent increase may apply to the First-tier Tribunal (Property Chamber) for a decision as to what the rent should be. Application must be made to the Tribunal before the new rent would be due. The Tribunal decides what rent the landlord could reasonably expect if he was letting it on the open market on the same terms, ignoring any improvements made by the tenant. The Tribunal may agree the proposed rent or set a higher or lower rent, which becomes the legal maximum the landlord can charge. It will usually operate from the date specified in the landlord's notice of increase unless the committee considers the tenant would suffer undue hardship when it may delay its effect. The landlord can propose a further increase after a year. As already explained a shorthold tenant is unlikely to refer a rent, though housing benefit authorities may.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

A tenancy confers exclusive possession on the tenant, the right to exclude the landlord and all the rest of the world (*Street v. Mountford*, 1989, HL). However, exclusive possession in the tenant is quite consistent with limited rights for landlords to enter the property e.g. to view the state of repair or to deal with emergencies.

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

Whatever the technical position deduced from the previous answer, the practical position is that all landlords retain keys to rented properties.

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

No (see 4.2 below).

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

No; this was known as the right of distress but has been abolished for all leases.

4. Ending the tenancy

4.1. Termination by the tenant

- **Under what conditions and in what form may the tenant terminate the tenancy?**

Residential tenancies usually consist of a fixed term grant followed by a periodic continuation. A notice to quit a rental property can be given to expire on the last day of a fixed term or while it is periodic, either by initial grant or by continuation after a fixed term ends. The periodic tenancy continues between the same parties and on the same terms (ignoring express terms about termination), with the period of the tenancy being determined from how rent was last payable under the tenancy. At this stage it is necessary for the tenant who wishes to leave to terminate the tenancy by giving the landlord a valid notice to quit. The old view requiring strict technical accuracy in notices has given way to a more relaxed view allowing effect to a notice which is comprehensible to the other party. Nevertheless many notices given by tenants are ineffective. The rules are as follows. A notice to quit residential property must be in writing, and of a minimum length of four weeks. A full period of the tenancy is required, so, for example, if the tenancy is quarterly a quarter's notice is required. The latter rule requires the notice to expire on the last day of a period. Service should be by post.

The parties to a rental agreement are free to come to a mutual agreement which allows for termination prior to expiration of the term. The tenant needs to be aware that this will lead to him becoming homeless intentionally which would limit his possibility of applying for social housing in the future. However, landlords rarely agree to accept a short notice from a tenant.

- **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)?**

Most residential tenancies are initially granted for a fixed term. If so, the tenant cannot terminate the tenancy without the landlord's concurrence during the continuance of the fixed term and any contractual regrant. It is possible for a lease to include a break clause enabling a tenant to break a fixed term, but this is unusual unless the term is long; the terms of a break clause often require the tenant to be up to date with rent etc before being entitled to exercise the break. A tenant who tries to leave early will lose his deposit and may face action for any balance owing.

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

Tenancies in the residential sector would rarely provide for the tenant to propose a replacement tenant for one who leaves. This might be appropriate where a flat is taken by a group of students to avoid the problem that a notice by one joint tenant would end the tenancy of all the others. However, such clauses are rare and in general the landlord will find a replacement tenant, though he may of course choose to accept a replacement suggested by the previous tenant.

4.2. Termination by the landlord

- **Under what conditions and in what form may the landlord terminate the tenancy (= eviction)? Must the landlord resort to court?**

An assured shorthold tenancy will often include a fixed contractual grant for a term of six months or more. The landlord will be able to terminate the tenancy at the end of the fixed term and any contractual regrant. It is necessary to end any periodic continuation by notice to quit. The landlord must give a statutory notice, which must be of two months duration (Form 3 – enter 'Assured Tenancy Forms' in www.gov.uk); this must expire on or after the term date but it is no longer necessary to state the precise date of the end of the tenancy.

At the expiration of the notice the landlord must, in theory, issue a possession action in the county court and the court must make an order for possession which ends the tenancy when executed. It is, in theory, necessary to secure a court order to evict a residential tenant, including a shorthold tenant. The Protection from Eviction Act 1977 applies and creates criminal offences protecting residential occupiers from unlawful eviction and harassment by their landlord or anyone else, including for example turning off utilities. A tenancy is not ended effectively if the tenant is forced out by harassment.

Because possession is mandatory, shorthold tenants tend to move once notice has been given.

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

A shorthold can be terminated during a contractual fixed term for various default grounds provided that the tenancy agreement provides for termination on those

grounds. The tenant must be given notice of the proceedings for possession and this notice must state the relevant ground as well as giving any relevant information.

	Mandatory	Ground 8	Substantial rent arrears (two months if rent is payable weekly or monthly; three months if quarterly or yearly).
	Discretionary	Ground 10	Rent arrears
	„	Ground 11	Rent persistently late
	„	Ground 12	Breach of obligation
	„	Ground 13	Deterioration of dwelling because of waste, neglect or default of the tenant.
	„	Ground 14	Nuisance or annoyance to neighbours or convictions for antisocial behaviour.
	„	Ground 14A	Domestic violence
	„	Ground 15	Deterioration of furniture
	„	Ground 17	Misrepresentation inducing the grant.

Unless the mandatory ground for rent arrears is made out the landlord is quite likely to wait until the fixed term expires (provided this is not too far distant) after which the normal repossession procedure at the end of a shorthold will give a mandatory ground for possession; this benefits from an accelerated procedure.

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

The tenant is not obliged to leave until the notice requiring possession (referred to above) is served. Failure to hand over the keys when the tenancy is properly ended will result in the locks being changed and the cost charged to the tenant's deposit.

4.3. Return of the deposit

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

This should be done within 10 days. The tenant should obtain a breakdown of any deductions.

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

Schemes offer alternative ways of settling disputes which aim to be faster and cheaper than regular court actions. Landlords are able to choose between two types of scheme: a single custodial scheme, which is free to join; and one or more insurance-based schemes. If a landlord fails to protect the deposit, the landlord cannot rely on service of a section 21 notice to obtain possession of the property until either the landlord returns the deposit to the tenant in full or secures agreement to the deductions made.

The deposit should be returned to the tenant at the end of the tenancy, if he has honoured the terms of the tenancy agreement. If the tenant has broken the terms of the tenancy agreement, then at the end of the tenancy the landlord and tenant should agree on the amount of any deductions. If the tenant is unhappy with the amount the landlord wishes to deduct from the deposit or the landlord refuses to engage in the deposit return process, the tenant is entitled to raise their dispute with the relevant tenancy deposit protection scheme.

4.4. Adjudicating a dispute

- **In what forum are tenancy cases typically adjudicated?**

The venue for repossession proceedings is always the county court for the locality where the land is sited.

- **Are there specialized courts for adjudication of tenancy disputes?**

No.

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

Court procedure will be 'accelerated' because a possession order is mandatory.

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

No.

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?**

Allocation of social housing usually involves a long wait during which most applicants will have to rent privately. It is essential to get on a waiting list as soon as possible. Pressure is greatest by far in London. There are a number of basic stages.

Eligibility for public/social housing

Housing cannot be allocated to a person who is not eligible for housing. Rules in relation to eligibility have been tightened progressively to apply for an allocation of social housing or to make a homelessness application (Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006, as amended). A substantial majority of public opinion that favours stronger controls on all EU migration. Detailed advice may be sought on the internet either from the Government website ('Housing' on <www.gov.uk/>) or from the website of the housing charity Shelter (www.england.shelter.org.uk) but in essence the categories eligible are British citizens and 'persons from abroad', who are eligible to apply for social housing. The last category includes:

- (1) Foreign nationals with a right of abode in the UK;
- (2) Nationals of EEA member states with a right to reside in the UK under EC rules based on their economic status (but nationals of Bulgaria, Romania and Croatia must be registered under the Worker Registration scheme;
- (3) In Wales (Homelessness (Wales) Regulations 2006; Allocation of Housing (Eligibility) (Wales) Regulations 2006; in future see Housing (Wales) Bill 2013 cl. 47, sch. 2.) also any person lawfully resident in the UK who is a national of a state which has ratified the European Convention on Social or Medical Assistance or the European Social Charter; this includes all EEA nationals.
- (4) A person granted refugee status or with exceptional and unconditional leave to remain;
- (5) A person with current unconditional leave to remain with habitual residence in the Common Travel Area (of the UK, the British islands, and the Republic of Ireland). People from abroad who are not eligible for housing are those subject to immigration control and not in any exceptional group:
 - (a) Asylum seekers;
 - (b) (In England) EEA nationals who do not have an economic right of residence;
 - (c) EEA jobseekers if not habitually resident in the Common Travel Area;
 - (d) EEA nationals for the first three months if not habitually resident in the Common Travel Area;
 - (e) Those admitted on the condition that they will be self-funding.

Homelessness

A full homelessness duty is owed under the Housing Act 1996 to a person who is homeless unintentionally and has a priority need for accommodation. Suitable permanent accommodation must be offered as soon as possible, and temporary accommodation until somewhere permanent is secured. Lesser duties are owed in other circumstances.

A person is **homeless** if he has no accommodation either in England or the rest of the United Kingdom or anywhere else in the world. EEA nationals exercising their economic rights will often fall outside the category of the homeless because they have accommodation which they could occupy in their home state. A person with accommodation may be homeless if he has accommodation which it is not suitable for him to occupy with his family unit, for example in extreme cases of overcrowding.

The authority must examine whether the applicant had a **priority need**, for example because he or she is:

- pregnant;
- residing with dependent children;
- especially vulnerable; or
- facing violence.

The local authority must also still examine whether the applicant is homeless **intentionally**. Cases where the applicant is responsible for finding himself homeless include

- falling into arrears of rent or mortgage instalments;

eviction after antisocial behaviour; or

leaving accommodation (including overseas) in which it would be reasonable to stay.

Homelessness applications are made to the local housing authority. When a duty is established the accommodation offered may belong to the authority, a housing association or a private landlord offering a shorthold. All homelessness decisions are subject to review and appeal to a County Court on a point of law.

Housing List

A person who is eligible and over the age of 16 may register with one or more local authorities or housing associations; some councils and housing associations run joint lists. The public/social lists available in a particular area can be found by contacting the housing department of the local authority; most have websites. The government provides a list of contacts local to an area ('Apply for Council Housing' on www.gov.uk).

Social housing must be allocated in accordance with an **allocation policy** covering transfers and exchanges as well as initial allocations, and the whole scheme must be published. Lists vary in length greatly from area to area however they generally include people who are homeless, people with special housing needs as well as people seeking a transfer to another social sector property. An applicant may either be in a priority group or without special priority or disqualified. A recent change has allowed the local authority to set qualifications, especially to ensure a local connection through work to the area of the local authority, though employment or family association, an aspect of the government's commitment to 'localism'. This recent change has shortened lists considerably.

Preference is given to certain **priority groups** in allocation, notably

- Persons who are homeless;
- occupiers of overcrowded or insanitary houses;
- people needing to move on medical or welfare grounds; or
- people who will suffer hardship if they are unable to move.

Consideration can be given to:

- financial resources available to meet housing costs;
- behaviour of the applicant and household affecting his suitability as a tenant;
- any local connection.

There is wide discretion to choose methods of banding and points allocation. If an applicant does not a priority need for housing allocation, the above provisions indicate the wide range of factors that might be considered relevant, including period of residence in the locality, age, income, ownership or property, any record of defaults, and so on. The landlord can determine how to weight applications according to their published policy.

Housing benefit

Housing benefit is paid to tenants irrespective of the sector in which they are renting. It is a means-tested benefit paid by local authorities from state funds to households with low incomes living in rented accommodation. Two thirds of social renters and one quarter of private renters are in receipt of the benefit in 2012-13. Claims are increasing significantly. Receipt of housing benefit is associated with age and lone parenthood and unemployment, but even so a third of working households renting from social landlords received this benefit. Qualification rules are complex; readers should refer to the websites of the Government www.gov.uk/housing-benefit or of Shelter www.england.shelter.org.uk.

Private sector claims have recently been subject to significant measures to curtail the cost of Housing Benefit in that sector. Tenants in all sectors are affected by the 'under-occupancy charge' or 'bedroom tax' as it has been labelled by the political opposition. Families living in accommodation larger than they are deemed to need will receive less housing benefit from the beginning of April 2013. Those with one spare bedroom will lose 14% of their housing benefit, while those with two or more spare bedrooms will lose 25%. The new rules allow one bedroom for each adult or couple. Up to two children under the age of 16 are expected to share, if they are the same gender. Those under the age of 10 are expected to share whatever their gender. It is hoped that this policy move will result in £490m savings for the taxpayer in 2013-14. The government estimates that more than 660,000 claimants will be affected, with an average loss of £14 per week.

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

In a private rental, the landlord is responsible for insuring the building itself but the tenant will have to insure the contents that belong to him. The policy should cover a tenant's liabilities as a tenant, for example, under his tenancy agreement he may be responsible for paying for any damage done to the property such as a broken window. Some policies will include cover for accidental damage which will cover for things like a spill that ruins a carpet but will not cover for wear and tear such as carpet that is worn out or faded over the years. More than half of all renters do not have home contents insurance.

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

Legal aid is currently (March 2004) being restricted and it is important to seek up to date information. As it stands legal aid is available to anyone facing eviction from their house or who is homeless, though it is means tested. Starting points are the official government website ('Legal Aid' on www.gov.uk), the civil legal advice website (civillineadvice.justice.gov.uk) and Shelter (england.shelter.org.uk).

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

A good place to start is the website of Shelter (www.england.shelter.org.uk), the housing and homelessness charity, which provides advice on all aspects of housing and also allows users to identify a local source of advice.

ESTONIA

Tenant's Rights Brochure

Ave Hussar

Team Leader and National Supervisor: Irene Kull

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1. Introductory information

- **Introduction to the national rental market**
 - **Current supply and demand situation**

According to Population and Housing Census 2011 (PHC 2011) there were 649,746 conventional dwellings for 599,832 households in Estonia in 2011. The Estonian housing market is characterized by a high rate of private ownership of the housing stock (97%) and a high rate of owner-occupation: 80% of the households live in dwellings that they own. According to PHC 2011, the share of owner-occupied dwellings amounts to about 82% of the non-vacant conventional dwellings (EU-average being ca. 71%). The rest is divided between municipal (social) rental housing (1.7%) and private rental market (ca 15%).

In Estonia, a relatively high share of the population (65%) lives in flats (EU-average ca 41%). The average floor area of dwellings per inhabitants had increased from 24 m² in 2000 to 30.5 m² by 2011. The number of dwellings counts for 502 dwellings per 1000 inhabitants.

The total share of unoccupied dwellings (without permanent residents) in Estonia is 14% (in Tallinn 9%, in urban areas 11%, rural areas 21%). There is an especially great oversupply of dwellings in rural areas. However, the figure on unoccupied dwellings does not reflect the housing supply available for new occupancy, since part of the units (approx. 25%) are occupied for secondary use which is not well reflected in statistics. The situation of housing demand and supply varies between regions and municipalities. There is especially high pressure on the housing market in the two largest cities Tallinn (capital city) and Tartu (second largest city in Estonia). Only the Tallinn urban region can be considered as a growth centre in Estonia.

As at 1 January 2013, the population of Estonia was 1,320,000. The population of Estonia is expected to decrease by 125,000 in the next roughly 30 years due to negative natural growth and negative net migration. Thus, the projected population of Estonia in 2040 will be 1,195,000. Since 2000, the share of one-member households has grown significantly (from 33.5% to 39.9% in 2011). Due to the trend towards smaller households (size of the average household decrease from 2.33 in 2000 members to 2.13 members in 2011), the number of households decreases relatively less than the size of the population.

Rental dwelling stock consists mostly (95%) of flats in apartment buildings. On average, such flats have a floor area of 24.4 m² and 1.09 rooms per inhabitant. As of January 2014, the average monthly rent excluding utilities was about 8.1 EUR per square metre in Tallinn and 7.0 EUR per square metre in Tartu. Expenditures on a dwelling per household member amounted to over 51 EUR per month in 2012 (i.e. 18% of the household budget), which was 4 EUR more than in 2011.

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

As there are only few institutional investors and few dwellings specially built for rental, the conditions of the dwelling and contractual practices vary considerably. It is therefore advisable to look for the offers prepared by real estate agencies. The default provisions of law impose the duty to pay the brokerage fee upon the party who has hired the agent. It should be noted, however, that even if the real estate agent is hired by the landlord, the fee is usually contractually agreed to be borne by the tenant.

The majority of landlords are non-professionals who could not deduct any investment or maintenance cost of the dwelling from the rental income and have to pay (currently) 21% income tax on the total amount received as rent. This is the major reason, why many private landlords tend to avoid written contracts. The oral rental contract is in general valid, but with certain reservations. Namely, if a residential lease contract with a term exceeding one year is not entered into in writing, the contract is deemed to have been entered into for an unspecified term, which cannot be terminated earlier than one year after the transfer of the dwelling to the lessee. In order to avoid uncertainty in rental relationships, the written format of the contract is advisable.

Prospective tenants should take into account the seasonality of the private rental market (specifically of the 1-2 roomed flats). As students form a large proportion of the tenants, shortage of offers and rise in rental prices in August and September is usual.

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

- **Private renting**

In Estonia, about 90% of the rental market is served by private landlords, i.e. individuals or private entities. In the private rental sector, there is no control over the initially agreed rent level. However, there are certain measures for contesting excessiveness of the rent level during the period of the contract.

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

Municipalities are responsible for providing social dwelling space for persons or families who are unable or incapable of securing housing for themselves or their families. Only the capital city of Tallinn has special housing provided for young families and key workers of the municipality in addition to the social housing provided for families in need. Yet, there is a shortage of housing in both categories, and there are more than a thousand applicants in the waiting list (Tallinn, 2014). However, the situation varies considerably from municipality to municipality.

- **General recommendations to foreigners on how to find a rental home**

First, it is advisable to contact a reputable real estate agent to find suitable dwelling and facilitate contracting. By the professionals, English or Russian is commonly spoken. Alternatively, the receiving institution (employer, university) should be consulted in this matter. It is possible that the receiving institution offers special dwellings for their employees.

Second, the foreigner should respect the landlord's obligation, as the person providing housing for an alien, to verify the legal basis for the alien's stay in Estonia and provide respective documentation.

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

First, in order to avoid any misunderstanding or possible lack of proof, the tenant should insist that the contract to be concluded and modified in written form. All Estonian inhabitants have a duty to make sure that their residence data (place where he or she permanently or primarily lives) are correctly listed in the Population Register. If a person is not an owner of the premises listed in the *notice of residence*, he or she shall add to the notice of residence a copy of a document certifying the right to use the premises (e.g. a lease contract) or permission from the owner of the room (signature on the notice of residence).

Second, the inventory act as at the delivery of the possession to the tenant should be attached to the contract. The tenant should inspect the premises personally before entering into contract.

Third, the tenant should follow the market information about the average amount of market rent (e.g. list of pending offers or price indexes in the Internet websites). Payment of any amount of money (rent and accessory expenses) should be documented (preferable paid through bank account).

Fourth, the tenant should be aware that he or she shall bear other expenses related to the use of dwelling (accessory expenses) only if so explicitly agreed. However, utilities costs – especially for the winter season – may increase the total cost of housing considerably. Upon entry into a contract, the tenant may demand to be informed by the lessor of the rent payable according to the previous lease contract and respective accessory expenses (e.g. for utilities).

Fifth, the tenant should, at his own expense, remove the defects of a dwelling which can be removed by light cleaning or maintenance necessary for the ordinary preservation of the dwelling. However, the exact scope of this duty may be arbitrary. In any case, the landlord has to guarantee suitable conditions for contractual use of the dwelling, and the tenant should not bear cost of repair or improvement. It follows that the tenant should not make payments to a “repair fund” of the apartment association.

Sixth, the tenant should be aware that the Estonian law is half-mandatory, i.e. the parties may not agree on the detriment of the tenant, unless specifically provided by law. There are further limitations to the parties’ freedom of contract, for example, an agreement which requires the tenant to pay a contractual penalty upon violation of a contract is void.

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

Estonian term	Translation into English
<i>allüür</i>	sublease/subletting
<i>eluruum</i>	dwelling (residential premises)
<i>eluruumi üürileping</i>	residential lease contract
<i>erakorraline ülesütlemine</i>	extraordinary termination without notice for a compelling reason

<i>korraline ülesütlemine</i>	ordinary termination (of the open-ended tenancy)
<i>kõrvalkulud</i>	ancillary expenses (e.g. utilities)
<i>lepingu muutmine</i>	modification of the contract terms
<i>maakleritasu</i>	brokerage fee
<i>parendused ja muudatused</i>	improvement and alterations
<i>perekonnaliikmed</i>	family members
<i>pisipuudus</i>	minor defect
<i>sotsiaaleluruum</i>	social dwelling
<i>tagatisraha</i>	security deposit
<i>tähtajaline üürileping</i>	fixed-term tenancy
<i>tähtajatu üürileping</i>	open-ended tenancy
<i>üür</i>	rent
<i>üürileandja pandiõigus</i>	landlord's right of lien

2. Looking for a place to live

2.1 Rights of Prospective Tenants

- **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?**

Discrimination of persons on grounds of gender, nationality (ethnic origin), race or colour upon, *inter alia*, access to and supply of goods and services which are available to the public, including housing, is prohibited in every phase of the tenancy. In all other aspects, private landlord has a right to exercise his or her freedom of contract upon choosing the 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?**

In general terms, the tenant has an obligation to inform the landlord of all circumstances with regard to which the other party has, based on the purpose of the contract, an identifiable essential interest. Information about the identity, civil status, profession and income, the number of children of the potential tenant could be classified as being of identifiable essential interest of the landlord. Any information provided by the prospective tenant, shall be accurate. However, remedies are available to the landlord only if relying onto the information caused damage to the landlord or if the mistake was of such importance that a reasonable person similar to

the landlord would not have entered into the transaction in the same situation or would have entered into the transaction under materially different conditions.

However, there is no obligation to inform the landlord of such circumstances of which the landlord could not reasonably expect to be informed. Landlord could not reasonably expect to be informed of sensitive personal data, e.g. information on sex life, data revealing ethnic or racial origin, data revealing political opinions or religious or philosophical beliefs, data on the state of health or disability, information on the intention to have children. In general, processing of such personal data is permitted only with the consent of the tenant. Tenant's consent, however, is not required for the collection of data disclosed pursuant to law (data entered in the Commercial Register, official notices, court rulings, etc), by the prospective tenant himself (e.g. an employee's blog on the Internet) or with his or her consent (Estonian Credit Register).

- **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)?**

The practice of charging a “reservation fee” is not common. A brokerage fee is paid only after the conclusion of the contract by the party who has contracted an agent. Obligation to pay the brokerage fee may be shifted to the tenant (who did not contract the agent) by agreement, but only if advised beforehand. It is, however, theoretically possible to agree upon earnest money, i.e. sum of money given by tenant to the landlord to certify that the (preliminary) contract has been entered into and to secure the performance thereof. Upon performance of a contract secured with earnest money, it is presumed that the earnest money will be used towards performance of the obligation. If the non-conclusion of the (main) lease contract is the fault of the tenant, the landlord shall retain the earnest money.

- **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)?**

Neither salary or bank account statement nor references from previous landlords are routinely asked. Most commonly, checking the financial status of the potential tenant may include enquires to the Estonian Credit Register at www.krediidiinfo.ee. For a small charge, registered personal users may obtain extensive information on any other person's financial status, provided he/she has a legitimate interest to process personal data, e.g. prospect of entering into contractual relationship. The report may contain person's credit rating and probability of default, payment defaults from Credit Register, tax debts, companies related to the person, immovables related to the person, official announcements related to the person.

However, most of the relevant information could be gathered from several electronic public registers for free or for a small fee. It is necessary only to know the tenant's personal identification code. For example, *Ametlikud Teadaanded* publishes announcements related to enforcement or insolvency proceedings, seizure of assets etc. Further, the data about the prospective tenant's effective punishments may be obtained from *E-toimik*. Enquiries regarding third person may be submitted for a small fee. *Riigi Teataja* (the official electronic bulletin State Gazette) provides public access to all binding court decisions. Information about tax debts may be easily obtained from the e-Tax Board.

- **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?

Real estate agents are expected to collect information about market conditions and the object of the lease, consult with the customer, make offers, find clients, negotiate and draft legal documents, and act as representative of the client after conclusion of the contract (delivering documents, keys, etc.). The usual agent's fee is equal to one month's base rent.

Applications for municipal or social housing are processed by social services departments of the respective local municipality.

Universities have set up international student services, which provide, inter alia information about available student dormitories or listings of residential space offered on the free market.

There are several common internet portals like <http://www.city24.ee/> and <http://www.kv.ee/> available for prospective tenants to search for suitable dwellings independently.

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

There are no official public blacklists of “bad tenants” or “bad landlords”, but landlords and tenants occasionally share relevant information in social networks or real estate blogs.

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)?**

There are no special formal requirements for a valid conclusion of a residential lease contract. However, if a residential lease contract with a term exceeding one year is not entered into in writing, the contract is deemed to have been entered into for an indefinite term, which cannot be terminated earlier than one year after the delivery of the dwelling space to the possession of the lessee.

There is no duty to register *residential lease* contracts, but the lessee of an immovable (i.e. incl. of a dwelling) may demand that a notation regarding the lease contract be made in the land register (*kinnistusraamat*). Such a notation ensures that the actual owner of an immovable shall permit the lessee to use the immovable pursuant to the lease contract and that a new owner does not have the right to terminate the lease contract except if the acquirer urgently needs the leased premises.

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

There are no specific mandatory requirements prescribed as to the content of the residential lease contract. In principle, the lease contract should include the following basic clauses:

- Identification of the parties (incl. contact means);
- Identification of the dwelling and indication of its residential purpose of use;

- Description of the dwelling (size, condition, furnishings, equipment);
- Rental amount and the procedure for paying it;
- Agreement on utilities and other ancillary expenses;
- Term of the contract;
- Specification of the obligations and rights of the parties;
- Termination of the contract (grounds, procedure).

It should be noted, that the parties cannot agree on terms less favourable to the tenant than provided by the Law of Obligations Act, unless specifically provided so.

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

Parties are free to agree to a residential lease contract either for a definite or an indefinite period of time. A residential lease contract with a term exceeding one year should be concluded in writing, otherwise the contract is deemed to have been entered into for an indeterminate term (with minimum duration of one year).

The law favours continuing contractual relationship even in case of time limited contracts by a providing presumption for automatic extension. Specifically, in the case of a residential lease with a term of at least two years, if neither party gives notification at least two months before expiry of the term that the party does not wish to extend the contract, the lease contract becomes a lease contract entered into for an indefinite term. However, it is advisable to negotiate a new term, as open-ended contracts may be terminated by either of the parties at any time without any justification by giving only at least three month's advance notice.

Upon termination of the lease contract by the landlord or expiration of the term of a lease contract entered into for a specified term, the tenant of the dwelling may demand that the lessor extend the lease contract for up to three years if termination of the contract would result in hardship for the lessee or his or her family. If the landlord does not consent to the extension of the contract, the lessee may demand extension of the lease contract by filing an action with a lease committee or in court.

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

The contract is not automatically void even if the precise amount of rent is not expressly stated. In that case average local rent could be charged. There is no control of an initially agreed amount of rent unless the transaction ultimately is found to be contrary to good morals or public order.

By default, the rent and ancillary expenses shall be payable after expiration of each of the corresponding periods of time (usually monthly). However, it is (lawful) common practice to provide in the contract that rent is due at the beginning of the period.

Payment is usually to be arranged through direct payment into a bank account, possibly in the form of standing order.

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

The tenant is responsible and should bear only the cost of minor defects (i.e. the defects which can be removed by light cleaning or maintenance, which are in any case necessary for the ordinary preservation of the property). Costs of major repair

works cannot be shifted to the tenant (unless related to the destruction and loss of and damage to a dwelling for which the tenant is responsible).

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

The law does not prescribe requirements as to what furnishings the landlord has to provide. In the case of a tenancy on a furnished or semi-furnished apartment, the landlord usually provides the main furnishings, like a furnished kitchen, a bed or bed couch, a wardrobe and a desk.

- **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)?**

An inventory at the time of the conclusion of the contract is highly recommended. The lessee shall be liable for the destruction and loss of and damage to a leased thing which occurs when the thing is in the possession of the lessee, unless he proves that the destruction, loss or damage occurred under circumstances which were not caused by the lessee. In case of a dispute, a written inventory (preferable supported by the photos of the dwelling) serves as evidence that the damage existed at the time that possession was given to the lessee. In any case, the tenant shall not be liable for the natural wear and tear on the dwelling when used in conformity with the contract.

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

Depending on the circumstances, the following contractual clauses should be of relevance to the tenant:

- security deposit (amount (max 3 month's rent), schedule of payment);
- prohibition to keep domestic animals or to smoke inside the dwelling (or alike);
- reference to and incorporation of the by-laws of the apartment association managing the condominium;
- specification of the landlord's right to inspect the dwelling;
- agreement on ancillary expenses;
- accommodation of the family members and third persons.

- **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.)?**

The tenant has the right to accommodate in the leased dwelling, without the consent of the landlord his or her spouse, any minor children and parents who are incapacitated for work. However, as an exception to the general mandatory nature of rules of residential lease contract, the parties could state in the lease contract that the lessee may accommodate family members only with the consent of the lessor. However, the landlord should exercise his right to decline in good faith.

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

The residential lease contract creates the right but not the obligation to occupy the dwelling. However, the absence of the tenant has no effect on the tenant's general duty to take care of the dwelling and take the interests of other residents and neighbours into account. Depending on the circumstances, it may mean that the

tenant should maintain heat in the apartment.

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

In case of divorce of the spouses, a court may order that one of the spouses continues to perform the residential lease contract entered into by both spouses as a lessee or that the other spouse becomes a party to the residential lease contract as a lessee in lieu of the spouse who entered into the contract. At the request of a lessor, a court may impose additional provisions regarding security for the performance of a lease contract. Non-married and same sex couples do not have rights guaranteed to married spouses.

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

There is no special regulation for apartments shared among students. Unless otherwise agreed in the initial contract, a tenant may transfer the rights and obligations arising from a lease contract to a third party only with the lessor's consent in a format which can be reproduced in writing.

Student lease contracts on campuses (as being aimed at temporary accommodation) are not subject to regulation of residential lease contracts. For details, see e.g. <http://campus.ee/?lang=en> .

- **death of tenant;**

To start with, the parties are free to agree that upon the death of a party a lease contract comes to an end. Assuming that there is no such provision, first the spouse who lived in the dwelling together with the deceased lessee has the right to take the place of the lessee in the lease contract. If the lessee did not have a spouse who has the right or who wishes to take the place of the lessee in the lease contract, other family members (i.e. partner, children, parents) who lived in the dwelling together with the lessee have the right to take the place of the lessee in the lease contract pursuant to an agreement between them. In order to exercise this right, a spouse or other family member should submit a corresponding notice to the lessor within one month as of the death of the main tenant.

In case a residential lease contract was entered into jointly by the lessees, after the death of one lessee the lease contract is valid and binding with regard to the other lessee. The surviving lessee may cancel the lease contract within three months of the death of the other lessee by giving at least three months' notice. In case the tenancy is not continued with one of these persons, it has to be continued with the heir, who may then terminate contract under similar terms.

The persons with whom the tenancy is continued are liable together with the heir as joint and several debtors for obligations incurred up to the death of the tenant.

- **bankruptcy of the landlord.**

If the dwelling actually occupied by the tenant is sold through a compulsory execution

or in bankruptcy proceedings, the contractual rights of the former landlord will be transferred to the new owner. The new landlord may then terminate such contract within three months, but only if the acquirer urgently needs the leased premises. If the new landlord exercises the right to terminate the fixed-term contract before expiry of the term, the previous owner shall be liable for any damage caused by termination of the contract to the tenant. However, the position of the tenant can be strengthened by the registration of the lease contract in the land register. A notation entered in the land register ensures that a new owner does not have any special right to terminate the lease contract. In principle, every tenant has the right to demand that a notation regarding the lease contract be made in the land register.

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

Subletting (i.e. tenant's transfer of the use of a thing fully or partially to a third party) is allowed subject to consent of the landlord. The latter may refuse to grant consent for the sublease of the thing only if the lessor has a good reason, especially if:

- 1) the lessee does not disclose the conditions of the sublease to the lessor,
 - 2) the sublease would cause significant loss to the lessor,
 - 3) the sublease would be unreasonably burdensome on the leased premises,
- or
- 4) the lessor has good reason therefore arising from the identity of the sublessee.

If the sublease is expected to be made with reasonable increase in the rent, the consent may be subject to the condition that the lessee agrees to the increase in the rent. If a landlord refuses to grant consent for the sublease without good reason, the lessee may cancel the contract in accordance with the terms provided for ordinary termination of a lease contract for indefinite term (i.e. by giving at least three months' notice), but he has no other recourse.

Subletting without the consent of the lessor may give ground for extraordinary termination of the lease contract by the lessor only if, as a result, the lessor or neighbours are so affected that the lessor cannot be expected to continue the lease contract.

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

The sale of the dwelling does not change the position of the tenant who already has acquired possession over the dwelling. Upon sale of the premises, the rights and obligations of the lessor arising from the lease contract are transferred to the new owner. For three years the previous landlord remains responsible as a surety.

However, the new owner may terminate the contract within three months if he urgently needs the dwelling himself. If the new landlord exercises this special right to terminate the fixed-term contract before expiry of the term, the previous owner shall be liable for any damage caused by termination of the contract to the tenant. In principle, every tenant has the right to demand that a notation regarding the lease contract be made in the land register with the effect that a new owner does not have any special right to terminate the lease contract upon acquisition.

- **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?**

Access to the basic utilities necessary to use the premises for permanent habitation should be guaranteed by the landlord. Whether the landlord or the tenant must conclude the contracts for supply of water, heating and electricity depends on the contractual agreement as well as on the respective supply system, since there is no legal regulation. Usually agreements with third party providers of electricity, water, gas or heating are concluded by the owner of the dwelling. In most cases easily accessible additional services which are not directly related to the use of the dwelling, such as cable TV, internet, landline telephone etc could be arranged in the name of the tenant.

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

The tenant should bear accessory expenses (i.e. charges for the services and acts of a lessor or a third party which are related to the use of a thing) only if explicitly agreed. Also, all taxes (e.g. land tax) and duties related to a thing shall be borne by the lessor unless agreed otherwise. In practice, all accessory expenses are usually agreed to be borne by the tenant in addition to (net) rent. Land tax and other possible duties usually remain the responsibility of the landlord.

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

In practice, there are currently no other taxes than land tax related to the immovable. Waste collection is organized by the municipality, but paid according to individual contracts between the landowners and the service providers. As a charge for the services of a third party related to the use of a dwelling, this may be agreed to be borne by the tenant (see previous answer).

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

In principle, the tenant should bear the costs of light cleaning or maintenance, which are in any case necessary for the ordinary preservation of the thing, and could bear (subject to agreement) costs for the services of a third party which are related to the use of a thing. Condominium costs, such as housekeeping, disinfestations etc fall under the latter category and may be shifted onto the tenant.

As repair of the dwelling is responsibility of the landlord, respective expenses could not be shifted onto the tenant (e.g. payments to the renovation fund operated by the apartment association).

- **Deposits and additional guarantees**

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

The parties may agree on a security deposit in the amount of up to three months' rent. In practice, a deposit in the amount of 1-2 month is usually demanded. The lessee has a right to pay the deposit within the first three months in equal instalments. The first instalment shall be paid upon entry into the lease contract.

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

The deposit shall be kept by the lessor in an account in a credit institution separate from the assets of the lessor and at least at the local average interest rate. The interest belongs to the lessee and increases the amount of the deposit.

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

According to Estonian tenancy law, the parties may not agree on terms less favourable to the tenant than those provided by law. The parties may agree on a security deposit in the amount of up to three months' rent or, as an alternative, other guarantees (pledge of immovables) or surety by some suitable person instead. In any case the limit of three months' rent must be observed.

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

The security deposit – as well as any alternative security – covers all claims arising from the contract but is not meant to be treated as an advance payment. It follows that the tenant is not entitled to stop paying the rent before the term of the contract merely by referring to the security deposit.

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; exposition to noise e.g. from a building site in front of the dwelling; noisy neighbours; occupation by third parties)?**

In general terms, a landlord should ensure that the dwelling is maintained in suitable condition for contractual use during the validity of the contract. In case of any substantial material defect (mould and humidity in the dwelling; noise from a building site, if exceeding the limits of reasonableness) or legal defect (e.g. third-party right) that deprives the tenant of the use of the dwelling the tenant has a right for remedy, see next question.

However, if, upon delivery of the possession, the tenant knows or ought to know that the thing does not conform to the contract but accepts the thing irrespective thereof, he or she loses the right to withdraw from the contract and may exercise any other remedy only if the lessee reserves this right upon accepting the thing. Exceptionally, in any case, the tenant may terminate the contract extraordinarily if the dwelling is in such a condition that the use thereof may involve significant hazard to human health.

As to the noisy neighbours, violation of the public order (disputes during the night time in the dwelling next door) and general noise caused by children next door should be treated differently, the latter could not in principle be classified as defect of

the dwelling.

- **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)**

First it should be noted that if, upon acquisition of the possession of the dwelling, the tenant knows or ought to know that the thing does not conform to the contract but accepts the thing irrespective thereof, remedies are available only if the tenant reserves the respective right upon accepting the dwelling as it is.

Secondly, the tenant has a duty to notify the landlord of the defect or obstacle promptly after it becomes evident. The landlord could claim compensation for loss caused by the failure to comply with this duty by the tenant. Furthermore, if a landlord cannot remove the defect or an obstacle to the use of the thing for the reason that the tenant has violated an obligation to notify, the latter may not exercise any remedies without granting the landlord a reasonable term to cure the defect and re-enable use of the leased thing.

Thirdly, the tenant may use remedies only in case there is a defect for which he is not responsible and which he need not remove at his own expense (minor defects).

Fourthly, parties may have agreed on preclusion or limitations of the rights of a lessee in connection with the non-conformity of a leased thing. However, such an agreement is void if the landlord knows or ought to know, upon entry into the contract, that the thing does not conform to the contract and fails to notify the lessee thereof.

Provided these requirements are met, the tenant may – apart from demanding that the landlord remove the defect or obstacle (see next *Repairs of the dwelling*) or take over a legal dispute with a third party – reduce rent, demand compensation for the damage or deposit rent due.

Tenant need not pay rent or bear accessory expenses during any period when the dwelling was not habitable due to a defect or obstacle. If the possibility of using the thing for its intended purpose has only diminished, tenant may reduce the rent to an extent corresponding to the defect for the respective period. For example, if the tenant is able to use the dwelling for half of the rent period, he is entitled to reduce rent by 50%. Rent reduction is exercised by sending a corresponding unilateral notice to the landlord.

In addition, the tenant may – together with or in lieu of performance – request to remove the defect or obstacle or claim compensation for damage. In the latter case, compensation for damage is due only upon expiry of the additional term provided to landlord to remove the defect or obstacle. Claim for damages is excluded in case the landlord proves that the defect or obstacle was caused by *force majeure*.

Instead of demanding damages and reimbursement of expenses, the tenant may set-off these claims against the landlord's claim for rent. Alternatively, he may also exercise a right of retention in relation to such a claim. In both cases, the tenant has to notify the landlord of his intention at least one month prior to the due date of the rent in a format which can be reproduced in writing (e.g. e-mail).

Alternatively, the tenant may deposit the rent with a notary's office after having given notice to the landlord to remove defects by a certain deadline in a format which can be reproduced in writing and warned the landlord that, if the defects or obstacles are not removed, the lessee will deposit the rent which falls due after expiry of the term. If the tenant does not file a claim against the lessor with a lease committee or court within thirty days as of the time when the first rent deposited becomes collectable, the landlord then may demand payment of the deposited amount

- **Repairs of the dwelling**

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

In general, a landlord is required to ensure that the dwelling is maintained at the agreed upon condition during the term of the contract. The tenant may demand that the landlord remove the defect or obstacle, unless

- 1) it is a defect for which the lessee is responsible and which the lessee must remove at his own expense,
- 2) it is a minor defect (i.e. can be removed by light cleaning or maintenance which are in any case necessary for the ordinary preservation of the thing) which should be carried out by tenant himself.

- **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 has delayed in effecting the removal of the defect or obstacle – i.e. does not remove such defect or obstacle within reasonable period of time after the lessor knew or could reasonably be expected to have known about the defect or other circumstances – the tenant has the right to remove the defect or obstacle and claim payment of the expenses incurred. In case the defect or obstacle restricts the possibility of using the thing for the intended purpose only to an insignificant extent, the tenant may remove the defect or obstacle and claim expenses even without prior notification to the landlord.

The tenant may set off a claim for reimbursement of the necessary expenses incurred by notifying the landlord of this intention at least one month prior to the due date for payment of the rent and in a format which can be reproduced in writing.

- **Alterations of the dwelling**

- **Is the tenant allowed to make other changes to the dwelling?**

- **In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**
- **Affixing antennas and dishes**
- **Repainting and drilling the walls (to hang pictures etc.)**

In principle, a tenant's right to make improvements and alterations to the dwelling is strictly subject to the landlord's consent in a format which can be reproduced in writing (e.g. e-mail). As there are no specific court cases covering the practice, the landlord's obligation to give consent should be assessed on a case by case basis. Principally, the landlord shall not refuse to grant consent if the improvements and alterations are necessary in order to use the dwelling for its intended purpose or manage it reasonably. If necessary, consent should be claimed in court. If improvements and alterations were made by the tenant without the prior consent of the landlord, the latter has a right to demand that the original condition be restored or to give notice of extraordinary termination.

On the other hand, if the landlord consents to improvements and alterations, he loses the right to demand that the original condition be restored (and respective expenses borne by tenant), unless he reserves such right in the giving of consent. Furthermore, if, upon expiry of a lease contract, it becomes evident that the value of the thing has increased considerably (i.e. dwelling can be leased for a higher rent or sold for higher price) due to the improvements or alterations made with the consent of the lessor, the tenant may demand reasonable compensation for this. The limitation period of such claim is six months from the return of the thing.

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

As there are no specific court cases on this subject, uses of dwelling should be evaluated in the light of general obligation of the tenant to use premises with prudence and according to the intended purpose, and more particularly, to take the interests of other residents and neighbours into account. In an apartment building, the tenant should respect the by-laws of the apartment association.

Thus, in general, as far as keeping domestic animals, producing smells, receiving guests over night, fixing pamphlets outside, engaging in limited commercial activity does not lead to breach of such duties, they should be tolerated. Moreover, in principle, the tenant has a right to receive guests over night as far as this activity does not lead to long-term accommodation of persons other than family members, an unauthorized sublease or transfer of the lease contract to third parties.

However, breach of obligation to use premises with prudence and according to the intended purpose and to take the interests of other residents and neighbours into account may lead to extraordinary termination of the lease contract in following occasions:

- 1) The tenant (or subtenant) violates those obligations despite any prior warning given by the lessor;
- 2) The tenant (or subtenant) violates those obligations materially or intentionally;
- 3) The tenant grants the use of the thing to a third party without authorization therefore and if, as a result, the landlord or neighbours are so affected that the lessor cannot be expected to continue the lease contract.

3.2 Landlord's Rights

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

In the private rental market, there is no general control of the initially agreed amount of rent unless the transaction may be rendered as being contrary to good morals or

public order and as such being void. However, there is certain level of control over rent increase, see next.

- **Rent and the implementation of rent increases**
 - **When is a rent increase legal? In particular:**
 - **Are there restrictions on how many times the rent may be increased in a certain period?**

In the case of an open-ended lease contract, it is presumed that the landlord may unilaterally raise the rent after each six months following entry into the contract. Parties may agree on a longer interval but not a shorter.

Periodic increase in the rent of a dwelling may be validly agreed under following conditions:

- 1) the lease contract is entered into for at least a three year term,
- 2) the rent increases not more than once per year and
- 3) the extent of the increase in the rent or the basis for calculation thereof is precisely determined (i.e. stepped, indexed).

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

There is no cap or ceiling fixed by statute. The tenant has the right to contest excessive rent, see next.

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

In case of open-ended lease contracts, the landlord should notify the tenant of an increase in the rent in a form which can be reproduced in writing not later than thirty days before the increase in the rent. The notice shall clearly set out the following:

- 1) the extent of the increase in the rent and the new amount of rent;
- 2) the date as of which the rent is increased;
- 3) the reasons for increasing the rent and a calculation of the new rent;
- 4) the procedure for contesting the increase in the rent.

Increase in the rent, made without the notice in accordance with the law, is void. An increase in the rent is also void if the landlord adds a warning that he will terminate the contract if the increase in the rent is contested.

Provided that the landlord has delivered formally valid notice of an increase in rent, the tenant may contest an *excessive increase* in the amount of the rent for a dwelling within thirty days of receiving notice thereof. A lessee may also contest an amount of rent during the period of validity of contract (after the landlord has declined tenants request for reduction of the rent) and claim a reduction of the rent as of the filing of a claim with a lease committee or court (Art. 302 of the LOA) if a lessor receives *excessive benefit* due to significant changes in the bases for calculation of the rent, particularly a decrease in expenses.

The rent for a dwelling is considered as *excessive* only if an unreasonable benefit is received from the lease of the dwelling, except in the case of a luxury apartment or house. However, if the amount of the rent for a dwelling does not exceed the usual rent for a dwelling in a similar location and condition, it cannot be considered as excessive. Furthermore, an increase in the rent is not excessive if it is based on an increase in the expenses incurred in relation to the dwelling (e.g. cost of utilities, if borne by the landlord) or an increase in the obligations of the lessor or if the increase in the rent is necessary in order to make reasonable improvements or alterations, such that the room or building is in the usual condition for such rooms and buildings.

It should be noted that the lessee has no remedy if the parties have already initially agreed on an excessive rent and the rent only increases in a small amount.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

After a tenant has occupied the dwelling as his home, the landlord has limited right to enter the premises. However, tenant should allow the landlord to examine the premises if this is necessary to preserve the dwelling or to transfer or lease it to another person. Landlord should inform the tenant of the intended inspection beforehand.

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

There is no special rule to answer that question. Considering the landlord's right to inspect the property and respective obligation to repair any defect (in some cases urgently), as far as the landlord does not abuse his or her right (violating the tenant's basic right for privacy and protection of home), holding a set of keys is not usually contested by tenants.

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

Landlord can not lock a tenant out of the rented premises by use of self-help even if tenant is not paying the rent. Landlord should first obtain a lawful enforcement instrument, i.e. court judgement or decision of lease committee that has entered into force.

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

Claims for the rent of the current year and the previous year and claims for compensation are secured by a lien on the tenant's movables which are part of furnishings or are used together with the room in leased premises. The right of security does not extend to things which cannot be the object of a claim (personal belongings of the tenant or his household members, basic stock of food etc). If a tenant wants to move out or to remove things from the premises, the landlord may withhold things to the extent necessary in order to secure the claims of the lessor. The lessor may use self-help in order to exercise the right of security.

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?

Tenant may terminate an open-ended lease contract by giving at least three months' notice (*ordinary termination*). Tenant does not have to justify the termination in any way. The parties are free to agree on a shorter (but not longer) notice period for a termination on part of the tenant.

Advance notice of *extraordinary termination* is not required. For the grounds of extraordinary termination, see next.

- **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)?**

A lease agreement (either of specified or unspecified term) may be extraordinarily terminated, only with a good (compelling) reason. A reason is good if, upon occurrence thereof, a party seeking termination cannot, given all the circumstances and considering the interests of both parties, be expected to continue performing the contract. Anyhow, the reason is "compelling" only if it is unexpected to the parties.

Certain specific grounds for extraordinary termination by the tenant are foreseen by the law:

First, a compelling reason for extraordinary termination may foremost relate to the fundamental non-performance by the landlord, basically if the tenant cannot use the premises for a reason dependent on the landlord, having granted the lessor a reasonable term to render the dwelling usable. However, if the use of the dwelling is restricted only to an insignificant extent, the tenant may terminate the contract for that reason if there is a particular reason for cancellation of the contract.

Second, legal grounds for extraordinary termination of lease contract can exist due to some health hazard related to the dwelling.

In those cases the tenant may terminate without responsibility for any damage to the landlord.

Additionally, a compelling reason for terminating the contract may be attributable to the tenant himself. But also in those cases, the interests of the both parties should be considered. Thus, if the tenant needs a larger dwelling or has to move due to personal or professional reasons, those reasons may well be valid for terminating the contract of lease, but subject to compensation of damages caused to the landlord.

Advance notice of extraordinary termination is (generally) not required. Termination is exercised by unilateral declaration of termination, which is submitted in a format which can be reproduced in writing. For valid declaration of a married tenant the consent of his or her spouse who is also living in the leased dwelling is necessary, in a format which can be reproduced in writing.

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

If the tenant has a compelling (personal reason) for extraordinary termination, but is under an obligation to compensate, landlord has the duty to mitigate damages. Thus, rejection of the proposed replacement tenant may constitute infringement of such

duty and may lead to loss of claim of damages that could have been reasonably mitigated.

Otherwise, the tenant may transfer the rights and obligations arising from a lease contract to a third party only upon the landlord's respective consent.

4.2 Termination by the Landlord

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

- **Must the landlord resort to court?**

An open-ended lease contract may be terminated by ordinary termination, i.e. by giving at least three months' notice (unless the parties have agreed longer or shorter period of notice for the landlord). Upon ordinary termination, the landlord does not have to justify the termination in any way. Ordinary termination as well as extraordinary termination is exercised by unilateral notice.

Advance notice of *extraordinary termination* is not required. For the grounds of extraordinary termination, see next.

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

The tenant may contest the (otherwise valid) termination of the contract by the landlord before a lease committee (currently only in city of Tallinn) or court if the termination is contrary to the principle of good faith, or demand the extension of the contract, see next.

Additionally, on the basis of an application of a tenant, a court may suspend enforcement proceedings or extend or defer enforcement if continuation of the eviction proceedings is unfair in respect of the tenant. In deciding whether to suspend the enforcement proceedings, the interests of the landlord and as well as of the tenant (e.g. family and economic situation of the tenant) shall be taken into account.

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

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

The general rule that a lease agreement (either of specified or unspecified term) may be *extraordinarily terminated* only for a good (compelling) reason applies also for the landlord. According to the specific provisions of the law, extraordinary termination by the landlord is foremost allowed if:

- 1) the tenant is using the dwelling for non-stipulated purposes (in general, landlord should give prior warning, unless the breach is substantial),
- 2) the payment of rent or accessory expenses was repeatedly and substantially delayed (generally, the landlord should provide additional term for payment),
- 3) the dwelling is a health hazard or
- 4) the tenant is in bankruptcy.

As to the defences available to the tenant, the first possibility is to contest the (otherwise valid) termination before a lease committee (currently only in city of Tallinn) or court if the termination is contrary to the principle of good faith. The

extraordinary termination of a contract by the landlord is contrary to the principle of good faith if, above all, the lessor cancels the contract for one of the following reasons:

- 1) the tenant in good faith files a claim arising from the lease contract,
- 2) the landlord wishes to amend the lease contract to the detriment of the tenant
- 3) and the latter does not consent thereto,
- 4) the landlord wishes to induce the tenant to purchase the leased dwelling, or
- 5) the marital status of the tenant changes, although this does not result in any significantly harmful consequences to the landlord.

Second, the tenant may demand that the landlord extend the lease contract for up to three years for the reason that termination of the contract would result in serious consequences for the tenant or his or her family. If the landlord does not consent to the extension of the contract, the lessee may demand extension of the lease contract before a lease committee or court. The tenant has this right even if the landlord has valid reasons for termination and the termination could not be rendered as being contrary to good faith. An application from the tenant for extension of the lease contract shall not be satisfied if extension of the lease contract is contrary to the legitimate interests of the landlord, in particular if the landlord has terminated the contract for the reason that the tenant committed fundamental breach (has arrears or materially violates the obligations regarding prudence and the duty to take into account the interests of others) or there is serious risk of breach (tenant is declared bankrupt).

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

If the tenant does not leave after the expiry of the contract, the landlord may demand payment of the rent agreed in the lease contract or rent which is usual in the case of a similar dwelling space in a similar location as compensation for damage for the period of delay. Additionally, the landlord is entitled to demand compensation for damage caused to him by the delay in return of the dwelling in an amount which exceeds the amount of rent. Landlord's respective rights are precluded in case the tenant justifiably withholds leaving the dwelling in order to ensure payment for the expenses incurred thereby.

4.3 Return of the Deposit

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

Tenant may demand repayment of a deposit if the landlord does not inform him of any claim arising from the lease contract within two months after expiry of the contract.

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

Any due claim of the landlord arising from the lease contract may be set-off against the security deposit. Most commonly, the tenant may be liable for the destruction, loss of and damage to a leased thing which occurs when the thing is in the possession of the lessee unless the lessee proves that the destruction, loss or damage occurred under circumstances which were not caused by the lessee or the

person to whom the lessee transferred use of the thing in compliance with the contract. The lessee shall not be liable for the natural wear and tear or deterioration of the dwelling or its furniture or changes which accompany the contractual use.

4.4 Adjudication of Disputes

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

There are no specialized courts; disputes arising from lease contracts as civil matters are adjudicated before ordinary county courts. The Lease Committee (currently established only in city of Tallinn) is an independent institution, and serves as an alternative to court in case of disputes related to lease contracts with claims of less than 3200 EUR.

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

As with any other civil matter, the court may, in justified cases involving an action where the dispute concerns not more than 2000 EUR (together with the accessory obligations - 4000 EUR) adjudicate the matter by way of simplified proceedings at the discretion of the court, taking account of only the general procedural requirements. A ruling of the county court in cases adjudicated by way of simplified proceedings is subject to appeal only if the county court explicitly gave permission to appeal – or in case of severe infringement of material or procedural law by the court of first instance – and if this infringement could influence the outcome.

More specifically, if the claim is directed only at the payment of rent or other sum of money due not exceeding 6400 EUR, it may be adjudicated by the court based on a standard format petition by way of expedited procedure prescribed for matters of payment order. The court delivers the proposal for payment and a form for an objection to the debtor. In case the debtor files a formal objection within 15 days (or in the case of service of the proposal for payment abroad, within 30 days) after service thereof, the matter will be heard as an action (or terminated if so requested by the petitioner).

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

There are no other alternative dispute resolution available except for the Lease Committee (Tallinn), see previous.

5. Additional Information

- **How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?**

Social housing – housing for individuals and families that are not capable or able to procure it for themselves – is provided by local governments as a form of social services. The following individuals are entitled to social services:

- 1) permanent residents of Estonia;
- 2) foreign nationals living in Estonia on a legal basis;
- 3) refugees in Estonia.

The subsistence benefit (incl. housing allowance) is determined and paid by the municipality or city government as well. Thus, departments of social welfare of the respective local government should be contacted.

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

Tenant may consider insuring the home contents located in a building or an apartment against fire, water damage (e.g. bursting pipes, household appliances connected to water network, a tap forgotten open out of negligence or water released from an aquarium), natural disaster (storm, hail, ridged ice or natural flood), vandalism and burglary (as a minimum).

Also, for the tenant whose activities may result in personal injury, property damage or financial loss to the landlord, third party insurance is recommended.

Legal assistance insurance covers the payment of costs arising from making claims against, *inter alia*, the landlord.

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

Basic legal assistance is given to the least privileged people by several non-profit associations, and the national system of legal aid makes a lawyer's assistance available to the least privileged. State legal aid is provided in preparing legal documentation and other legal counselling and representation. Similarly, a tenant may apply to a court for procedural assistance to cover legal expenses (advocate's fees, filing fee, security on cassation, obligation for provision of a security to court, etc.). State legal assistance does not mean that legal aid services are free of charge. Applicant may still be subjected to the duty to partially self-finance the costs for legal assistance or pay the costs partially or in full after the termination of court action. To receive state legal assistance, the tenant should submit a written application and notice regarding his financial state. Further information and relevant forms can be found at <http://www.just.ee/4616> or <https://www.advokatuur.ee/eng/state-legal-aid> .

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

There is no special legal aid in the area of tenancy law. Legal assistance is provided by legal bureaus, law offices and notaries.

State Legal Aid information system (Riigi Õigusabi Infosüsteem - RIS):

Telephones: +372 697 9090, +372 697 9091, +372 697 9092

E-mail: ris@advokatuur.ee

<http://ris.just.ee>

Tallinn Rent Committee:

Telephones: +372 6404566, +371 6404684, +372 6404523

E-mail: yyrikomisjon@tallinnlv.ee

<http://www.tallinn.ee/Teenus-Adjudication-of-rental-disputes>

FINLAND

Tenant's Rights Brochure

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1. Introductory information

- **Introduction on the national rental market**

- **Current supply and demand situation**

One third of all rental dwellings are owned by private individuals: 28%, or 220,000 apartments. Housing companies also own 1.4%, or 11,000 apartments.

Municipalities own another third: 31.6%, or 248,000 apartments. The great majority of these dwellings are state-subsidized. In addition, municipalities own non-state-subsidized rental apartments, which are not under nationwide tenant selection and other restrictions, but allocated by the municipalities themselves. General-interest corporations own 15.9%. The three major general-interest organizations owning state-subsidized residential rental dwellings are VVO, SATO, and Avara. Finally, corporations in industry and insurance and banks own 5.7% or 45,000 apartments; the group 'others (parishes, foundations ... unknown)' make up 17.4%, 136,500 apartments.

Apartments in the multi-storey buildings of previous generations, where most rented flats are found, tend to be small. The average useful floor area per dwelling has grown by 20 square meters since the early seventies, but it is still relatively small (79.9 square metres per dwelling and 39.6 square metres per person).

Demand for housing in Finland has been spurred by rising incomes, tax subsidies on homeownership, population growth, migration to a select few cities, and the declining size of household-dwelling units. In fact, larger apartments, especially those with three rooms and a kitchen, may sometimes be vacant even in cities. This is because, by and large, more and more people live alone, not only in Helsinki. The average size of a Finnish household has decreased constantly, and is now 2.07 persons. 44% of households are now single-person units; another 33% are two-person households.

Rents have risen in step with house prices. The rise has been most rapid in Helsinki, where rents in new rental agreements rose 30% between 2008 and 2012. The markets have also seemed to differentiate so that the rate at which the maximum price for which a small apartment can reasonably easily be rented has risen more rapidly in the capital region and some growth centres (Lahti, Oulu, Turku) compared to other growth centres (Jyväskylä, Kuopio, Tampere). The maximum price for which an apartment with two rooms and a kitchen could reasonably easily be rented in Helsinki rose from 900 to 980 EUR in 2010–2011.

Thus, markets have differentiated not only between the capital region and the rest of Finland, but also between some growth centres and others. Outside the growth centres, there are vacant dwellings.

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

- The amount of the deposit is often two months' rent, and if the tenant cannot reclaim it at the end of the lease, this amounts to a significant loss. Disputes

concerning the landlord's refusal to give back the deposit on grounds of the condition of the apartment are perhaps the most problematic area in Finnish tenancy law.

- A consistent custom is absent about how the condition of the apartment in the beginning of the lease is compared with its condition at the end of the lease.
- There are lengthy queues to obtain state-subsidized rental dwellings in Helsinki.

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

- **Private renting**

Residential renting divides into two segments, which are roughly equal in size. Besides private markets, there is a state-subsidized, social rental housing sector, distinct when it comes to the owners of the dwellings (municipalities and general-interest organizations), regulated rent, and an administrative tenant-selection procedure. In private markets, the parties may freely agree on the rent and on rent increases. The only constraint on the parties' power to agree in common on rent increases is contained in the Act on Indexing Restrictions. Nevertheless, courts can always examine the reasonableness of the rent and other contract terms.

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

Rents in social rental dwellings are regulated to cover the financing costs of developing the building and the maintenance costs of the real estate (cost recovery rent). The same unitary tenancy contract regime applies to all other aspects of the landlord-tenant relationship. In effect, the nationwide system of social rental housing is superimposed on the forms of tenure by attaching conditions to state subsidies for construction and renovation. The conditions, so-called 'ara restrictions,' require cost-recovery rent and, concomitantly, resident selection.

- **General recommendations to foreigners on how to find a rental home**

From the landlord's point of view, the most convenient way of finding a tenant is to use an estate agent. But landlords also place advertisements on the Internet and in papers. Young people seeking an apartment or having questions about renting can contact the Finnish Youth Housing Association¹³⁸.

A twelve-page guideline 'Fair Rental Practices' has been produced jointly by four main associations in the field of rental housing. It is widely available, in Finnish, Swedish, and English.¹³⁹

¹³⁸ <https://www.nal.fi/fi/etusivu/>.

¹³⁹ http://www.vuokralaiset.fi/vuokratapa_engl.pdf.

The Consumers' Association of Finland is also active, and has published a 'Tenancy Guideline,' a brochure explaining tenancy legislation for both tenants and landlords; it is available in Finnish, Swedish, Russian, and Somali.¹⁴⁰

- **Main problems and “traps” in tenancy law from the perspective of tenants**
 - First of all, the parties are advised to annex in the tenancy agreement a statement on the condition of the apartment, complete with photographs and signed by both parties.
 - A fixed-term agreement expires at the end of the term, and is very difficult to terminate earlier. Tenancy law prescribes no minimum or maximum duration.
 - In general, a valid contract may be written, oral, or tacit. Nevertheless, an exception pertains to a fixed term in a residential tenancy contract. A fixed-term tenancy agreement must be made in writing, when it concerns other than a holiday home. If not made in writing, a tenancy agreement may only be valid for an unlimited term.
 - During the lease, the apartment must always be in such a condition as the tenant may reasonably require, taking the age of the apartment, the local housing stock and other local conditions into consideration, except when the parties have expressly agreed otherwise.
 - The parties may agree that the tenant is responsible for the upkeep of any facilities or equipment available to her.

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

Finnish	Translation into English
<i>vuokranantaja</i>	landlord
<i>vuokralainen</i>	tenant
<i>purkaminen</i>	rescission (termination without notice)
<i>vuokra</i>	rent
<i>vuokravakuus</i>	security deposit
<i>kunnossapito</i>	maintenance
<i>välittäjä</i>	agent
<i>välityspalkkio</i>	agent's fee
<i>Vuokrankorotus</i>	rent increase

¹⁴⁰ At <http://www.kuluttajaliitto.fi/asuminen>.

<i>Irtisanominen</i>	notice of termination
<i>Alivuokraus</i>	Subletting
<i>Sopimus</i>	Contract
<i>määräaikainen vuokrasopimus</i>	fixed-term tenancy agreement

An official English translation of the Act on Residential Leases, *laki asuinhuoneiston vuokrauksesta* (31.3.1995/481), is available at:

<http://www.finlex.fi/en/laki/kaannokset/1995/en19950481>.

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?**

The Non-Discrimination Act of 2004 implemented the European Union Equality Directive from 2000. The Act applies to discrimination based on ethnic origin concerning the supply of or access to housing and movable and immovable property and services on offer or available to the general public other than in respect of legal acts falling within the scope of private affairs and family life. Examples of exclusions are subletting and transfers of a dwelling or holiday home in one's own use.

- **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)?**
- **What kinds of questions by the landlord are allowed (e.g. on sexual orientation, intention to have children etc)?**

Landlords renting only a few dwellings may ask for virtually any documentation from a prospective tenant, including identifying data, credit information, and information about a workplace or study place. No ground needs to be stated for looking into documentation. Landlords are especially advised to enquire about who will be moving into the apartment along with the tenant.

The Personal Data Act applies to other than the processing of data 'by a private individual for purely personal purposes or for comparable ordinary and private purposes.' Only those data that are necessary for the purpose of processing may be processed (necessity requirement). According to a non-binding guideline, the collection of the following information may be necessary and consistent with the Personal Data Act.

- Identifying data on people who will be moving into the apartment (the person identity code of a married or non-married partner and the year of birth of a child);
- Income data on those responsible for the tenancy;
- Credit information;
- Salary statement, statement on the amount of pension, or other statement, such as statement on the amount of earnings-related unemployment benefit or other comparable statement to ascertain the tenant's ability to pay.

According to the guideline, salary statements may be requested from a tenant only as support for the final decision-making concerning the handover of the apartment. Thus, when showing the apartment, it is not necessary to request these statements from the lookers. Also the agent can require that salary statement will be presented before the actual tenancy contract is made. But the guideline does not consider that the agent has any necessity of giving salary statements over to the landlord. Instead, it suffices that the agent tells the landlord of essential information verified from these documents; if the landlord wishes to obtain the statements, the applicant-tenant's consent is necessary.

- **Is a “reservation fee” usual and legal?**

The agent is only entitled to a fee when a final agreement is created.

- **What is the role of estate agents in assisting the tenant in the search for housing?**

A real estate agent's services include sales of real estate, home sales, and land leases, along with residential and commercial leases, while a rental agent may only perform rental service (residential and commercial leases). In residential leases, the services of either type of agent may include some or all of the following: making estimates of correct rent, marketing and showing the apartment, checking the backgrounds and credit rating of the applicants, contacting employers and former landlords, interviewing applicants, writing the tenancy agreement, taking care of banking matters, security deposit, and receiving and handing over the keys.

The only person who should pay the agent's fee is the principal, who purchases the service. The agent's fee must be reasonable, taking into account the character of the assignment, the amount of work carried out, the economically appropriate way of carrying out the assignment, and other circumstances. The standard practice in residential leases is for the agent to charge one month's rent plus VAT.

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

For additional information about a possible tenant, a conscientious landlord will contact the tenant's previous landlord, or at least inquire about the previous landlord's contact details. A possible tenant may likewise inquire from the landlord

about the previous tenant's contact details. As the landlord must store documentation, especially the tenancy contract, for years after the end of a lease, information is available.

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 valid contract may be written, oral, or tacit. Nonetheless, a fixed-term tenancy agreement must be made in writing, when it concerns other than a holiday home. If not made in writing, a tenancy agreement may only be valid for an unlimited term.

No registration or fee payment is needed.

- **What is the mandatory content of a contract?**

- **Which data and information must be contained in a contract?**

In tenancy legislation, no requirements have been laid down as to what at least needs to be stipulated in a contract.

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

Tenancy agreements are unlimited in time, unless otherwise agreed or legally provided. Prior to 1991, fixed-term agreements were only legal under exceptional circumstances, but since then their use has been liberated.

If a fixed-term lease of no more than three months is agreed on with the same tenant more than twice consecutively, the lease shall be considered a non-fixed-term lease notwithstanding the fixed-term provision.

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

Rent is, in the private sector, determined on the basis of what is agreed. This freedom of contract is only limited by the legal power of courts to examine whether the rent, or a stipulation on determining it, is reasonable.

The main rule in the Act on Indexing Restrictions prohibits index clauses in contracts, but this is followed by a list of exceptions. A permissive exception covers all residential-lease agreements concluded for an unlimited period, or – if fixed-term – for no less than three years. In fixed-term agreements of less than three years, index clauses are null and void to the effect that the landlord will lose the entire rent increase.

In principle, the grounds of increase must simply be agreed in the contract, precluding any blanket right for a private landlord to increase rent unilaterally. In state-subsidized dwellings, the landlord may unilaterally increase rent and decide

on the date of increase.

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

The landlord has the duty to ensure that:

At the commencement of the lease and throughout its duration, the apartment shall be in such condition as the tenant may reasonably require, taking the age of the apartment, the local housing stock and other local conditions into consideration, unless otherwise agreed regarding the condition of the apartment.

This provision is dispositive, and so the parties may agree on an inferior condition of the apartment. But basic requirements for the apartment are set in health-protection, land use and building and environmental legislation.

If the parties agree that the tenant is responsible for the condition of the apartment and that the apartment should be in the exact same condition at the end of the lease, then the tenant may be responsible for ordinary wear and tear.

During the lease, the parties may freely agree to a new rent. They may also agree to a higher rent only for a few months, for example, to cover the costs of renovation.

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

During the lease, the apartment must always be in such a condition as the tenant may reasonably require, taking the age of the apartment, the local housing stock and other local conditions into consideration, except when the parties have expressly agreed otherwise.

Whether and which furnishings the landlord has to provide depends on the agreement.

- **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)?**

The parties are advised to annex in the tenancy agreement a statement on the condition of the apartment, complete with photographs and signed by both parties.

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

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

- clause on the provision of a security deposit

- clause on the grounds of rent increase
- clause on repairs or alterations, as no repair work can be made without the landlord's permission
- the parties may agree that the tenant takes home insurance
- the facilities available to the tenant are identified in the contract
- the name, birth date, and contact details of both parties are written down in the contract; because notice of termination among others requires contact details, the tenant should make sure that these are correct.

- **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.)?**

The tenant has the right to use the apartment as a joint home with her or his spouse – '*puoliso*,' a broad term covering both a married partner and a non-married partner – and a child of their family. Provided that this does not cause significant inconvenience or disturbance to the landlord, the tenant also has the right to use the apartment as a joint home with her or his own – or her or his spouse's – near relative. Under "near relatives" are included both spouses' parents, sisters, adoption parents and foster parents, and other relatives may be allowed for if they are particularly close. Otherwise, the landlord's consent is required.

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

The residential use of the apartment implies that someone must live in the apartment. That person need not be the tenant herself. As long as the tenant takes care of the dwelling, the landlord has no legitimate reason to terminate the contract based on the tenant's failure to occupy the dwelling.

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

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

The tenant may transfer the lease to her or his spouse (*puoliso*), a child of the family, or the parent of either spouse, provided that the transferee is already living in the apartment.

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

If the contract has been concluded with one person among a group of students, the other students might be considered subtenants (for subletting, see below). If

the contract has been made with the group, an individual tenant may give notice on her own behalf, while a new tenant who wishes to be a party must conclude a new contract.

- **death of tenant;**

If the tenant dies, the surviving spouse (*puoliso*), a child of the family, or the tenant's or the spouse's parent has the right to continue the lease if he or she was living in the apartment. At death, the deceased person's lease remains in effect on the previous terms and the estate of the deceased is responsible for fulfilling the terms. The listed persons have three months' time to notify the landlord of an intention to continue the lease, and after this notification the responsibility of the estate ends.

- **bankruptcy of the landlord;**

The buyer of a property sold in a compulsory auction has the right to give notice on any tenancy agreement within a month of having taken possession of the property, unless the property is sold subject to a stipulation guaranteeing the continuance of the lease. The tenant will have the benefit of the landlord's notice period.

- **Subletting: Under what conditions is subletting allowed?**

Provided again that this does not cause significant inconvenience or disturbance to the landlord, the tenant may assign no more than half of the apartment to another person's residential use (not, for instance, office use); when this occurs for a consideration, the chapter on subletting in the tenancy act applies to the relation between the tenant and the subtenant. The purpose of the provisions on subletting is to regulate a situation where the tenant and the subtenant share the possession of the apartment.

The subtenant must always move out of the apartment when notice has been served, and can only claim damages afterwards; and the sublease is terminated without notice at the same time as the sublessor's leasehold or other right of use.

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

The tenancy agreement is binding on the new owner if any one of the following three conditions is met: the tenant has taken possession of the apartment before the transfer takes place; the agreement transferring ownership includes a provision on the continuance of the lease agreement; or a mortgage has been taken out to secure the permanence of the lease.

- **Costs and Utility Charges**

- **What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?**
- **Which utilities may be charged from the tenant by the landlord? What is the standard practice?**

The parties may agree on charges. The general advice – in this sense rule – is that the parties should agree on all charges whether based on the quantity consumed, the number of persons living in the apartment, or another measure, including lump sum.

All charges paid to the landlord are regarded as part of the rent, no matter how they are called, and the provisions on rent payment and the reasonableness of rent apply.

Some housing companies subscribe electricity and charge it from the shareholder or the tenant, depending on what has been agreed. In other companies, the resident concludes the contract herself. When the apartment has its own electricity meter and an individual contract with the provider is possible, tenancy agreements usually stipulate that the tenant shall pay for her own electricity.

Water is typically charged by the housing company, which concludes the contract with the supplier.

The tenant may be charged either an inclusive rent or a separately identified item besides the rent, but all charges paid to the landlord are legally regarded as part of the rent. Increases in the price of utilities, when charged by the landlord, must comply with the regulation on rent increases.

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

The parties may agree in the tenancy contract on any charges.

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

The parties may also agree that the tenant is responsible for the upkeep of any facilities or equipment available to her, or the parties may divide the responsibility in the desired manner.

- **Deposits and additional guarantees**

- **What is the usual and lawful amount of a deposit?**
- **How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?**

Any contractual stipulation requiring either party to put up security larger than three months' rent is null and void. The tenant typically agrees to deposit security of one or two months' rent on a separate bank account. At the end of the tenancy, she should get the sum back – with interest, in line with case law on returns from property – if she has fulfilled her obligations.

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

Security can be a sum of money, movable property, or obligations. Also, insurance companies supply guarantee insurance.

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

A security may be put up to cover all obligations arising from the contract or, as is less often done, only some obligations, such as rent payment.

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)?**

The apartment must be, throughout the duration of the lease, in such condition as the tenant may reasonably require, taking into account the age of the apartment, the local housing stock, and other local conditions. The wording '*reasonably* require' is understood to refer to an objective evaluation of the condition of the apartment. In other words, the personal views of the parties are not decisive. Heating, necessary appliances, and necessary interface are required. Many disputes relate to water or humidity damage. It is possible that the deficient condition of the apartment is caused by, among other things, noise from outside the apartment.

- **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)**

If the defect is of major significance and the landlord does not remedy the defect without delay, the tenant has the right to rescind the contract, provided that the defect is not due to the tenant's own negligence or other carelessness.

In these cases, if the landlord does not remedy the defect, the tenant has the right to remedy the defect at the landlord's expense, at reasonable cost. For example, if the tenant requests the landlord to repair a defective water supply pipe and the landlord does not reply, the tenant may remedy the defect at the landlord's expense if the defect is not due to the tenant's negligence; the landlord is responsible for the condition of the apartment; the defect is of major significance; and the landlord has been given enough time to act. The tenant should see to it that the cost is reasonable: she must pay the excess herself.

The tenant has the right to be exempted from paying the rent or to have the rent reasonably reduced, as long as the apartment cannot be used or is not in the required or agreed condition. Rent reduction is independent of the landlord's negligence, but the defective condition must not be due to the tenant's own negligence. The period from which a rent reduction may be claimed is limited to the time after the landlord was informed of the defect (by the tenant or otherwise).

The tenant has the right to compensation for any inconvenience or loss caused by the landlord's negligence or other carelessness, with the landlord having the burden of showing that she did not act carelessly.

- **Repairs of the dwelling**

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

The landlord has the duty to ensure that the apartment in such condition as the tenant may reasonably require, taking the age of the apartment, the local housing stock and other local conditions into consideration.

The provision imposing this duty on the landlord is dispositive, and so the parties may agree otherwise. If the parties agree that the tenant is responsible for the condition of the apartment and that the apartment should be in the exact same condition at the end of the lease, then the tenant may also be responsible for ordinary wear and tear.

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

First of all, the parties may agree, both during tenancy and beforehand, that the tenant does renovation work in the apartment, including remodelling, resurfacing, and instalments. The dispositive provision cited above gives the parties wide discretion in agreeing on the condition of the apartment and tenant's improvement.

On the other hand, the tenant has no right to perform any repairs or alterations in the apartment without the landlord's permission. There are only two exceptions to this rule: the tenant's right to remedy a defect at the landlord's expense – already mentioned – and the right always to take action to prevent or restrict immediate

damage to the apartment. The last kind of emergency action can be necessary in the case of water damage and the like.

- **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.)**

A landlord who enters into a contract with a tenant with physical disability must be aware that some changes will be made in the dwelling. Before the tenant takes possession, the parties should agree about payments and removals. If the tenant encounters physical disability while the tenancy is in force, the instalment of necessary devices for coping may not be a ground for termination, because otherwise a person with disability would be discriminated against. The financing of the installation and removal of these kinds of devices is part of the municipalities' legal duties towards seriously disabled people – persons who, because of a disability or disorder, have long-term special difficulties to cope with the activities of normal life. The reasonable costs of necessary changes to the apartment, appliances, and devices associated with the apartment must be compensated by the municipality.

- **Affixing antennas and dishes**

If the fixing of antennae is forbidden by the housing company or in building-façade regulations, the mounting of an antenna may give rise to a ground for rescinding the contract by the landlord (violation of 'provisions or regulations for the maintenance of public order'). The question may arise whether an exception should be allowed on grounds of the tenant's fundamental freedom of expression and right of access to information, but no precedent exists on the point. The significance of the right of groups to develop their own language and culture and the significance of the internet are likewise unexplored in the practice of the higher courts.

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

As said, any work – changes to structures, painting, wallpapering – must be agreed to.

- **Uses of the dwelling**

- **Are the following uses allowed or prohibited?**

- **keeping domestic animals**

- **producing smells**
- **receiving guests over-night**

Disturbance with the way of life is a ground for rescission by the landlord. While keeping a pet may not be prohibited in the articles of association, animals – like also guests – can be noisy. On this basis, disturbance may be created or the house rules may be violated. (The board may define ‘rules necessary to maintain order from 10:00 p.m. and 6:00 a.m.’). Additionally, pets may be the cause of an odor nuisance exceeding certain limits.

For a justified reason, the landlord may, in addition, include in the tenancy agreement limitations which would generally be regarded as intervening with normal habitation. A landlord might, for example, rent an apartment for the time being and, because of allergy, prohibit pets. Then the agreement could be rescinded if the apartment is used in a manner violating the stipulation.

- **fixing pamphlets outside**

Neither the tenant nor the owner is likely to have the right to use external walls (for example, to exhibit a poster) as these belong to the housing company. No aesthetic annoyance may be created for other residents. If the tenant continues to use the property against a prohibition by the board, the landlord may have the right to rescind the agreement.

- **small-scale commercial activity**

If the apartment is used for an essentially different purpose than what was agreed to, the landlord may rescind the contract. If the tenant arranges for herself an office in one room, this use is not essentially different. But opening a shop would be directly in contravention of the articles of association of the housing company. Converting a room into a medical clinic, for instance, raises the question of where to draw the line: a few clients on evenings might not signify any essentially different purpose of use, but long reception hours, or hiring an employee, might.

3.2. Landlord’s rights

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

In the private sector, rent is determined on the basis of what is agreed. This freedom of contract is limited only by the legal power of courts to examine whether the rent, or a stipulation on determining it, is reasonable. A court may, at the tenant’s request, reduce the rent or alter a stipulation on determining the rent at its discretion if, without grounds considered acceptable under tenancy, the rent significantly exceeds the current market rate charged in the area for apartments of similar rental value and used for the same purpose.

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

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

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

No, but the guideline 'Fair Rental Practices' recommends that negotiations must be initiated no later than six months prior to an intended increase and the increase must be reasonable. It also says: 'Increases may not exceed 15% per year, except in situations where extensive renovations are being made to improve the property and the rental value of the apartment.'

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

If the reasonableness of the rent is disputed in court, evidence of reasonable market-level rent should be presented.

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

The landlord may not unilaterally increase the rent unless the grounds for rent increase have been agreed in the contract. Before an amendment enters into force, the landlord must notify the tenant in writing of the new rent and the date on which it will take effect.

In state-subsidized dwellings, the landlord may unilaterally increase rent and decide on the date of increase. The landlord must notify the tenant in writing of the new rent and the grounds for the increase at least two full months prior to the rent payment period when the new rent will first apply.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

The landlord is generally not at liberty to enter the premises. The landlord has the right to enter only (i) whenever necessary for supervision of the condition and upkeep of the apartment or (ii) in order to show the apartment to interested parties, if it is to be sold, or leased again. In the first case, the tenant shall immediately provide the landlord with access to the apartment at a suitable time, so even in this case the landlord may not enter without permission, but must arrange her visit at a suitable time.

In the second case, the parties must agree on the time, for the landlord only has the right to show the apartment at a time suitable to the landlord and the tenant.

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

Instead of addressing the right of the landlord to keep a set of keys, tenancy acts have regulated the conditions of entry and visits to the apartment. If the parties have agreed that the landlord keeps extra keys, the landlord may nevertheless only enter the premises in the above-mentioned situations.

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

The landlord may never legally lock the tenant out. The tenant is entitled to executive assistance from the police whenever the landlord in a manifestly unlawful manner prevents exercise of legal rights.

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

The landlord can only apply for seizure under the Code of Judicial Procedure.

4. Ending the tenancy

4.1. Termination by the tenant

- **Open ended contract (if existing): under what conditions may the tenant terminate the tenancy?**

The tenant's notice period is one month, no matter for how long the lease has lasted, and the period cannot be extended in the contract.

The notice period shall be calculated from the last day of the calendar month in which notice was given unless otherwise agreed. The last provision means that the parties may agree on the date from which the notice period is calculated, and so the notice period can start to run for example once a year.

- **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)?**

Exceptionally, a court may permit the tenant to give notice on a fixed-term agreement. The tenant may be allowed to give notice if:

- 1) the tenant's need for an apartment comes to an end or is essentially altered by his or her illness or disability or the illness or disability of a member of his or her family living in the apartment; or
- 2) the tenant moves to another locality for reasons of study, employment, or his or her spouse's employment; or
- 3) if, for some comparable reason, the agreement's remaining in force until the agreed date would be patently unreasonable from the tenant's point of view.

Grounds of rescission: The tenant has the right to rescind any tenancy contract immediately if the use of the apartment manifestly endangers the tenant's own or her household member's health. Further, the tenant has the right of rescission on the ground that the condition of the apartment becomes deficient, provided that the defect is not due to the tenant's own carelessness and the landlord is responsible for the condition of the apartment, if the defect is of major significance and the landlord does not remedy the defect without delay after the tenant has requested this.

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)?**

On giving notice to the tenant, the landlord must deliver a written notification 'stating ... the grounds for' the termination, otherwise the notice will be ineffective. Consequently, the landlord should give at least some reason(s) for the notice to have effect. Although, as there are no grounds for legal notice laid down in legislation, any ground will do as long as it is not contrary to good rental practice.

Grounds of rescission: the landlord has the right to rescind any tenancy contract with immediate effect

- 1) if the tenant neglects to pay the rent within the time prescribed by law or agreed on;
- 2) if the leasehold is transferred or the apartment or part of it is otherwise assigned for another person's use, contrary to the provisions of the Act on Residential Leases;
- 3) if the apartment is used for any other purpose or in any other manner than that provided when the lease agreement was made;
- 4) if the tenant creates a disturbance with his or her way of life or allows others to do so in the apartment;
- 5) if the tenant fails to take good care of the apartment; or
- 6) if the tenant violates provisions or regulations for the maintenance of public health and order in the apartment.

The landlord's right to rescind the agreement shall not exist, however, if the actions giving rise to the grounds for rescission are of minor significance.

- **Must the landlord resort to court?**

Provided the tenant accepts the notice of termination and vacates the dwelling at the end of the lease, there is no need for the landlord to resort to court.

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

If the tenant disagrees with the landlord's notice, the tenant may bring an action in court. The court shall declare notice given by the landlord ineffective if:

- 1) the grounds for giving notice consist of revision of the rent or of a stipulation on the rent and the requested rent or stipulation on determining the rent would be considered unreasonable, or
- 2) the notice must be considered otherwise unreasonable in view of the tenant's circumstances and there is no justifiable reason for termination.

Under the second heading, the notice might be deemed unreasonable on the basis of consequences – because the tenant has, for instance, difficulty in finding a comparable dwelling in the region – while the landlord does not have a justifiable reason for termination.

Alternatively, the tenant may waive her direct protection against notice, vacate the flat and claim damages. The tenant is entitled to compensation if a lease agreement is terminated by the landlord by giving notice which cannot be considered to conform with acceptable tenancy practice.

The choice between the remedies depends on the circumstances, but the damages option is out of the question if the tenant stays in the apartment after the removal date.

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

Prior to the end of a fixed term, a court may permit the landlord to give notice if:

- 1) the landlord needs the apartment for his or her own use or for the use of a member of his or her family for reasons of which he or she could not have been aware at the time when the agreement was made; or
- 2) for some comparable reason, the agreement's remaining in force until the agreed date would be patently unreasonable from the landlord's point of view.

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

The court must provide the other party an opportunity to be heard, and the other party is entitled to reasonable compensation for any loss incurred as a result of the premature termination of the contract.

- **What happens if the tenant does not leave after the regular end of the**

tenancy or does not hand in (all) the keys of the dwelling?

The landlord will, in such cases, request eviction from court.

4.3. Return of the deposit

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

After termination of the tenancy, the landlord has to return the deposit including interest, provided he has no claims against the tenant.

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

A security may be put up to cover all obligations arising from the contract. The obligations arising from a contract include not only rent but also associated costs, such as interest, interest on arrears, liquidation costs, and costs of foreclosure. Similarly, when the landlord has justifiably needed to resort to litigation, legal costs are damage caused by the tenant's failure to fulfill the obligation to pay the rent.

If the parties agree that the tenant is responsible for the condition of the apartment and that the apartment should be in the exact same condition at the end of the lease, then the tenant may be responsible for ordinary wear and tear.

4.4. Adjudicating a dispute

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

General courts have jurisdiction. Previously, ten general lower courts used to have a special housing court division, but these housing courts were wound up in 2002.

It is worth noting that the Consumer Disputes Board has, since 2007, handled disputes concerning rental housing (see below).

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

No, but generally an overwhelming 99.3% of civil cases are resolved in the preliminary stages (written preparation/submissions or oral preparation/submissions). Average duration of cases adjudicated to a final decision in written preparation is 2.2 months.

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

The Consumer Disputes Board (until 2007 the Consumer Complaints Board) has, since 2007, given recommendations to resolve disputes concerning rental housing when the parties are private individuals, or when the claimant is a private individual against a business landlord.

Apart from the consumer institutions which include the Consumer Ombudsman, and the mediation service of the Finnish Bar Association, there are few alternatives to general courts in tenancy disputes.

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.)?**

At least once a year, the owner of state-subsidized dwellings and the municipality must advertise publicly – in the local paper and on the Internet – the apartments for which applications may be filed with the operator in question. Newly constructed apartments are also often advertised separately.

The applicant sends the form YM34/02 with annexes to the owner of the dwelling or, if agreed, to the municipality. The tenancy contract itself is entered into with the owner of the dwelling.

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

The landlord and tenant may agree that the tenant must take home insurance, and tenancy contracts are said to include more and more frequently a clause, requiring that the tenant must have home insurance. Nevertheless, furniture and fixtures such as wooden flooring may be insured by the landlord's home insurance, too.

Approximately 70 to 75% of households have legal cost insurance as part of their home insurance; it is also part of property insurance. The coverage of legal cost insurance can be limited, however. This concerns deductibles, the maximum amounts of compensation, and other terms, such as the time when the compensation is paid. In addition, tenancy cases are quite often excluded from the insurance.

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

Legal aid may be granted to a person whose case is, for one reason or another, not covered by legal cost insurance. Legal aid is available from the State Legal Aid Offices¹⁴¹ on the basis of the applicant's disposable income.

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

A tenant may turn, for example, to the manager of the housing company or to housing counselling which is offered by municipal housing companies and authorities and general-interest organizations. The tenant may also turn to the counselling services of Finnish Tenants¹⁴² and the housing counselling of the Consumers' Association of Finland¹⁴³. Young people seeking an apartment or having questions about renting can contact the Finnish Youth Housing Association¹⁴⁴.

¹⁴¹ <http://www.oikeus.fi/20631.htm>.

¹⁴² <http://www.vuokralaiset.fi/>.

¹⁴³ http://www.kuluttajaliitto.fi/briefly_in_english.

¹⁴⁴ <https://www.nal.fi/fi/etusivu/>.

FRANCE

Tenant's Rights Brochure

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1. Introductory information

- **Introduction on the national rental market**
 - **Current supply and demand situation**

Compared to many other countries, the effects of the Global Financial Crisis (GFC) on the French have been relatively limited. Although house prices have decreased somewhat between the end of 2008 and the beginning of 2010, they have been increasing again since then. In nominal terms, current house prices are already higher than the pre-GFC peak level. However, since 2012 house prices are slowly decreasing again, due to deteriorating economic and credit conditions. The housing production did not suffer much from the GFC, which is also due to the fact that the French government conducted active policies to keep this production at a high level. The housing market situation in France strongly differs between areas. The pressure on this market is high in the Paris region and most the major cities, whereas it is much lower in much of the countryside. Housing affordability is a serious issue in the areas with much pressure on the housing market.

In 2006, tenants in the French social rental sector paid an annual average rent of 55 EUR per square meter. This corresponds with a monthly rent of a little more than 300 EUR. Tenants in the private rental sector on average pay much more: 90 EUR per square meter per year. This corresponds with a monthly rent of a little more than 500 EUR. The table below shows the difference in rent levels in different geographical regions. The table shows that the differences in rent level between the social rental and the private rental sector are the biggest in regions with a large pressure on the housing market such as Ile de France.

Table Monthly rent in Ile de France and the rest of France, social rental and private rental sector, 2006

Region	Social rental sector	Private rental sector	% difference
Ile de France	344	676	49%
Rest of France	293	463	37%
Total	306	517	41%

Source: Commissariat Général au Développement Durable, Compte du logement 2011, 140

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

One of the main current problems of the national rental market concerns the access of the poorest to a dwelling. Some landlords let indecent dwellings for a very high price to people who cannot access the rental market. Sometimes hotel owners let rooms to families for the price of a full apartment in the regular rental market. These landlords are called "*marchand de sommeil*" (which literally means "people who sell sleeps"). This expression is a negative way to say these people are only renting a place to sleep and not to live in. Landlords take advantage of the precarious situation of tenants to demand higher than regular market rents.

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

The share of the various tenure sectors

In France, owner-occupation is the largest tenure category (58%), followed by private renting (23%) and social renting (19%).

**Table 1.1 Tenure distribution in France (* 1000 dwellings), 2011
(Summary table 1)**

Tenure Sector	Number of dwellings	% of total dwelling stock
HLM (public or private)	4143	15
Other social rental landlords (among which SEMs and cooperative housing companies)	1062	4
Individual private landlords	6374	22
Institutional private landlords	269	1
Total rental sector	11848	42
Owner-occupation	16395	58
Total dwelling stock	28243	100

Source: Commissariat Général au Développement Durable, Compte du logement 2011

- **General recommendations to foreigners on how to find a rental home**

To find a rental home, a foreigner should contact a professional: a rental agency, a notary or a bailiff. The cost may be higher than to contact landlords directly, but the intervention of a professional offers a protection and more choice to potential tenants. One other main issue is the language. The information is only available in French.

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

Problems/traps	How to solve/avoid it
Discrimination	Check the list of documents the landlord is not allowed to request
Need for a guarantor	Subscribe to insurance (see new act “ <i>Garantie universelle des loyers</i> ”)
Fees requested from the tenant	
Restitution of the deposit	Ask for an inventory made by a professional, ideally a notary or a judicial officer, when entering and leaving the dwelling
Price of the rent	Check the rents of similar dwellings in the area

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

In French	In English/explanation
Agence immobilière (see also question concerning the role of the real estate agency, p.273)	Real estate agency
Bail d'habitation	Lease contract
Bailleur/loueur/propriétaire	Lessor/renter/owner
Caisse d'allocation familiale CAF	Organ in charge of social allowance including housing benefit
Collocation	Flat-sharing
Commission régionale de conciliation	Regional board for arbitration (only competent concerning lease contracts) Competent organism for mediation
Depot de garantie/caution	Deposit
Donner congé	To give notice for the termination of the contract
Etat des lieux	Inventory
Frais d'agence	Agency fees
Garant	Guarantor
HLM (Habitation à loyer modéré)	Type of social housing (Literally: dwelling with a moderate rent)
Huissier de justice	Judicial officer/Bailiff

Location/locataire	Lease/tenant
Loyer (quittance)	Rent (receipts)
Notaire	Notary
Tribunal d'Instance	Competent court for disputes concerning dwelling lease

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?**

The applicable law is the Act n° 89-462 of 6 July 1989 (here after 1989 Act). This act was modified several times. The last one was promulgated on 24 March 2014.

There is no specific rule in the French law concerning the choice of a tenant. The only rule is the prohibition of discrimination. Article 1 of the 1989 Act prohibits discrimination based on: name, origin, physical appearance, health reasons, handicap, family situation, gender, moral thinking, sexual orientation, political thoughts, trade union activities, affiliation or non-affiliation (true or unproven) to a race, an religion, a nation or an ethnic group.

In practice, the choice is most of the time linked to financial considerations: guarantees and securities but also income 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 has to respect the privacy of the tenant and is not allowed to ask the tenant about his sexual orientation or intention to have children. The tenant does not need to lie, as he is supposed to refuse to answer. In practice, it could be hard for the potential tenant to refuse to answer or to prove that the landlord discriminated him by asking prohibited questions.

To protect the tenant, there is a list of documents (see question concerning the checks the landlord is allowed to make, p. **Fehler! Textmarke nicht definiert.**) the landlord is not allowed to request from the tenant. The idea is to protect the personal life of the tenant.

- **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)?

The landlord is not allowed to demand a reservation fee (see below the list of documents the landlord is not allowed to request). The only fees that can be paid are the agency fees and the price of drawing up the contract by a notary or a judicial officer.

There is no fee stamp concerning the conclusion of the contract. The law protects the tenant concerning the payment of fees. Only the costs related to the preparation should be shared equally between the landlord and the tenant, e.g. if the contract is written by a notary. The costs of research and negotiation obligations are to be paid by the owner.

- **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 1989 Act contains a list of very precise documents the landlord is not allowed to ask for. This provisions aims to prevent the landlord from discriminating the potential tenants and also to protect the private life of the tenants.

Article 22-2 of the 1989 Act states that the landlord is not allowed to ask for:

- identity picture;
- health care insurance card;
- bank statement;
- attestation from the bank;
- certificate that he/she has no credit;
- *debit authorization*;
- divorce judgment except the paragraph starting with "*par ce motif*" (this paragraph just says that the spouses are divorced but do not give details concerning the reason of divorce, the repartition of the belongings or the children);
- certificate from the previous landlord if the tenant can give other proof;
- certificate from the employer if the employee can give his/her working contract and his/her wage slip;
- marriage contract;
- certificate to prove cohabitation;
- voucher (cash) to make a reservation for the place;
- medical information, not even for specific dwellings;
- extract of criminal record ("*extrait de casier judiciaire*"),
- cash or values, or goods to guarantee the payment of more than one month on a locked ban account;
- more than two balance sheets ("*bilan*") in the case of independent workers;
- copy of information contained in the "*fichier national des incidents de remboursements des crédits aux particuliers*" (national register that contains the name of people who had previous difficulties paying their loans).

- **What is the role of estate agents in assisting the tenant in the search for housing? Are there other bodies or institutions assisting the tenant in the search for housing?**

In the real estate sector various types of professionals can be distinguished: "*agent immobilier*", "*administrateur de biens*", "*marchand de biens*", "*vendeurs de listes*", "*promoteur immobilier*". The "*promoteur immobilier*" and the "*marchand de biens*" are

only in charge of selling real estate.

- An “*agent immobilier*” is someone who, on a regular basis, is in charge of interventions and transactions concerning real estate: renting or selling.
- An “*administrateur de biens*” is a manager who exceptionally acts as an intermediary for his customers. One of his missions is to be in charge of the rental management for his clients, which means: looking for tenants, organizing the signature of the lease contract, collecting the rent and the service charges, organizing the termination of the contract (inventory, return of the deposit etc.).
- A “*vendeur de listes*” is someone who sells lists of dwellings for rent to potential tenants. The fees of the “*vendeurs de listes*” are cheaper than that of the estate agencies, but providing a list is their only task. They give contact details of potential landlords, but do not help people to find a dwelling. They do not visit dwellings with their clients, and they do not negotiate with the landlords. Much criticism has arisen, as frequently some of the dwellings of the list are already rented. Some of them were sentenced for misleading advertising or for fraud (in French law: “*escroquerie*”).

The real estate agency can also be in charge of the administration of the dwelling and can represent the landlord for the relationship with the tenant: receipt of payment, ask for repairs, giving notice and renewal of the contract. The landlord gives his approval for the repairs or for any important decision; the agency only informs the tenant about the decision of the landlord.

The contract signed between the agency and the tenant must specify:

- the type of dwellings the clients are looking for,
- the nature of the service provided to the client,
- the price of the service,
- the condition of reimbursement of the client if the service is not provided within a certain period.

If the parties do not sign such a contract, no compensation shall be paid to the agency.

The real estate agent has a duty to check that all the conditions are fulfilled to sign the contract. It is also liable for the specifications contained in the lease contract and for all the obligations of the law, e.g. the technical diagnosis that must be given to the tenant or the respect of the rules concerning decent housing. In case of hidden defects, the agent is liable only if he knew of the defects before the conclusion of the contract.

When the real estate agency prepares the lease agreement signed by the tenant and the landlord, it is a private contract “*acte sous seing privé*”. If one of the parties does not fulfil his obligations, the only option of the other party is to go to court.

A public officer can witness the signature of a lease agreement: a notary or a judicial officer (i.e. bailiff). In such a case, the deed is more secure and there is no need to go to court to obtain the execution of the contract. When a public officer draws up the contract, he delivers to the parties a copy called “*copie exécutoire*”, and this act is directly enforceable. For example, if the tenant does not pay the rent, the landlord can directly contact the relevant judicial officer for the enforcement of the agreement.

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

There are no provisions in the French law concerning blacklisting of bad tenants. The independent administrative body in charge of data protection issues, the *Commission nationale informatique et liberté* (i.e. CNIL, see <http://www.cnil.fr/>) rendered a decision on that point. The CNIL stated that such a list creates a risk of exclusion (See <http://www.cnil.fr/les-themes/conso-pub-spam/fiche-pratique/article/position-de-la-cnil-sur-les-listes-noires-de-locataires/>). Thus, information must be given to the “bad” tenant prior to his inscription in the list. Only professionals in the rental sector are allowed to create a list of bad tenants, and its content must be accessible only to professionals. The CNIL recalled that the law prohibits the listing of people, e.g. it is not allowed to put on the list information concerning injunctions to pay the rent.

2.2. The rental agreement

- **What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?**

Article 3 of the 1989 Act states that the contract must be in writing. It could be an authenticated deed “*acte authentique*” (written by a public officer, a notary or a bailiff) or a private deed (in French: “*acte sous seing privé*”). Each party has a right to ask for a written contract that fulfils conditions of Article 3 of the 1989 Act. If one party refuses to sign a written contract, the lease can be cancelled (in French: “*résiliation*”) and the party who refuses to sign can be condemned to damages. To protect the tenant, the judge can also render a decision that will be considered as the valid contract. The judgment will then contain all the requirements of the 1989 Act. If a notary or a bailiff writes the contract, the fees of writing are divided between the landlord and the tenant.

There is no registration of the contract under the French law.

The fees the tenant and landlord may have to pay are:

- fees of the rental agency (depending on the contract between each party and the agency)
- fees concerning the intervention of a bailiff or a notary (equally divided between the tenant and the landlord)
- fees of the intervention of a bailiff for the inventory (equally divided between the tenant and the landlord).

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

According to Article 3 of the 1989 Act, in the contract, some provisions are mandatory:

- the identification of the landlord (the name or the denomination, the address of his residence or of his headquarters and if there is one, the name and address of his representative),
- the effective date of the beginning of the contract. Most of the time, this date corresponds with the day of the signature of the contract,

- the duration of the contract. As Article 10 of the 1989 Act specifies what is the legal duration of the contract, it is easy to know the duration even if it not written in the lease (3 years if the landlord is a natural person, in French "*personne physique*"; 6 years if he is a corporate body, in French a "*personne morale*"). The mention is in fact important when the parties choose to sign a contract for a longer period, or if the landlord can benefit from Article 13 of the contract, which allows a shorter contract in specific cases (i.e. when a specific event, known in advance and specified in the contract, justifies that the landlord, natural person, rents his dwelling for less than three years),
- the description of the dwelling and annexes (number of rooms, accessories and equipment that belong to the landlord), precision concerning the use of the place (e.g. if the contract is a mixed contract - residence/commercial -),
- the rent level; the payment terms
- the living area has to be mentioned. The 1989 Act does not give precisions concerning the calculation of the rent, but one should refer to Article R.111-2 of the Building and Housing Code.

According to Article 3 of the 1989 Act, some provisions are optional. It means that there is no need to mention them in the contract, but once they are included they are mandatory for the parties.

Where applicable, the method to review the rent annually should be mentioned. If the contract does not include any provision concerning the increase of the rent, the landlord cannot ask for such an increase. When such a provision is included, the rent can only be increased once a year and the law limits the rate (based on a bench mark index).

If the landlord asks for a security deposit, the amount must be written in the contract (maximum one month rent).

Article 4 specifies which provisions are not allowed in a rent agreement ("*clauses abusives*") and are considered as null if ever they were included.

The provisions are (the following contains a translation plus explanation where required):

- a) which requires the tenant to accept visit of the dwelling during public holidays or more than two hours a day during working days, in order to sell or rent the leased premises,
- b) which requires the tenant to insure the dwelling through an insurance company chosen by the landlord,
- c) which requires, for the payment of rent, the automatic debiting on the current bank account of the tenant or which requires the tenant to sign in advance a banker's draft (in French: "*lettre de change*") or a promissory note (in French: "*billet à ordre*"),
- d) which requires the tenant to allow the landlord to collect directly the rent or to have it collected directly from his/her salary in the assignable limit,
- e) which organizes the collective liability of tenants in case of damage to a common element of the rented premise,
- f) which obliges the tenant to agree in advance to reimburse the leasehold repairs based on an estimate made only by the landlord,
- g) which organizes automatic termination of the contract if the tenant does not respect his/her duties for a reason other than non-payment of the rent, the charges, the deposit, or for non-compliance with a ruling of a tribunal which has the force of *res judicata* and which records neighbourhood disturbance,

- h) which authorizes the landlord to reduce or remove service stipulated in the contract without any compensation,
- i) which authorizes the landlord to collect fines if the tenant does not respect the terms of the contract or condominium rules,
- j) which prohibits the tenant to practise political, religious, associative or trade union activities,
- k) which requires the tenant to pay for the establishment of the mandatory inventory, except the case the tenant asked a bailiff to make the inventory,
- l) which states that the contract is tacitly renewed for a duration smaller than the legal duration (i.e. three years if the tenant is a natural person, in French "*personne physique*", six years if the landlord is a corporate body, in French "*personne morale*");
- m) which prohibits the tenant to seek the liability of the landlord or which exempts the landlord from any kind of liability,
- n) which prohibits the tenant to accommodate people who do not usually live with him,
- o) which requires the tenant to pay, when entering the premises, more money than the money for the payment of agency fees (see Article 5 of the 1989 Act) or the deposit (Article 22 of the 1989 Act),
- p) which requires the tenant to pay the cost to send him the rent receipt, or to pay more litigation costs than the ones stated in the procedural law,
- q) which states that the tenant is automatically liable for any damage observed in the dwelling,
- r) which prohibits the tenant from claiming compensation to the lessor when he/she performs work in the dwelling for more than forty days,
- s) which allows the landlord to terminate automatically the lease agreement by a referee which is a judicial process that cannot be challenged.

An inventory (in French: "*état des lieux*") must also be joined to the contract (Article 3 of the 1989 Act). Such a document is realized both when the tenant enters the dwelling and when he leaves. It is realized jointly by the landlord and the tenant or by their representatives (e.g. real estate agency or a specific agency). If a third party is in charge of the realization of the document, the cost is not directly or indirectly paid by the tenant. If for any reason (e.g. refusal of the tenant or of the landlord to sign the document) the document cannot be written jointly, one of the parties can ask for the intervention of a bailiff. The costs, which are fixed by a State Decree, are divided between the tenant and the landlord. Parties are given notice of this procedure at least seven days in advance.

The document describes precisely each room of the dwelling and all the equipment, both fixed and moveable items. For the heating system, the tenant has a right to ask for a change of the inventory during the first month when he starts warming the place. If the heating system does not work properly, the tenant can ask for a change of the inventory to mention its malfunction. Comparing the inventories drawn up when entering the dwelling and when leaving will have an impact on the deposit the tenant is entitled to: the amount of the repairs is deducted from the amount of the deposit. If no inventory is established, the tenant is considered to have received the dwelling in good conditions (See Article 1731 of the Civil Code). The party that refuses to be present during the inventory is not allowed to ask for the application of Article 1731 of the Civil Code.

A technical diagnosis (in French: "*diagnostic technique immobilier*") must also be joined to the rent contract and is composed of three documents. The first one is

called “*diagnostic de performance énergétique*”, which means that an analysis of the energy performance of the dwelling is made. The second one is called “*constat de risque d'exposition au plomb*” and concerns the existence of lead in the pipework. The third diagnosis is the “*état des risques naturels miniers et technologiques*”, which aims to inform the tenant about risks concerning the area where the dwelling is located. These risks can be natural (floods, landslides), mining or technological (industrial, chemical) hazards. Finally, a last diagnosis concerning asbestos has to be made. It does not have to be handed out to the tenant but it has to be available at his request.

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

French law prohibits open-ended contracts (Article 1709 of the Civil Code). Concerning the lease of a dwelling, the 1989 Act specifies two different durations depending on the situation of the landlord. The durations specified by the law are mandatory.

If the landlord is a corporate body (In French: “*personne morale*”) Article 6 states that the duration of the contract is six years. If the landlord is a natural person (in French “*personne physique*”), the duration of the contract is three years.

Article 10 c

renewed an indefinite number of times. There are only a few reasons that allow the landlord to terminate the contract at the end of the lease (see termination of the contract).

If the flat is furnished, the duration is one year or nine months if the tenant is a student (Art. L632-1 of the Building and Housing Code). There is also an automatic right to renewal for the same duration, except when the tenant is a student.

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

Article 3 of the 1989 Act, specifies that the amount of rent and the moment of payment must be indicated in the contract. If the landlord wants to increase the rent annually, he has to add a provision in the contract giving details about the calculation (based on a benchmark index).

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

The Decree 87-712 of 26 August 1987 provides a very precise list of the costs that must be supported by the tenant (see table).

According to Article 1756 of the Civil Code one repair should be added to the list provided by the 1987 Decree: the cleaning of the wells and cesspools, except if there is a provision in the contract saying the contrary. If the tenant does not carry out the repairs or reimburse the landlord who performed them, he can be condemned to pay them and also to pay damages.

	Rental repairs (to be performed by the tenant)
External areas exclusively for the use of the tenant.	<ul style="list-style-type: none"> • a) Private gardens: routine maintenance, including driveways, lawns, ponds and swimming pools, pruning, weeding trees and shrubs; replacement of shrubs, repair and replacement of mobile watering system • b) Awnings, canopies and terraces: removal of foam and other plants. • c) Downspouts and gutters: disgorging ducts.
Openings	<ul style="list-style-type: none"> • a) Sections such as open windows and doors: lubrication of hinges; minor repairs of buttons, door handles and hinges, including replacement of bolts and pins • b) Glazing: rehabilitation of mastics; replacement of deteriorated windows • c) Devices occulting light such as blinds and shutters: lubrication; Replacement including ropes, pulleys or a few blades • d) Locks and security locks: lubrication; replacement of small parts as well as lost or damaged keys • e) Grilles: cleaning and lubrication, including replacement of bolts and pins
Interior parts	<p>a) Ceilings, walls and interior partitions: -cleaning; minor corrections of paint work and tapestries; replacing coating materials such as ceramic, mosaic, plastic, filling holes, or similar made similar repairs;</p> <p>b) Parquet floors, carpets and other floor coverings: -Polishing and vitrification; -Replacement of parquet floor boards and repairs of carpets and other floor coverings, especially in case of stains and holes</p> <p>c) Fitted wardrobes and joinery such as skirting boards and beadings and mouldings: Replacing closet shelves and</p>

	cleats and repairing their closure; attachment fittings and replacement of woodwork.
Plumbing	<ul style="list-style-type: none"> • a) Water mains: disgorging, including replacement of gaskets and clamps b) gas pipelines: current valves, traps and vents maintenance; periodic replacement hoses connection c) Septic tanks, cesspools and latrines: draining d) Heating, hot water and plumbing production: replacement of bimetallic, pistons, membranes, water boxes, piezo ignition, valves and seals of gas appliances; washing and cleaning of radiators and piping; replacement of seals, valves and glands taps; replacement of seals, gaskets, pipes and shower hose, • e) Sinks and fixtures: Cleaning lime deposits, replacement hoses showers
Equipment installations for electricity	Replacement of switches, sockets, circuit breakers and fuses, bulbs, fluorescent tubes; repair or replacement of rods or protective sheets
Other equipment mentioned in the lease.	<ul style="list-style-type: none"> • a) Current and minor repairs of appliances such as refrigerators, washing machine and dishwasher, tumble dryer, cooker hoods, softeners, solar collectors, heat pumps, air conditioning units, individual antennas, taped furniture, fireplaces, windows and mirrors: • b) Petty repairs necessitated by removal of draught-excluder; • c) Lubrication and replacement of seals hoppers; • d) Sweeping ducts and flue gas ducts.

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

If the dwelling is rented unfurnished, the landlord is not expected to provide furniture or appliances. Sometimes the kitchen is equipped with an oven, a fridge, hot plates, but this is not mandatory.

If the dwelling is rented furnished, the landlord is supposed to equip it with the

necessary equipment for a normal daily life. Worthless furniture is not considered sufficient.

- **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)?**

An inventory must be joined to the contract (Article 3 of the 1989 Act). The tenant has a right to demand this inventory if the landlord has not provided one. He is more than advised to do so. If no inventory is made, the tenant is assumed to have received the dwelling in good condition. The tenant can appoint a bailiff to make the inventory; the cost will be shared by both parties. At the end of the contract, a new inventory must be made for the restitution of the deposit.

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

The clauses that must or must not be included are explained in the question concerning the content of the contract.

- **Parties to the contract**
 - **Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?**

There is no provision in the 1989 Act or in the Civil Code concerning people that are allowed to move in with the tenant. The situation is slightly different if the person is not a member of the family of the tenant.

If the person who moved in with the tenant is a member of his family, the right to respect for private and family life as protected by the Article 8 of the European Convention on Human rights can be used. Therefore, the landlord has no right to prevent family members of the tenant to move in with the tenant.

If the tenant is married, Article 1751 of the Civil Code states that the spouses are co-holder of the lease agreement. It means that both spouses have to respect the duties of the tenant and the landlord has to fulfil his obligations toward both of them. In such a case it is obvious that the spouses have a right to live in the rented dwelling even if only one of them signed the rent agreement. The co-ownership of the lease agreement is maintained until the divorce of the couple. Even after one of them moves out, the landlord is entitled to ask him to pay the rent.

The solution is different when the tenant is linked to someone by a partnership (in French: *PACS*, i.e. *Pacte civil de solidarité*). They are not co-owner of the lease agreement. According to Article 515-4 of the Civil Code, the partner of the tenant is only jointly liable for the payment of the daily life needs, except for costs that are obviously too high. It means that the partner may have to pay the rent, if it is not obviously too high considering their income.

The situation of partners and spouses is similar if the tenant did not inform the landlord that he is married or in a partnership. According to Article 9-1 of 1989 Act, in such a case, the document served to the tenant is also valid for the partner or spouse. This person is liable for the non-execution of the obligations of the tenant without being personally served. This provision intends to protect the landlord, as in that case the tenant did not give the information needed. For example, if the landlord wants to give notice to the parties, he needs to serve the notice to all of them, but if

the landlord is not aware of the fact that the tenant is married, he will not know to give the spouse notice and therefore will not do so. Thus, it is fair to consider that if information is hidden from him, the service on the sole tenant is valid.

In case a couple is not married or linked by a partnership, they can both live in the same dwelling but the person who did not sign the contract is not linked to the landlord, i.e. he is not protected by the content of the 1989 Act and has no obligation to pay the rent if the tenant does not.

If the person who moved in with the tenant is one of his friends, this situation can fall under the scope of Article 8 of the European Convention on Human Rights, as the tenant has a right to family life. The moving in of a friend can be considered as belonging to the family life of the tenant, and thus protected for the same reason as the moving in of a family member (spouse or child).

The only provision in the 1989 Act concerning the right to invite people can be found with the article concerning unfair provisions. Article 4,n) of the 1989 Act states that a provision preventing the tenant from accommodating people that are not living usually living with him is null. This article is not applicable when someone wants to move in with the tenant, but it reveals the wish of the legislator to protect the privacy of the tenant. However, there are two limits to the possibility of the tenant to have someone moving in with him. First, the tenant has to respect his obligations, especially his obligation of a peaceful enjoyment of the dwelling (Article 7b of the 1989 Act). Second, the tenant is not allowed to sublet a part of the dwelling, except if he obtains the authorization of the landlord, (Article 8 of the 1989 Act) (see the specific question).

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

The tenant is not obliged to live in the dwelling but he has to furnish the dwelling. The law offers a kind of guarantee to the landlord. Article 2332 of the Civil Code states that the tenant has to furnish the flat so that the landlord can seize the contents if the tenant does not pay the rent or other charges. The lien of the landlord concerns all the movables in the house, including movables that do not belong to the tenant, except if it is possible to prove that the landlord was aware of the origin of these movables when they were put in the dwelling.

Article 14-1 of the 1989 Act states that the landlord can ask the tenant to prove he occupies the dwelling if some reasons make the landlord think that the tenant abandoned the dwelling. If the tenant does not answer to the letter of the landlord, the latter can ask a bailiff to certify that the dwelling is abandoned and if necessary to make a list of its content and to establish its value. If the dwelling is abandoned, the landlord is allowed to bring the dispute before the judges who can declare the termination of the contract and if necessary organize a sale of its content (for example to pay the charges and rent due to the landlord).

- **Is a change of parties legal in the following cases?**
 - **divorce (and equivalents such as separation of non-married and same sex couples);**
 - **apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);**

- **death of tenant;**
- **bankruptcy of the landlord;**

To answer this question, the term ‘tenant’ refers only to the person who signed the lease agreement. Several situations have to be distinguished: the divorce of the tenant, the separation from his partner or from the person he lives with, the situation of students sharing a flat and the death of the tenant.

Article 14 of the 1989 Act	If the tenant abandons the dwelling (in French: “ <i>abandon de domicile</i> ”)	If the tenant dies
Without any condition, the contract continues in the benefit of	-his/her spouse -his/her partner	-his/her spouse -his/her partner
The contract continues if the person was living with the tenant for at least a year at the date of the desertion in the benefit of	-his/her descendant -the person he/she lives with -his/her forbears -people dependant on him	-his/her descendant -the person he/she lives with -his/her forbears -people dependant on him

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

According to Article 8 of the 1989 Act, subletting is in principle not allowed. However, the landlord can give his approval to the tenant. In such a case he must agree to the fact that the tenant sublets his dwelling but also on the price of the rent. The law also specifies that the price of the rent per square meter of living space subleased shall not exceed the price paid by the main tenant. If the main contract terminates, the sub-tenant has no rights toward the landlord, e.g. the sub-tenant cannot obtain an extension of the contract.

Article 8 also states that in case of flat sharing, the 1989 Act is not applicable to the subletting contract. Thus, the provisions of the Code Civil apply (Articles 1709 to 1778 of the Civil Code). The parties – tenant and subtenant – can decide that some provisions of the 1989 Act are applicable, but the tenant can never offer the same protection to the subtenant as a real landlord, as he is not the owner of the dwelling.

The only solution for the landlord if his dwelling is subleased without his agreement is to go to court to seek the termination of the contract. He has to prove that the tenant, by subletting, does not respect his own contract.

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

In case of sale of the premises, the contract binds the new owner, who is not able to terminate the contract before its term expires. The new owner has to send his details to the tenant so that the tenant can pay him the rent (Article 3 of the 1989 Act).

- **Costs and Utility Charges**

- **What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?**
- **Which utilities may be charged from the tenant by the landlord? What is the standard practice?**
- **Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?**
- **Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?**

For provision of utilities, the tenant has to conclude the contracts with the suppliers. Sometimes, for water supply, there is only one contract for the complete building. In such a case, the water is included in the charges that the tenant must reimburse to the landlord.

A statement of charges is sent to the tenant one month prior to the adjustment. The statement shall indicate the different categories of expenditure which the charges are related to and, where relevant, the amount consumed, for example, water and energy. If the dwelling is located in a co-owned building, the statement shall specify how the charges are distributed between tenants. The tenant also has the right to ask the landlord for some clarification.

The means to pay the expenses vary.

The landlord can ask the tenant to pay advances of the charge regularly, e.g. monthly or quarterly, and regularization shall be done every year to adjust the payment to the real expenditure. The landlord can also ask the tenant to reimburse him for the expenses he made and which are included in the list of charge the tenant has to pay. The landlord has to prove to the tenant the expenses he made. The landlord or the manager of the building must keep the bills at the tenant's disposal during one month after sending him the statement. If the tenant has trouble paying the expenses, he can ask the landlord for a delay.

Every year, the landlord shall make what is called a regularization of the expenses. It means that the landlord has to compare the money he received from the tenant for the payment of the service costs to the real expenses. If the tenant paid too much, the landlord has to pay back the difference. If he/she did not pay enough, the landlord can claim for the difference.

The division of the costs between the tenant and the landlord is organized by Decree n°87-713 adopted 26 August 1987. The list of charges is limited and fixed by this decree. Expenses, which are not mentioned in this text, shall be paid by the owner and cannot be charged to the tenant.

	Costs that shall be paid by the tenant
Lifts and hoists	<ul style="list-style-type: none"> • electricity expenses; • operating expenses (periodic inspection, cleaning, biannual review of the cables, technical maintenance visits, administrative cost by the enterprise in charge of the maintenance, technical repairs); • expenses for providing products or small maintenance

	<p>equipment (rags, grease and necessary oils, cabin lighting lamps)</p> <p>expenses relating to minor repairs of the cubicle (change buttons sending door hinges), of the bearings (closes doors mechanical, electric or pneumatic), and fuses</p>
Cold water, hot water and central heating	<ul style="list-style-type: none"> • expenditure related to cold and hot water of all the occupants of the dwelling; • expenditure related to water for routine maintenance of common areas, including purification plants; • expenditure related to water for routine maintenance of outdoor spaces; • expenditure related to goods required for the operation, the maintenance and the water treatment; • expenditure related to energy supply whatever its nature; • expenses related to the operation of general and individual meters and to the maintenance of fume; <p>expenditures for repairing leaks on joints</p>
Individual installations	<ul style="list-style-type: none"> • heating; • hot water production <p>distribution of water in the units (control of the connections, flow rate and temperature, repairs service , replacement joints, flushes)</p>
Common areas for one building or several buildings.	<ul style="list-style-type: none"> • expenditure for electricity; • expenditure for the provision of cleaning products (brooms and bags needed for waste), fumigation and disinfection products; • expenses for the maintenance of the timer (light or door), carpets, rubbish chutes; • expenditure of repairs or maintenance of cleanliness devices such as the vacuum cleaner <p>expenses related to the cost of maintenance personnel</p>
Outdoor spaces	<ul style="list-style-type: none"> • operating and maintenance expenses of the access routes; • operating and maintenance of the parking areas <p>operating and maintenance of the green areas and playground equipment for children</p>
Taxes	<ul style="list-style-type: none"> • tax or fee for garbage collection; • sweeping tax; • sanitation tax

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

There is no mandatory deposit, which means that if there is no provision organizing a deposit in the contract, the landlord does not have any right to ask for a deposit.

There is no provision in the French law concerning what the landlord is supposed to do with the deposit. The landlord can therefore do whatever he wants with it; his only obligation is to reimburse the tenant at the end of the contract. Article 22 of the 1989 Act states that the landlord is not allowed to ask for a deposit if the payment of the rent is supposed to be made in advance for a period of two months or more. For example, if the rent is paid in advance every quarter, the landlord cannot ask for a deposit.

If there is a provision in the contract concerning the deposit, the amount cannot exceed one month of rent. The amount is transferred to the landlord when the lease agreement is signed. It can be transferred either by the tenant himself/herself or by a specific organization. It could be *Avance loca-pass*. This mechanism was created to lend money (without interest) to tenants to finance their deposit. The other option is to obtain help from a special fund created in each department and dedicated to financial issues linked to housing (in French: “*Fond de solidarité pour le logement*”).

- **Are additional guarantees or a personal guarantor usual and lawful?**
- **What kinds of expenses are covered by the guarantee/ the guarantor?**

The landlord can ask the tenant to find someone to act as a guarantor for the payment of the rent, but only in specific cases. The landlord is not allowed to ask for a guarantor if he subscribes a special insurance that can be private or be the “*garantie des risques locatifs*”, guarantee against rental risks, except if the tenant is a student or an apprentice. A system of *garantie loca-pass* exists, but it only benefits to people whose landlord is a corporate body.

If the tenant does not pay the rent or if there are any damages in the dwelling, the insurance will reimburse the landlord. The association APAGL, which means in French “*association pour l'accès aux garanties locatives*”, will organize the reimbursement of the rent by the tenant to the insurance company that paid the landlord.

The guarantor is supposed to pay in place of the tenant when he does not pay the rent, the services cost, or charges that the tenant is supposed to reimburse to the landlord or for repairs in the dwelling.

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

defect and then claims the costs from the landlord)

The first obligation of the landlord is to hand over the dwelling. If there is a delay in the completion of the dwelling, or in case of refusal of clearing and handover by the previous tenant, the landlord is not able to deliver the dwelling. Thus, the landlord is not able to comply with the main obligation of the lease agreement (Article 6 of the 1989 Act).

There is no general definition of what a defect of the dwelling is in the French law. The notion varies from the various obligations of the landlord. Obligations of the landlord are specified at Article 6 of the 1989 Act.

The first kind of defect can be linked to the building. One of the first obligations of the landlord is to deliver decent housing. When a judge considers that a dwelling is indecent, he may oblige the landlord to improve the dwelling, impose a rent reduction and fix damages to be paid to the tenant. If a dwelling is indecent, the tenant has a right to leave without notice.

The landlord also has to deliver the dwelling without any repairs to be made. In the contract, the parties can decide that the tenant will make the repairs and that he takes the dwelling, as it is, "*en l'état*".

However, when urgent repairs must be done, the tenant cannot object to them, according to Article 1724 of the Civil Code. If the repairs take too much time, the rent can be reduced during that time. If the tenant cannot stay to live in the dwelling, the tenant has a right to terminate the contract.

The landlord also has an obligation to offer peaceful enjoyment of the lease object. The landlord must not disturb the private life of the tenant. This obligation stops in case of "force majeure". If the landlord cannot offer the tenant peaceful enjoyment of the dwelling, the contract can be cancelled (full eviction) or the rent is reduced (partial eviction). Parties can also include in the contract a provision stating that the landlord is not responsible for the peaceful enjoyment of the dwelling,

It means that the landlord is also not allowed to change the shape of the rental object. Article 1723 of the Civil code states: "A lessor may not, during the term of the lease, change the form of the thing leased."

The peaceful enjoyment depends on the possibility of the landlord to prevent the event. The landlord cannot be liable for any exposition to noise or any disturbance.

The landlord also has to provide guarantees. He has to guarantee the tenant from the defect of the rental flat (Article 1721 of the Civil Code). He has to ensure that the tenant will be able to use the rental object, even if the defects were not known before the conclusion of the lease agreement. This guarantee is not applicable if the defect is visible for everybody, including the tenant when he visited the dwelling. In that case, we assume he agrees to take the flat with this defect. The parties can exclude the liability of the landlord in the contract, except if the tenant is considered as a consumer and protected as such.

If the landlord is considered responsible, the contract can be cancelled, or the rent reduced and damages given to the tenant. The only thing the tenant has to prove is the dysfunction of the rental object.

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

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

The obligation of maintenance of the dwelling is divided between the tenant and the landlord. All repairs other than those mentioned in the 1987 Decree (see table above) have to be dealt with by the landlord. Even some of the rental repairs must be performed by the landlord – those due to damages “caused by decay, defect, construction defect, unforeseen event or force majeure” (Article 7d of the 1989 Act).

Article 606 of the Civil Code also mentions works the landlord has to deal with. It states that: “Major repairs are those to main walls and vaults, the restoring of beams and of entire coverings; that of dams, breast walls and enclosing walls also in entirety. All other repairs are of maintenance.”

The French *Cour de cassation* (Civ. 3rd 13 July 2005, n°04-137) gives clarifications stating that: “when application of Article 606 of the Civil Code is concerned, maintenance repairs are those that are useful for permanent maintenance of the building while major repairs are those concerning the structure and overall strength of the building.”

The landlord has to organize major repairs, even if they cost more than the price of the rent. He will not have to repair if he has to rebuild and if it is not linked to a lack of previous repairs but linked to “*force majeure*” or fortuitous event. According to Article 6 of the 1989 Act and Articles 1719 and 1720 of the Civil Code, the landlord must do more than the repairs the tenant is not obliged to make. The landlord has to deliver decent housing. The landlord is thus responsible for all damage that occurs and that affects the habitability or the suitability of the house. Then, the landlord must also deliver a dwelling “*in good repair of whatever character. He must, during the term of the lease, make all the repairs which may become necessary, other than those incumbent upon lessees.*” The landlord has an obligation of maintenance of the rental object according to the use written in the contract. When repairs need to be made and the landlord refuses, the tenant has to send him a registered letter to ask him to comply with his obligation. If the landlord does not reply within two months, the tenant is entitled to bring the dispute before the *Commission départementale de conciliation* or the *Tribunal d’Instance*. The judge can force the landlord to make the repair, or to authorize the tenant to make the repairs and to be reimbursed by the landlord, or to award damages to the tenant for disturbance. The tenant may have to pay a part of the repairs that the landlord should pay, if the tenant is at fault.

According to Article 6 d) of the 1989 Act, the parties can decide that the tenant will deal with some of the repairs the landlord is normally supposed to make. The parties may agree on compensation for the tenant and on duration (e.g. the rent will be lower for a limited period of time depending on the amount of work realized by the tenant). In case of early departure of the tenant, a provision concerning the compensation of the tenant shall also be included. Judges are very strict with such provisions and often refuse to make the tenant pay for too expensive of works, such as those concerning the structure of the house or to rebuild the roof.

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

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

The tenant is supposed to take good care of the dwelling and to use it as a “good family man”, “*en bon père de famille*”. It means that he has to be quiet and to peacefully enjoy the use of the rented home. According to Article 7 f) of the 1989 Act, the tenant shall not “transform the premises or equipment rented without the written agreement of the landlord”. One of the issues is the interpretation of this notion of “transformation”. Judges have stated that modification of the structure of the building requires the agreement of the landlord, e.g. to break a wall to have a bigger room, to change the use of a room from a bedroom to a kitchen and from a kitchen to a laundry or to build a swimming pool. On the contrary, the fact to change the colour of the painted surfaces cannot be considered as a transformation, even if it is colourful, except if it is too eccentric and if the landlord cannot rent the dwelling because of this paintwork.

There is no specific provision in the law concerning the changes needed to accommodate a tenant’s handicap. Fixing antennas, including parabolic, can be seen a transformation the tenant cannot make without the agreement of the landlord.

If the tenant does not respect this rule, the landlord can first terminate the contract. At the end of the contract, he can also ask the tenant to demolish the transformation and to rebuild the dwelling as it was previously. The landlord can also decide to keep the dwelling as it was, and the tenant who did not ask for his agreement before the works cannot ask for any financial compensation even if the works is an improvement of the dwelling. Article 7 f of the 1989 Act also allows the landlord to ask the tenant to immediately restore the dwelling if the transformation jeopardizes the proper functioning of equipment or the safety of the premise. It could be the case if the works prevent people from accessing the roof of the building.

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

Article 7 b) of the 1989 Act states the tenant has to respect the intended use of the dwelling (in French: “*destination*”) as it is stipulated in the contract. For example, the tenant has to respect the division residence/professional use when it is a mixed contract.

The tenant is not allowed to do what he wants with the dwelling. He is supposed to take good care of the dwelling and, for example, the alterations he is allowed to make are limited. He also has to respect the neighbourhood, as he can be responsible in case of disturbance. The rules applicable to neighbourhood disturbance are applicable to everybody, regardless of whether the people living in the dwellings are the owners or the tenants. But the landlord can use the inappropriate use of the dwelling as a reason not to renew the contract when it arrives to its end.

A law adopted in 1970 (Act 70-598 of 9 July 1970 modified by Loi n° 2012-387, 22 March 2012) states that the landlord is not allowed to prevent the tenant from having pets in his dwellings. However, the pets may not damage the building or cause

trouble. Since 1999, the landlord can prevent the tenant from having dogs classified as “attack” dogs considered by the French authorities as very dangerous.

The tenant is allowed to have visitors overnight, as the landlord is not allowed to prevent him from inviting people who are not living with him. Such a provision in the contract would be considered as unfair and thus null (See Article 4 n) of the 1989 Act). Such ban can also be considered as an infringement of Article 8 of the European Convention on Human Rights.

The landlord can be responsible if his tenant does not respect the neighbours. The landlord has to give notice to the tenant that he will use all the means he has to prevent the tenant from disturbing the neighbours (Article 6-1 of the 1989 Act).

Considering Article 1728, 1 of the Civil Code, the tenant has to respect the “*destination*” of the dwelling, which means he has to respect the use that the dwelling is made for. If nothing is written in the contract, it is necessary to check the intentions of parties at the moment they signed and the specific circumstances. For example, judges have decided that the tenant did not respect the intended use (in French: “*destination*”) of the dwelling if he lives in a four rooms flat with three wives and twelve children.

To change the destination of the dwelling, the tenant needs the authorization of the landlord. For example, the tenant cannot open a fish shop in his dwelling without the authorization of the landlord. The passivity of the landlord cannot be considered as an approval of the change of the intended use of the dwelling.

The law allows what is called “*clause d’habitation bourgeoise exclusive*”. Such provision prevents the tenant from practising any professional activity, even as self-employed. This kind of provision can also be included in the condominium rules.

3.2. Landlord’s rights

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

In principle, the rent is freely determined by the parties to the contract (Article 17 of the 1989 Act). When the dwelling is an, HLM the determination of the price is different. The price is determined based on a price per square meter (decided by the organization) multiplied by the size of the dwelling.

In some cases, the law regulates the determination of the rent. Article 18 of the 1989 Act organizes a special regime for some areas where the price of the rent is regulated. In practice, it concerns the cities of the 38 conurbations with more than 50,000 inhabitants located in France (for 27 of them) and overseas (11 of them). It means that approximately 40% of the French population is affected by the rent regulation.

Conurbations in France	Conurbations overseas
Amiens, Annecy, Annemasse, Arles, Beauvais, Bordeaux, Caen, Creil, Douai / Lens, Forbach, Fréjus, Grenoble, La Rochelle, Le Havre, Lille, Lyon, Marseille / Aix-en-Provence, Meaux, Menton, Montpellier, Nantes, Nice, Paris, Rennes, Strasbourg, Toulon and Toulouse	Basse-Terre, Cayenne, Fort-de-France, Le Robert, Mamoudzou, Pointe-à-Pitre/Les Abymes, Saint-André, Saint-Denis, Saint-Louis, Saint-Paul and Saint-Pierre.

In these areas, when a new lease agreement is signed, if the landlord did not make any improvements in the dwelling, the last rent paid by the previous tenant can only be increased based on a fixed rate benchmark index for rent (In French: “*IRL*” for “*Indice de référence des loyers*”).

Otherwise, according to Article 17 d) of the 1989 Act, to calculate the increase of the rent the landlord needs:

- the current rent,
- the last value of the benchmark index for rents for the reference quarter mentioned in the contract, and
- the value of the benchmark for rents for the same quarter of the previous year.

If the lease does not mention what the quarter of reference is, the last benchmark index for rents known when the lease started serves as a reference.

The calculation of the new rent is as follows:

$$\begin{aligned} & (\text{current rent} \times \text{benchmark rents for the reference quarter}) \\ & \div \\ & \text{value of benchmark for rents for the same quarter of the previous year} \\ & = \\ & \text{new rent} \end{aligned}$$

- **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?**
 - **Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?**
 - **Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?**

There is no provision concerning the question of whether the landlord is allowed to keep a set of keys of the rented apartment. If the law does not prohibit this, it is not illegal. But regarding all the obligations the landlord has, he cannot enter the dwelling without the agreement of the tenant. If he does so, he does not respect his contract and can be subject to cancellation of the contract or be ordered to pay damages to the tenant.

Moreover, he can be sentenced on a criminal basis. People who enter the dwelling of someone else without authorization or with violence can be sentenced to

pay a fine of 15,000 EUR and to one year imprisonment (Art. 226-4 of the Criminal code).

The landlord is allowed to enter the dwelling once or twice per year to check the condition of the premises. He needs to make an appointment with the tenant, and he cannot enter without the agreement of the tenant. In case of termination of the contract, the tenant has to allow the landlord to come in to show the premises to people who are interested in renting it.

The landlord is never allowed to enter the dwelling and change the keys by himself. He has to follow the procedure organized by the law (see question 4.2).

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

Termination of the contract by the tenant is organized by Articles 12 and 15, paragraph I of the 1989 Act. The tenant can leave at any time, subject to certain formal requirements. The tenant has to inform the landlord three months in advance. In specific cases, the notice is only one month: if the tenant finds his first job, if his/her job is transferred, if he/she loses his job, if he finds a new job after losing the previous one, if the tenant is more than sixty years old and his health justifies his move, if the tenant benefits from social allowance (in French: *Revenu minimum d'Insertion* or *Revenu de solidarité active*). There is no condition in the 1989 Act concerning the localization of the new job.

The term starts when the landlord receives the letter. The tenant has to pay the rent during the full term, one or three months, except if he reaches an agreement with the landlord or if another tenant enters the dwelling before the end of the term.

To inform the landlord that he wants to leave, the tenant has to send him a registered letter with acknowledgement of receipt or to have the notice served by a bailiff. There is no provision in the law concerning the content of the letter, but if the tenant benefits from a shorter notice, he should inform the landlord. Once the tenant sends his notice, he has to leave the dwelling at the end of the term, except if he reaches an agreement with the landlord to stay or to extend the notice.

4.2. Termination by the landlord

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

the end of the rental term?

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

According to Article 15 of the 1989 Act, the owner is only allowed to give notice to the tenant at the end of the lease agreement, and he can only give notice for three reasons.

The first one is the decision of the landlord to use the dwelling as his main residence or to have one of his relatives live in the dwelling. The relatives concerned can be: the spouse, the person with whom he cohabits for over a year, the person he lived in partnership with (i.e. PACS, *Pacte civil de solidarité*), if the pact was signed at least one year before the date of termination, and their respective ancestors and descendants.

The notice must be served to the tenant either by registered letter with acknowledgment of receipt or by a judicial officer or hand-delivered against signature. This notice should be sent to the tenant at least six months before the end of the lease. It must specify the reasons why the landlord does not continue the lease and include the names and addresses of the beneficiaries. If this information is not written in the notice, the notice is not valid, and the lease is renewed for the same period (3 or 6 years).

After vacating the dwelling, the tenant may contest the reasons given by the landlord but he has to prove that the house is not occupied by the person or persons mentioned in the letter, or that the dwelling is empty, or that the property is used as a second home. He can then ask the district court to award him damages for the prejudice suffered.

The second reason for a landlord to terminate the lease is the sale of the dwelling. The premise can be sold during the contract or at the end of the contract. The owner can sell the property occupied during or at the end of the lease without informing the tenant. As the conditions of the contract are not changed for the tenant, the lease terms stay the same and the new landlord cannot evict the tenant. There is no duty of information from the seller to inform the tenant. The new owner must only give his details to the tenant, and he will also refund the deposit when the lease terminates.

The owner may also decide to sell the property to the tenant or to a third party. In this case, the notice must be sent to the tenant at least 6 months before the end of the lease by registered letter with acknowledgment of receipt or issued by a judicial officer, or hand-delivered against signature. The letter of termination shall indicate the selling price and the method of payment. It must describe precisely what is sold. If the landlord does not comply with these obligations, the notice is not valid. After receiving the letter, the tenant has two months to respond. If he is not interested, he must leave the place at the end of the lease.

Third, the landlord is also allowed to give notice for legitimate and serious reasons. There is no definition of that concept in the law. In general, the fact that the tenant does not respect his obligation is sufficient. For example, if the tenant does not pay the rent or if he does not respect his obligation of peaceful enjoyment of the dwelling. In this case, the landlord shall inform the tenant 6 months before the end of the contract by registered letter or through the service by a bailiff. The letter must explain the reason of giving notice.

The landlord can terminate the contract following very severe procedures of eviction when the tenant does not pay the rent and service costs.

Article 15, paragraph III of the 1989 Act organizes a special protection for tenants who are over seventy years old and whose income is less than a certain limit (1.5 less than what is called in French: "*salaires minimum de croissance*"). The landlord cannot refuse to renew the contract, or if so he has to provide the tenant with another dwelling, which complies with the needs of the people and is located not far from the location they live. This rule is not applicable if the landlord himself is over sixty years old or if his own income is less than a certain limit (1.5 less than the minimum wage, i.e. in French: "*salaires minimum de croissance*"). The ages of the tenant and landlord are checked at the term of the contract and their income at the time of the service of the notice.

If the dwelling is a social housing, there is no termination at the term of the contract. The only option for the HLM is to ask the tenant to leave if the tenant does not fulfil his obligation. The HLM organization can bring the case before the judge if the tenant refuses to leave. If the contract contains a provision saying that the tenant must leave if he does not respect his obligations (payment of the rent and service costs, peaceful enjoyment of the dwelling), judges only check if the tenant respects these obligations. If there is no such a provision, judges also check if the attitude of the tenant who does not respect his obligations and the punishment are commensurate.

If the tenant does not respect his obligation to pay the rent and the annex charges, the landlord can terminate the contract. If there is a provision for this in the contract, the landlord does not need to bring the case before a judge.

As soon as the tenant stops paying his rent, the landlord shall contact the insurance company (if there is one) or the guarantor before asking for the termination of the contract. If the tenant receives allowance for the dwelling (in French: "*allocation logement*"), the landlord can contact the administrative organization (in French: "*Caisse d'allocation familiale*") to receive the payment directly.

If the rent is not paid, the landlord can start a procedure to obtain the termination of the contract in application of the clause contained in the contract (Articles L412-1 to L412-6 of the Code of civil procedure of execution). He must serve through a bailiff a demand of payment (in French: "*Commandement de payer*") giving the tenant a delay of two months to pay. The tenant has a delay of two months to take the dispute to court to ask for more delay or to apply to the special fund (in French: "*Fond de solidarité pour le logement*"). If there is a guarantor, the bailiff has to notify him of the demand for payment. After two months – or after the delay awarded by the judge if the tenant already took the case to court – the landlord must go to court for a summary judgement stating that the lease is terminated and ordering the expulsion.

If there is no provision in the contract, the landlord can directly bring the dispute before the judge to ask for the termination of the contract and the expulsion of the tenant. The landlord can ask the tenant before taking him to court, but he is not obliged to do it. The court checks if the fault of the tenant is serious enough to justify the termination of the lease and his expulsion. If the judge considers that the tenant is able to pay, he can set a payment deadline. Otherwise, the judge has to terminate the contract. After the judgement, the landlord has to appoint a bailiff to send to the tenant an order to leave the dwelling within two months. The tenant can go to court (in French: "*Tribunal de grande instance*") to ask for a delay. The Tribunal can grant a delay from one month to a year depending on the situation of the tenant (age, health, family situation). If a notary wrote the lease agreement, there is no need for

the landlord to go to court, as the contract is directly enforceable. If the tenant does not pay the rent, the landlord can directly appoint a bailiff for the execution of the contract.

The eviction of the tenant requires the intervention of a bailiff. The bailiff can announce his visit but this is not mandatory. He can come to the house any day between 6 AM and 9 PM. If there is no protest of the tenant the bailiff writes minutes in which he lists the furniture of the tenant, indicates the place where they are and demands the key of the dwelling. If the tenant refuses to open the door, the bailiff writes minutes in which he explains the failure and asks for the intervention of the police. If the tenant is absent, the bailiff can only enter the dwelling if a police authority and a locksmith accompany him. He informs the tenant by posting an announcement on the door stating that he may no longer enter the dwelling. According to the law, during the winter from 1 November to 15 March (extended to 31 March by the new law adopted in 2014), no eviction is allowed. This period is called “*trêve hivernale*” in French. Due to a very hard winter, in 2013 the term was extended until 31 of March. The landlord is allowed to start a procedure during the winter period, but he will have to wait until the end of the term for the execution. The exception does not apply if the procedure is against a squatter, if an administrative act states that the building is dangerous (in French: “*arrêté de péril*”) or if the eviction of the tenant is accompanied by a rehousing corresponding to the need of the tenant.

4.3. Return of the deposit

- **Within what timeframe and under what conditions does the landlord have to return the tenant’s security deposit?**
- **What deductions can the landlord make from the security deposit?**
 - **In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?**

The landlord must return the deposit within two months after the establishment of an inventory. This inventory will list the difference in condition of the dwelling between the time of the start and the end of the contract.

When the contract terminates, the deposit is given back to the tenant within a maximum of two months after the return of the key by the tenant. The amount corresponds to the amount given by the tenant when entering the flat minus the amount due to the landlord. The tenant does not receive any interest. The reimbursement by the landlord at the end of the lease is calculated using the inventory but also taxes or charges the landlord has to pay in the name of the tenant. The landlord has to give a justification for the amount deducted from the initial amount.

The landlord may take into account only damage and not ordinary use. There is no precise provision considering the inventory of furnished flats.

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?**

The first option in case a dispute arises between landlord and tenant is to bring the dispute before a “*Commission départementale de conciliation*” (Article 20 of the 1989 Act) composed of representatives of landlords’ associations and of tenants’ associations. The Commission is competent for disputes concerning rent, service charges, repairs, deposit, and inventory of fixtures. The goal of the Commission is to reach an agreement between the landlord and the tenant. The Commission gives a recommendation within two months. If no agreement is reached and one of the parties decides to go to court, the recommendation of the Commission can be transmitted to the judge (“*Tribunal d’instance*”). To start the procedure in front of the Commission, the landlord or the tenant just has to send a registered letter. Parties can be assisted by the person of their choice, e.g. a professional association or a lawyer. It is not mandatory to be represented by a lawyer. The proceeding in front of the Commission is free of charge.

The parties can always decide to go to court, as it is not mandatory to resort to such Commission.

The competent tribunal for matters related to lease agreements concerning dwellings is the *Tribunal d’instance* (Article R221-38 of the *Code de l’organisation judiciaire*, i.e. Code of the Judicial Organisation) where the rental property is located (Article R221-48 of the *Code de l’organisation judiciaire*).

This tribunal is competent in first and final instance to handle disputes of a maximum of € 4000 (Article L321-2-1 of the *Code de l’organisation judiciaire*). In such a case no appeal is possible, but parties can go to the *Cour de cassation*. If the demands exceed more than € 4000, parties have the right to challenge the decision of the *Tribunal d’Instance* in front of the *Cour d’appel*. Eventually, they can also challenge the decision of the *Cour d’appel* in front of the *Cour de cassation*.

In case of discrimination issues, the tenant may turn to the *Défenseur des droits* since 1 May 2011 to have his rights protected. This institution can give recommendations that help to bring the dispute to court. It has investigative power, and members of the team can go on-site to check whether there is discrimination. This institution also has the power to set up “mediation”, threatening the “guilty” party to publish its recommendation. The power of the “*Défenseur des droits*” has a symbolic aspect and is more efficient towards companies or corporate bodies than towards natural people. Corporate bodies may fear the impact of such negative recommendation on their image and may accept a compromise in order to avoid publicity.

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?**

The first condition concerns the financial means. The incomes of the candidate to such a dwelling shall be situated in a range fixed by the government. Currently a person living alone should earn per year between € 12,662 and € 29,924 in Paris and its suburbs and between € 11,006 and € 26,016 in other regions. For a family of four

or for one person with two people dependant on him, the income per year should be between € 29,618 and € 69,998 in Paris and municipalities adjacent, between € 27,245 and € 64,396 in Paris' suburbs and between € 21,457 and € 50,440 in other regions. The incomes that are taken into account are those declared to the tax authorities two years before the application or the incomes declared the previous year if they decreased more than 10% between these two years. The reduction must be proved. As an exception, only the resources of the candidate are taken into account if he is currently divorcing. A statement from the judge certifying no-conciliation between the spouses was reached or by a statement explaining urgent measures. Likewise, an exception applies for the partner in a civil partnership (in French: *PACS*, i.e. *Pacte civil de solidarité*) whose separation was declared in court proceedings. Finally, an exception is also made for the victim of violence within the relationship, proven by a registered complaint to the police or to a judge.

Secondly, the HLM are only available for French people or for foreigners in possession of a valid residence permit on French territory. The HLM are in priority allocated to people with disabilities or to families with a dependent person with disabilities, to people whose application is urgent.

The first step of the process to obtain an HLM is a pre-registration. The applicant sends the documents required (an official form of demand, a copy of an identity card or equivalent, a document certifying the legality of his stay in France, a copy of his tax document with mention of his income). Then the candidate is given a registration number and a certificate of registration and a list of the documents he must produce later on in the process.

The second step is the inscription itself. The candidate has to produce the official form of demand plus the document mentioned in the previous stage of the process with his registration number. A special committee makes the decision. The waiting period can vary considerably from one department to another depending on the dwelling stock and the number of requests. Once the candidate is allocated a dwelling, he has a minimum of ten days to accept or to refuse. If he refuses, he has very little chance of receiving a better offer, as there are numerous candidates on the waiting list. If the offer is totally inappropriate, the candidate can challenge the decision in front of the "*Commission de médiation*" or use the mechanism created by the DALO Act. If the application is rejected, the candidate receives a letter with the decision. He cannot challenge this decision. If after a certain time (fixed in each department by the Prefect) the candidate does not receive an answer, he can apply to the "*Commission de médiation*" to claim his right to a social dwelling.

The application for a social housing that is not satisfied must be renewed every year, eventually through a dedicated website; otherwise, the request is automatically cancelled. Once the candidate is allocated a dwelling, his request is removed. This is also the case if the candidate sends a letter to withdraw the application for an HLM.

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

The tenant has an obligation to insure the rented premises (Article 7, g of the 1989 Act). This insurance covers at least all the risks the tenant is liable for, such as fire or water damages. The tenant can buy insurance that covers more potential damages. The landlord has a right to include in the contract a provision stating that the contract terminates if the tenant does not prove he has insurance for the dwelling. The landlord cannot choose the insurance company instead for the tenant.

- **Are legal aid services available in the area of tenancy law?**
- **To which organizations, institutions etc. may a tenant turn to have his/her rights protected?**

There are no specific legal aid services available in the area of tenancy law. The tenant is advised to contact associations.

The French umbrella organization for tenants, both in the social and the private rental sector, the '*Confédération Nationale du Logement*' (CNL). This organization is a member of the International Union of Tenants (IUT). Apart from the CNL, there are four other organizations that represent tenants in negotiations.

All the information about the CNL can be found on their website:

<http://www.lacnl.com/>

See also in this list, associations that provide useful information concerning lease contracts:

Agence nationale pour l'information sur le logement:

<http://www.anil.org/>

Association jurislogement:

<http://www.jurislogement.org/>

Fondation Emmaus:

<http://www.emmaus-france.org/>

For students: centre national des oeuvres universitaires et étudiantes

<http://www.cnous.fr/>

GERMANY

Tenant's Rights Brochure

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1. Introductory information

- Introduction: The national rental market
 - Current supply and demand situation

The German housing market is characterized by a high share of rental dwellings, which are owned mainly by private persons. According to the most recent numbers from the *Zensus 2011*, there are ca. 41.3 million dwellings in Germany. About 52% of them are used for rental purposes (EU-average ca. 29%), and 64% of these rental dwellings are owned by private persons. The share of owner-occupied dwellings amounts to about 42% of the whole dwelling stock (EU-average ca. 71%).

Although the total number of the population is expected to decrease (from 80.5 million in 2012 to about 79 million in 2025 and to about 67.5 million in 2060), it is believed that the number of households will still be increasing in the next few years. From 1992 to 2012, the number of households in Germany increased by 14% to 40.66 million, and will account for 41.1 million in 2025. The assumption that the number of households will still increase although the population decreases, results basically from the upward tendency to live in one-person households. In 1992, one-person households constituted 33.7% of the overall household number, and this percentage amounted to 40.5% in 2012. For the future, it is estimated that one-person households will even account for 42.5% of all households. In order to be able to supply the current as well as the upcoming demand, 183,000 new dwellings will have to be built annually until 2025. In 2012, about 205,000 new dwellings were constructed. According to estimates, there is currently a shortage in Germany of 250,000 dwellings. The cities with the most massive housing shortage are Munich (-31,000 dwellings), Frankfurt (-17,500 dwellings) and Hamburg (-15,000 dwellings).

With regard to rental dwellings, the average useful floor area amounts to 69.9 square metres, and every tenant has on average a useful floor area of 38.7 square metres, with the result that these dwellings are inhabited by an average of 1.8 persons. Concerning the amount paid for rent, the average monthly rent excluding utilities (*Nebenkosten*) is EUR 376.16 or EUR 5.43 per square metre and the average rent including utilities is EUR 522.21 or EUR 7.56 per square metre. The financial burden, which is considered as the proportion of expenses for housing in relation to the household income, amounts to about 22.5% (EU-average ca. 16.9%).

- Main current problems of the national rental market from the perspective of tenants
 - Brokerage fee: in the big cities, dwellings are frequently offered by estate agents who are hired by the landlord, but have to be paid by the tenant
 - Rental market in the metropolises: finding an affordable rental dwelling is difficult in the metropolises like Munich, Frankfurt or Hamburg
 - Shortage of social dwellings: the demand for social dwellings exceeds its supply considerably; currently, there is a small number of newly constructed dwellings
- Significance of different forms of rental tenure

- Private renting

About 92% of all rental dwellings are rented out on the private rental market, i.e. the landlord is free to determine the amount of rent at the time of concluding the tenancy contract, although this is subject to some limits under criminal law. During the tenancy, however, he is bound to the reference rent customary in the locality (*ortsübliche Vergleichsmiete*) regarding increases in rent.

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

The remaining 8% are assigned to the rental tenures with a public task. This category can be defined as housing that is on the one hand subject to rent control which the owner has to accept in return for subsidization and on the other hand is subject to access restrictions which limits the prospective tenants. Only tenants who cannot secure adequate accommodation for themselves because of their low income or other financial circumstances are entitled to this kind of rental housing. However, the commitments of the landlord are limited in time, and after a time limit expires, the rents can be raised to market level and the housing unit can become part of the private rental sector. The subsidization is not restricted to special types of owners so that all kinds of owners can become landlords of housing with a public task.

- General recommendations to foreigners on how to find a rental home

In general, it is advisable for a foreigner who does not speak German very well ask a native speaker to come along to the viewing of a dwelling in order to avoid possible communication problems or misunderstandings. In particular, guest students should contact the international office or the student services of the university they will visit. Foreigners who come to Germany for work may ask their employer or colleagues how to find an apartment or whether the company even offers special dwellings for their workers (*Werkwohnung*).

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

- Amount of rent reduction: there are reference points based on comparable court cases, but it depends on the individual case; therefore, no legal certainty regarding the amount of rent the tenant may reduce because of a material or legal defect of the dwelling
- Clauses on cosmetic repairs: the wide case law regarding the effectiveness of clauses on cosmetic repairs creates legal uncertainty (over three quarters of all terms concerning cosmetic repairs are void)
- Operating costs: every second invoice of advance payments for operating costs apportioned to tenants is incorrect
- Parabolic antenna: the right of the tenant to install a parabolic antenna is still controversial
- Use of standard contracts by the landlord or estate agent: the provisions of the contract are often not geared to the particular tenancy; furthermore, the

provisions are frequently formulated to the advantage of the landlord; therefore, the tenant needs legal knowledge or legal advice in order to know whether the contractual provisions are effective or not

- *Important legal terms related to tenancy law*

German	Translation into English
<i>außerordentliche Kündigung</i>	termination without notice for a compelling reason
<i>Betriebskosten</i>	operating costs
<i>Bruttomiete/Warmmiete</i>	gross rent (including utilities)
<i>Eintrittsrecht</i>	right of succession
<i>Indexmiete</i>	indexed rent
<i>Kauf bricht nicht Miete</i>	purchase is subject to existing leases
<i>Kautio</i>	security deposit
<i>Kleinreparatur</i>	minor maintenance work
<i>Kostenmiete</i>	rent that is required to cover the current expenses
<i>Maklergebühr</i>	brokerage fee
<i>Mieterhöhung</i>	rent increase
<i>Mietspiegel</i>	list of representative rents
<i>Nebenkosten</i>	utilities
<i>Nettomiete/Kaltmiete</i>	net rent (excluding utilities)
<i>ordentliche Kündigung</i>	termination of an open-ended tenancy
<i>ortsübliche Vergleichsmiete</i>	reference rent customary in the locality
<i>Schönheitsreparatur</i>	cosmetic repair
<i>Staffelmiete</i>	stepped rent
<i>Untermiete</i>	sublease/subletting
<i>Vermieterpfandrecht</i>	landlord's right of lien
<i>vertragsgemäßer Gebrauch</i>	use in conformity with the contract

<i>Wohnberechtigungsschein</i>	qualification certificate for social or subsidized housing
<i>Zeitmietvertrag</i>	fixed-term tenancy

(An official English translation of the current German Civil Code (tenancy law: sections 535-580a) is available under http://www.gesetze-im-internet.de/englisch_bgb/).

2. Looking for a place to live

2.1. Rights of the prospective tenant

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

According to the broad non-discrimination rule enshrined in the General Act of Equal Treatment, discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation is prohibited. This rule must be considered by landlords in every phase of the tenancy. However, different treatment in the rental housing sector is exceptionally allowed in order to create or achieve a stable structure of citizens, a balanced settlement structure, and balanced economic, social and cultural circumstances.

- 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?

Information concerning the personal status or the solvency of the potential tenant can be gathered lawfully if they are essential for the tenancy, meaning that the landlord must prove a legitimate interest. Legitimate questions are for example the identity of the potential tenant, his civil status and the number of children. Questions about the solvency are justified as well, if they concern the profession and income of the potential tenant. In that case, the tenant is obligated to provide information truthfully. Otherwise the landlord has a right to dispute the contract or to avoid his declaration of will.

If the question is however illegitimate, especially because of infringing personal rights, the tenant has a “right to lie”. In that case, the landlord cannot rescind the contract. This applies to detailed questions about civil status, sexual orientation, the intention to have children or the state of health of the potential tenant’s health.

- 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)?

Landlords are not allowed to demand a fee for the negotiation of a tenancy contract over their own residential space, and even estate agents are prohibited from

demanding such a fee from a prospective tenant before a contract has been entered into. Only after the conclusion of a tenancy agreement as a result of his negotiation, they may claim a brokerage fee.

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

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

- interviews either with the potential tenant (especially about his solvency), his last landlord or his employer; the last landlord is not obligated to issue his previous tenant a certificate that there are no rent arrears (*Mietschuldenfreiheitsbescheinigung*), but the tenant may demand receipts for received rent payments,
- demanding submission of a salary statement from the prospective tenant,
- common solvency check of the General Credit Protection Agency (*Schutzgemeinschaft für allgemeine Kreditsicherung*, SCHUFA) with the tenant's consent or a self-disclosure of the tenant,
- inspection of lists of debtors maintained by the local courts or other credit agencies,
- requiring a bank reference is permissible only in the case of commercial tenants.

Data checks on the prospective tenant, particularly those concerning financial status can in any case be gathered lawfully with the consent of the tenant. The consent is necessary because of the fundamental right to informational self-determination and the right to data protection. Tenants are not obligated to give their consent to a solvency check, but it is often demanded and therefore "helpful" for the landlord in the tenant selection process.

- What is the role of estate agents in assisting the tenant in the search for housing? Are there other bodies or institutions assisting the tenant in the search for housing?

In order to find a dwelling, the tenant may hire an estate agent who assists him in the search, especially by proposing and executing viewings of dwellings corresponding to the tenants' needs. If a tenancy contract is entered into as the result of the negotiation of the estate agent, the latter may demand at most the amount of two monthly net rents (*Netto-/Kaltmiete*) excluding utilities plus value added tax.

Apart from estate agents, the tenant can be assisted by municipalities provided that he is searching for social housing, as well as by housing cooperatives (*Wohnungsbaugenossenschaft*) if he wants to rent a cooperative dwelling (*Genossenschaftswohnung*). Regarding the accommodation of students and guest students, most universities have special institutions, like the student services or the international office, which provide assistance in searching a dwelling or room especially in student hostels.

If the tenant wants to find a dwelling on his own, he can search for housing advertisements in newspapers or on the bulletin board of the particular city/town

(dwellings are usually offered by the landlord himself) or he may search on the common internet portals:

- www.immobilienscout24.de
 - www.immonet.de
 - www.immowelt.de
 - www.wg-gesucht.de (for flat-shares)
- } dwellings are often offered by 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?

There are blacklists of “bad tenants” in Germany. These lists or databases are compiled by different companies (e.g. Deutsche Mieter Datenbank KG (DEMDA) www.demda.de; SAF Forderungsmanagement GmbH <http://www.immobilienscout24.de/de/anbieten/serviceleistungen/bonitaetspruefung.jsp>; Supercheck GmbH www.privatevermieter.de; Vermieterschutzkartei Deutschland-GmbH & Co. KG (VSK) <http://www.vermieterschutzkartei.de>; Zentralverband der Deutschen Haus-, Wohnungs- und Grundeigentümer e.V. - Haus & Grund Deutschland <http://www.hausundgrund.de/mietersolvenzcheck.html>) which are subject to restrictions based on data protection rights. The companies obtain data from the local courts and their lists of debtors as well as from credit institutions, energy utilities, debt collection agencies and landlords. Landlords who want to request information about a tenant must register and pay a fixed rate for each disclosure. Even tenants themselves have the possibility to get a self-disclosure from these companies or the SCHUFA.

For landlords, there are no real “blacklists”, but there are similar mechanisms. The tenant may for example obtain information about the landlord from the local tenant association. Apart from that, a website exists on which tenants can rate landlords as well as neighbourhoods (<http://www.wowirwohnen.de/leitbild/>). The landlord is not in fact named on the website, but the exact address of the dwelling is indicated. If the landlord is represented by an estate agent, tenants should further find out whether or not the estate agent is a member of the German Real Estate Association (*Immobilienverband Deutschland*, IVD), since a membership of the IVD confirms the agent as a professional and qualified service provider.

2.2. The rental agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?

The tenancy agreement does not have to be in writing to be valid. However, if the tenancy shall be temporary for a period longer than one year, the contract has to be laid down in written form. The same applies in case of a tenancy unlimited in time, but under exclusion of the right to terminate the tenancy ordinarily for a period of

more than one year. Otherwise, the tenancy is deemed to be concluded for an indefinite period of time. Apart from that, the contract is still effective, but it is advisable to always conclude a tenancy in writing to avoid problems of proof. In order to satisfy the requirement of written form, the essential conditions of the contract must follow from the tenancy agreement, in particular the rent amount, the parties, the period and the rental property.

Ordinary tenancy contracts do not have to be registered at the *Land* register. There is no fee in terms of a public charge for the conclusion of a tenancy contract in Germany, but the landlord is not prohibited from agreeing to charge the tenant a fee for the conclusion of the tenancy contract (*Vertragsausfertigungsgebühr*). The limit of this contract fee constitutes the coverage of costs, since the landlord may not demand commission for his own dwelling. Unreasonable, excessive fees illegally violate principles of good morals and can therefore be reclaimed from the landlord. Courts have held that a fee of about EUR 50 is cost-covering and therefore reasonable. An agreement on a fee for the conclusion of the contract within the frame of standard business terms is however always ineffective.

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

A tenancy contract must at least include and describe the parties, the rental object, the contract duration (and as the case may be a reason for the limitation on duration), the amount of rent and finally the residential purpose, which is especially necessary in case of a mixed-use-tenancy. Apart from these mandatory minimum requirements, the contract should also provide information on the beginning of the tenancy, the size of the dwelling, the scope of use, provisions on keeping of animals, contracts of supply, the allocation of costs for utilities and the duty to carry out cosmetic repairs as well as to bear the costs for minor damages.

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

Tenancy contracts can be concluded either for a definite or an indefinite period of time. In Germany, tenancy contracts are mainly concluded for an indefinite period of time, since, to the protection of tenants, the landlord must prove one of the following three reasons for the fixed-term tenancy: (1) the landlord wishes to use the premises as a dwelling for himself, members of his family or his household; (2) the landlord wishes to eliminate the premises or change or repair them so substantially that the measures would be significantly more difficult as a result of a continuation of the lease; (3) the landlord wishes to rent the premises to a person obliged to perform services, for example an employee of the landlord. The landlord must notify the tenant in writing of the reason for the fixed-term when the agreement is entered into. Otherwise, the tenancy is deemed to be concluded for an indefinite period of time. The same applies if a reason for the fixed-term tenancy is not met. The tenant may also demand an unlimited extension of the tenancy if the reason ceases during the tenancy period. But if the reason for the fixed-term is met and does not cease to apply, the tenant has no claim to contract extension.

Tenancies on holiday homes, dwellings inhabited by the landlord himself or public houses are exempted from this restriction as well as residential space in student or other hostels for young people.

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

Regarding the rent payment, the contract must first distinguish between the net rent as consideration for the use of the dwelling, the utilities which are included in the gross rent (*Brutto-Warmmiete*) and those for which the tenant himself has to conclude a contract of supply. Furthermore, the tenant must know when and in which intervals he has to pay the rent. Usually, the tenant has to pay the rent in advance on a monthly basis. If the contract does not provide information on the due date, the rent is, according to tenancy law, to be paid at the beginning – but at the latest on the third working day – of each payment period the parties had agreed. Since Saturday is not a bank business day, this day is not considered as a working day in the context of calculating the payment deadline. Finally, the contract must contain information on how the rent is to be paid. Usually, the parties agree that the tenant has to pay the rent via bank transfer, often in form of a standing order.

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

According to German tenancy law, it is up to the landlord to maintain the rented property in a suitable condition as well as to bear all the costs resulting from necessary maintenance works and repairs. Nevertheless, it is lawful and usual to shift the costs for minor maintenance works (*Kleinreparaturen*) and for cosmetic repairs (*Schönheitsreparaturen*) to the tenant.

Cosmetic repairs include renovation works such as paperhanging, painting or whitewashing the walls and ceilings, painting the floors, radiators including tubes, inner doors as well as the windows and insides of exterior doors. Usually, kitchens and bath rooms with showers have to be renovated every three years; toilets, corridors, halls, living and sleeping rooms every five years; and ancillary rooms e.g. storage rooms every seven years. Nevertheless, the scope of the duty to renovate depends primarily on the degree of the real wear and tear. Therefore, a fixed schedule in a tenancy agreement is ineffective. But if the tenancy contract provides a flexible schedule using the words “regularly”, “usually” or “in general”, the assignment of cosmetic repairs is effective. The same applies to clauses according to which the tenant is obliged to pay the costs for cosmetic repairs proportionately in case of commenced but not expired renovation periods. If the tenant must however pay these costs on the basis of inflexible periods, such a clause would be void. Clauses committing the tenant to pay the costs for cosmetic repairs according to an estimate of a professional painter are ineffective as well. This applies also to clauses according to which the tenant is obliged to carry out cosmetic repairs at his own expense by craftsmen.

Minor maintenance works include however only those parts of the dwelling which the tenant uses directly and often, for example repairing small damage to the installed

hardware for electricity, water and gas, to the equipment for cooking and baking as well as to the locks of doors and windows. An assignment to the tenant is effective, if the clause determines a ceiling for every single repair and also for all minor repairs within a year. The costs the tenant shall bear for a single repair may not exceed an amount of EUR 75 up to EUR 100, while the costs for the whole year may not amount to more than 8% to 10% of the annual rent. Furthermore, the tenant may not be obliged to carry out the maintenance works on his own.

Provided a clause on the assignment of cosmetic repairs or minor maintenance works is ineffective, the contents of the tenancy contract are determined by the statutory provisions with the result that the landlord remains responsible.

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

According to the building regulations, a dwelling must have at least one habitable room, one toilet, one bathtub or shower and a kitchen or a kitchenette, i.e. the technical requirements for the installation of a kitchen suffice. Apart from that, it depends on the tenancy agreement whether and which furnishings the landlord has to provide. In the case of a tenancy on a furnished apartment, the landlord usually provides the main furnishings, like kitchen furnishings, a bed or bed couch, a wardrobe and a desk.

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

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

- Any other usual contractual clauses of relevance to the tenant

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

- clause on the provision of a security deposit
- clause on the apportionment of operating costs
- clause on the assignment of cosmetic repairs or minor maintenance works
- clauses on the prohibition to keep domestic animals or to smoke inside the dwelling
- clause on the right of the landlord to inspect the dwelling
- clause on the exclusion of the tenant's right to give ordinary notice

- 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.)?

Spouses, civil partners, parents and children of the tenant are allowed to move into a dwelling together with the tenant. Permission on behalf of the landlord is not necessary, since taking close family members into the dwelling falls within the scope of appropriate use. The same applies to domestic servants and nursing staff. Nevertheless, the tenant has to inform the landlord that he intends to take family members into the dwelling. Cohabitees and other family members like brothers and sisters of the tenant are however subject to approval.

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

Based on the tenancy contract, the tenant is entitled, but not obligated, to live in the dwelling. As long as he still takes care of the dwelling, the landlord has therefore no legitimate reason to terminate the tenancy contract based on the tenant's failure to occupy the dwelling.

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

In case of divorce, a former spouse who acquires the matrimonial home as a consequence of divorce becomes party to the tenancy which was entered into by the other spouse or both. The same applies with regard to civil partners. According to family law, the spouse shall get it that is more dependent on using the matrimonial home than the other spouse, especially taking into account the best interests of the children living in the household and of the circumstances of the spouses. However, the landlord has an extraordinary right to terminate the contract provided that there is a compelling reason in the person of the entering spouse.

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

If the dwelling is rented as a flat-share, the German courts infer from such a tenancy that the landlord has to accept the change of several members. Consequently, he has to exclude the right to change the members or to include a clause on their succession in the tenancy agreement, in order to avoid possible unfavourable legal consequences regarding the constant exit and entry of tenants.

- death of tenant;

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

three months within one month after obtaining knowledge of the death of the tenant. As far as there is no other tenant, specific persons who maintained a joint household together with him at the time of demise, like spouse, civil partner, children or life partner (in this order), have a right of succession. If any of these persons do not object, the landlord is committed to continue the tenancy with this person, provided he is not entitled to an extraordinary right of termination due to a compelling reason in the person of the successor. In case the tenancy is not continued with one of these persons, it has to be continued with the heir, who is as well as the landlord entitled to terminate the lease extraordinarily within one month. The persons with whom the tenancy is continued are liable together with the heir as joint and several debtors for obligations incurred up to the death of the tenant.

In all these cases described, the new tenant enters into the tenancy contract under the same conditions as the former tenant.

- bankruptcy of the landlord;

If the landlord is bankrupt and the dwelling is sold through a compulsory auction, the new owner enters into existing tenancies and takes over all the rights and duties of the former landlord. But unlike in the case of a general sale of residential space, the new owner has a special right to terminate existing tenancy contracts within the statutory notice period of three months.

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

Principally, the tenant is not entitled to permit a third party use of the rented property without the consent of the landlord, particularly not to sublet it. This applies in any case to the subletting of the whole dwelling. If the tenant wants however to sublet just a part of the residential space, for example one room, he may demand permission from the landlord provided that he acquires, after entering into the tenancy, a justified interest in permitting a third party to use part of the dwelling. Personal or economic interests of the tenant can cause such a justified interest, as for instance the need of a financial adjustment due to income reduction or unemployment. The mere wish to admit someone else is however not sufficient.

In case of a legitimate interest, the landlord may refuse approval only if (1) there is a compelling reason in the person of the third party; (2) the residential space would be overcrowded or (3) the landlord cannot for other reasons reasonably be expected to permit third-party use. A compelling reason is assumed if the landlord fears serious disturbance of the domestic peace based on concrete indications or if he has a personal animosity with the subtenant. But the decision whether or not to permit the sublet may especially not be based on the solvency of the subtenant, since it causes a tenancy just between the subtenant and the main tenant and not with the landlord. Further, the determination of when a dwelling is regarded as overcrowded depends on the circumstances of the individual case. In general, each person needs at least nine square metres and children less than six years of age should have at least six square metres. Provided the landlord can only be expected to permit third-party use with a reasonable increase in rent, especially with regard to utilities, he may then make permission dependent on the tenant agreeing to such a rent increase.

If the third party moves in without the permission of the landlord, the sublease contract is nevertheless effective and the landlord has no claim to the rent which the main tenant charged the subtenant, because the subletting does not affect the landlord's legal position. However, he is entitled to terminate the main tenancy without notice after an unheeded warning notice, but giving notice is unjustified when the landlord has to accept the subtenant.

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

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

If the dwelling is disposed of by the landlord, the acquirer of the residential space enters into existing tenancies and takes over all the rights and duties of a landlord that the seller used to have. Provided the acquirer does not perform his duties, the landlord is liable for damages in the same way as a surety. Therefore, the sale of the dwelling does not change the position of the tenant.

Special protection exists with respect to tenants in the case residential space has been recently converted into condominiums (*Eigentumswohnung*). If apartment ownership has been established after the tenant was permitted to use it and the dwelling is sold to a third party, then the acquirer may invoke a legitimate interest (personal needs or prevention of making appropriate commercial use) only after the end of three years after the disposal. This security of tenure is only applicable to the disposal of apartment ownership that has been established after the handover of the dwelling. Therefore, tenants who have already rented a condominium instead of a rental apartment do not enjoy this special protection.

- 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?

Under German law, utilities mean primarily operating costs (*Betriebskosten*). They are defined as the costs that are incurred from day to day by the owner as a result of the ownership or of the intended use of the building, the outbuildings, facilities, installations and the land. These running costs include on the one hand basic utilities like the costs for the supply and the consumption of water and heating and on the other hand additional utilities like the real estate tax, the charge for sewage water as well as the costs for the maintenance of the heating system, for street cleaning, waste disposal, house cleaning, disinfestations, garden maintenance, lighting for

shared parts of the building, chimney cleaning, lifts, caretaker, insurance and benefits in kind and performances rendered by the owner.

The costs for utilities may be distributed according to the consumption, the size of the dwelling, per capita or per housing unit. If the parties have not agreed on a certain method, operating costs are to be apportioned in proportion to the floor space. However, if the residential building is equipped with a central heating and water supply system, the costs for heating and warm water must always be distributed according to the consumption of the tenant. Other operating costs depending on the reported consumption or causation by the tenant shall be also distributed according to consumption, as far as such technical requirements are available, for example regarding waste disposal.

Whether the landlord or the tenant must conclude the contracts of supply of water, heating and electricity depends on the contractual agreement as well as on the respective supply system, since there is no legal regulation. As a general rule, it is always the tenant who concludes the contract if the costs for the supply and consumption can be distributed according to his consumption (e.g. because the dwelling is supplied by a self-contained heating system and has its own water meter). With regard to the supply of electricity, it is almost always the tenant who concludes the contract with the power company (except for cases in which the owner supplies the dwelling by means of renewable energies like solar power), since most of the dwellings have their own electric meter.

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

According to German tenancy law, the landlord must bear all costs to which the rented object is subject. However, the parties may agree that the tenant is to bear the operating costs. As already mentioned above, operating costs include the real estate tax, the charge for sewage water, the costs for the supply and the consumption of water and heating (provided the landlord concludes the contracts of supply) as well as the costs for the maintenance of the heating system, for street cleaning, waste disposal, house cleaning, disinfestations, garden maintenance, lighting for shared parts of the building, chimney cleaning, lifts, caretaker, insurances and benefits in kind and performances rendered by the owner. The costs of administration, maintenance and restoration however are not apportionable. Usually, the parties agree that the tenant has to bear the apportionable operating costs. The costs for the supply and consumption of electricity are however not regarded as operating costs. Since almost all dwellings in Germany have their own electric meter with the result that the tenant concludes the contract of supply, there is anyway no need for allocation.

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

As already mentioned above, the costs for street cleaning and waste collection are regarded as operating costs and may be therefore apportioned to the tenant. Other public services such as road charges for instance are however not allocatable.

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

It is lawful to shift condominium costs, such as costs for house cleaning, disinfestations or for a caretaker, onto the tenant, since these costs are defined as operating costs that may be borne by the tenant. Other costs concerning the administration, maintenance or restoration of the condominium are not apportionable.

- Deposits and additional guarantees

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

In Germany, it is common practice that the parties agree on a security deposit for the performance of the tenant's duties. It may amount at most to three months' rent excluding operating costs. Provided the parties agree on several security deposits, their total amount also may not exceed this limit.

If the deposit is to be provided in the form of a sum of money, the tenant is entitled to pay in three equal monthly instalments. The first instalment is due upon commencement of the tenancy, while the other instalments become due together with the subsequent rent payments. A deviating agreement to the disadvantage of the tenant is ineffective. If the tenant is in default to pay the security deposit in the amount of two months' rents, the landlord may terminate the tenancy with immediate effect.

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

The landlord must invest a security deposit provided in form of a sum of money with a banking institution at the usual rate of interest for savings deposit and with a notice period of three months. Because of this duty to invest the deposit, the landlord often requires the tenant to open a savings account on his own and to put it in pledge for the landlord's benefit. Alternatively, the parties may also agree on another form of investment. In either case, the investment must be made separately from the assets of the landlord, usually in the form of a trust account, and the tenant is entitled to the income. The duty of the landlord to pay interest on the deposit does not however apply to residential space in a student hostel or a hostel for young people.

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

Usually, the parties agree that the tenant must provide the security deposit in the form of a sum of money. Additionally or as an alternative guarantee, it is also lawful to agree on a pledge of claims or movable things as well as on the provision of a reasonable surety (*Bürge*). In either case, the limit of three months' rent must be observed. A surety as a personal guarantor is often required by the landlord if the prospective tenant has only low-income due to education or study. Then, the landlord usually demands the parents of the tenant to stand surety.

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

The security deposit serves as a guarantee for all claims of the landlord arising from the tenancy. It is precisely not supposed to be an advance rent payment, so that the tenant is not entitled to stop paying the rent before the tenancy ends. In case of social or subsidized housing, an agreement on a security deposit is only valid if it is intended for ensuring claims for damages regarding the dwelling or forborne cosmetic repairs.

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)?

Under German tenancy law, a defect is defined as every adverse deviation of the actual condition from the contractually agreed condition, which impairs or negates the suitability of the rented dwelling. Such impairment can be based either on a material or on a legal defect. The latter exists in particular if the tenant is fully or partially deprived by a third-party right of use of the rented dwelling. A material defect is especially assumed if a warranted characteristic, as for instance the provision of a kitchen, is lacking or later ceases, as well as if the dwelling is mould-infested or humid in general. Noise from a building site and noisy neighbours are considered as material defects of the dwelling only if the noise exceeds the limits of reasonableness. Thus, a defect is especially assumed in case of noise due to extensive construction works at the neighbouring plot, as well as in case of noisy disputes during the night time in the dwelling next door, but not in the event of general noise caused by children.

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

Principally, all claims and rights of the tenant against the landlord due to defects of the dwelling require that the tenant did not know of the defect when entering into the tenancy contract or at the time of acceptance. Provided he remains unaware of the defect due to gross negligence, he has these rights only if the landlord fraudulently concealed the defect. Furthermore, the tenant is obligated to notify the landlord immediately if a defect comes to light during the tenancy period. Otherwise, he is entitled neither to reduce the rent nor to demand damages. Rather, the tenant is liable to the landlord for damages incurred by the failure or delay to report. Finally, the landlord is not subject to any claims due to a defect which is imputed solely to the sphere of the tenant.

Provided these requirements are met, the tenant is entitled to a rent reduction. For the period when suitability of the dwelling is negated, the tenant is exempted from paying the rent, while he has to pay a reasonable part of the rent as far as suitability is merely reduced. Concerning this, only a defect which substantially reduces suitability can cause the legal consequence of rent reduction. A defect is regarded as trivial if it is easy to recognize and to remedy and its removal entails only low costs. The amount of rent reduction is calculated on the basis of the gross rent and usually expressed as a percentage.

Apart from rent reduction, the tenant may also demand damages if (1) a defect exists when the tenancy contract is entered into, regardless of any fault by the landlord; (2) a defect arises later due to a circumstance that the landlord is responsible for or (3) the landlord is in default in remedying a defect. In the latter case as well as if an immediate removal of the defect is necessary to maintain or restore the state of the dwelling, the tenant may remedy the defect himself and demand reimbursement of the necessary expenses (section 536a (II) BGB). In order to place the landlord in default, the tenant has to give a warning notice in addition to the notice of defect. The tenant may demand damages notwithstanding the right to rent reduction. Instead of demanding damages and reimbursement of expenses, the tenant may set off these claims against the landlord's claim for rent. Alternatively, he may also exercise a right of retention in relation to such a claim. In both cases, the tenant has to notify the landlord in text form of his intention at least one month prior to the due date of the rent.

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

One of the primary duties of the landlord is to maintain the rented property in a suitable condition for the whole tenancy period. Therefore, the landlord is principally responsible for all kinds of maintenance works and repairs. But as already mentioned above, it is lawful and usual to include clauses in the tenancy contract, according to which the tenant is obligated to bear a portion of costs for minor maintenance works as well as to carry out cosmetic repairs. Provided the contract contains such clauses, the landlord is obliged to carry out repairs which are defined as neither cosmetic repairs nor as minor maintenance works (e.g. which entails costs of more than EUR 100 per single repair).

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

Whether or not the tenant may replace the rent payment by a performance in kind depends primarily on the provisions in the tenancy agreement. Apart from that, the tenant has a statutory right to this effect in so far as he is entitled to set off a claim for reimbursement of expenses against the landlord's claim for rent. A claim for reimbursement requires that the tenant had remedied a defect either because the landlord was in default in remedying the defect or because an immediate remedy was necessary to preserve or restore the state of the rented property. Furthermore, the tenant may also have a claim for reimbursement if he has carried out for instance

necessary renovation works or repairs which correspond to the landlord's interests and will, but to which he has not been instructed by the landlord.

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

With regard to changes necessary in order to accommodate a handicapped person, the tenant may demand the approval of the landlord for structural changes or other installations required to make the use of the dwelling or access to it fit for the needs of the disabled. The landlord may only refuse approval if his interest in maintaining the rented dwelling or building unchanged outweighs the tenant's interests. Furthermore, the landlord may make his approval dependent upon payment of a reasonable additional security deposit for restoration of the original condition. Consequently, the tenant must bear not only the costs of the structural alterations, but also the costs of the restorations works.

- Affixing antennas and dishes

In general, tenants are not entitled to fix a parabolic antenna without the permission of the landlord. However, if a foreign tenant cannot gain access to TV channels in his native language or of his home country even by using cable television, he is, pursuant to his right to inform himself without hindrance from generally accessible sources, allowed to install such an antenna without permission. To this extent, the fundamental freedom of information outweighs the landlord's property right. The interest of a foreign tenant to be informed about the events in his home country is not lessened if he lives in Germany for many years or even if he has German citizenship. Furthermore, the tenant may not be referred to newspapers or the internet in order to inform himself. However, some courts have recently held that the possibility to receive TV channels via internet should be considered within the weighting, since it is nowadays comparable to TV. Therefore, it remains to be seen if foreign tenants will be permitted in the future to install a parabolic antenna as often as in recent years.

The possibility for a German tenant to claim permission for the installation of such an antenna is however *a priori* more limited: He has to prove a higher need for information, for example due to his profession, which cannot be satisfied through other media sources, like the internet, cable or terrestrial television.

Provided the landlord has to tolerate the installation of a parabolic antenna, he has nevertheless still the right (1) to determine the place where the antenna shall be fixed, (2) to be indemnified from all costs and (3) to demand a deposit for the costs of a removal. If the tenant is not however entitled to install such an antenna, the tenant uses the dwelling in breach of contract and the landlord may after an unheeded warning seek a prohibitory injunction.

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

Without the landlord's permission, the tenant is principally not allowed to carry out physical alterations affecting the structure of the residential building, even if these measures lead to an improvement on the condition of the dwelling. This includes e.g. the refurbishment of bathrooms, the installation of new heating systems as well as the renewal of floors. Only in the case of minimal structural alterations or if refusal of approval on part of the landlord would be due to other reasons contrary to the principle of good faith and trust, would the tenant have a claim to permission. This applies especially to alterations that are reversible with little trouble or that can be restored easily, like repainted walls, dowels or nails.

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

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

- producing smells

Producing smells belongs to the ordinary use of residential space. But to the extent that smells cause an unreasonable stench and originate from dirt and uncleanness in the dwelling, other tenants of the residential building are entitled to a rent reduction, and the landlord may terminate the tenancy. Smoking, not in an excessive way, belongs also to the contractual use of residential space. Therefore, it is principally not possible for the landlord to terminate the tenancy due to the fact that the tenant smokes inside the dwelling. Recently, however, a court has upheld such a termination, since the smoke led to an unreasonable odour nuisance that posed a risk to health of the other tenants of a multiple dwelling. Regarding compensation because of discolorations or other damage due to nicotine, the tenant is only liable if smoking caused a deterioration of the dwelling that cannot be removed by aesthetic repairs.

- receiving guests over-night

As a general rule, tenants may receive guests as often and as much as they want to, also over-night. Only in exceptional cases may the landlord ban a guest of the tenant from the dwelling, for example if this person has disturbed the domestic peace several times. The tenant is even entitled to receive guests for a period of several weeks not needing the permission of the landlord. But in the case that the visit lasts

over a period of three months, it is assumed that the accommodation of the guest is permanent. Then, the tenant may demand permission for the subletting from the landlord. However, this does not apply to spouses or children of the tenant.

- fixing pamphlets outside

Whether or not the tenant is entitled to fix a pamphlet in the window or at the house front depends essentially on its content and presentation. Furthermore, the tenant's freedom of expression has to be weighed against the landlord's property right as well as against the rights of the other tenants. Considering this, courts have held that the tenant should be in principle allowed to fix posters outside, even if its content is political. But as far as such a poster causes a disturbance of the domestic peace, it has to be removed.

- small-scale commercial activity

Commercial use of a dwelling rented solely for residential purposes still falls under the term "habitation" as long as the professional activities are exercised in a way that they do not emerge to the outside. Thus, offices or shops with active customer traffic are contrary to contract and do not have to be tolerated by the landlord without any prior agreement. However, if the effects on the rental object and on other tenants are not beyond the scope of usual residential use, the landlord is obligated to permit the commercial activity.

3.2. Landlord's rights

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

Hitherto, a system of rent control has applied only to tenancies concerning housing with a public task. In that case, the landlord may only demand a rent that is required to cover the current expenditures (*Kostenmiete*) and well below the market level. However, after an average period of about fifteen years, these dwellings pass into the free market, and landlords are then permitted to increase the rent up to the market level.

With regard to the private rental market, the introduction of a rent control system is part of the coalition agreement of the new Federal Government but not yet regulated by law. After the elections for the German Federal Parliament, the *Bundestag*, the new governing parties agreed during the coalition negotiations on a "Package for affordable Building and Housing". Accordingly, the amount of rent in case of new tenancy contracts may not exceed 10% of the reference rent customary in the locality.

Apart from that, a rent control exists under general civil law as well as criminal law. Under criminal law, the landlord commits an administrative offence by demanding a rent that exceeds the customary rent for comparable dwellings by more than 20% in times of a limited supply of housing accommodation. If the landlord however demands a rent in excess of 50% of the rent charged for comparable dwellings, he commits even a criminal offence. If the parties have agreed on such an excessively

high rent, this agreement is partially void under general civil law. The tenant may therefore claim restitution regarding paid excessively high rents. Since the rent agreement is only partially invalid, only the excessive amount can be claimed back. Prospectively, the tenant will have to pay a permissible rent instead of the excessive rent, which anyhow still exceeds the level of the customary rent. Apart from the partially void rent agreement, the rest of the tenancy contract remains effective.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?

Regarding increases in rent, the landlord may either include a clause on future changes in the amount of rent in the tenancy agreement or demand a higher rent during the tenancy period.

Future changes in the amount of rent may be agreed only as a stepped rent or as indexed rent. A stepped rent is an automatic increase clause by which the rent is fixed in varying amounts for specific periods of time. Each amount of rent or increase must be indicated as a monetary amount in the written contract. If the clause only indicates the increase per square metre or as a percentage, the agreement on the stepped-rent is void, since the amount of increase is not transparent enough for the tenant. The rent must remain unchanged on each occasion for at least one year and further unilateral increases are excluded during the period of stepped rent. An index oriented increase clause is however a written agreement by which the rent is determined by means of the price index for the cost of living of all private households in Germany. The price index is computed by the Federal Statistical Office (*Statistisches Bundesamt*) and available at: https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/Preise/Verbrauch/erpreisindizes/Tabellen/_VerbraucherpreiseKategorien.html. As well as in the case of a stepped rent, the rent must remain unchanged for at least one year while an indexed rent is applicable, except for increases because of modernization or changes in operating costs. An increase in rent up to reference rent customary in the locality is however completely excluded. If the indexed rent changes, the landlord must indicate the change in the price index as well as the rent (or the increase in rent) in the individual case as a monetary amount in a written declaration. The revised rent must be paid at the commencement of the second month beginning after receipt of the declaration.

The ordinary form of rent increase during the tenancy period in order to compensate inflation or to increase profit is the increase in rent up to the reference rent customary in the locality. Such an increase is allowed if the rent has remained unchanged for fifteen months at the time the increase is to occur and can be therefore made at the earliest one year after the most recent rent increase. Then, the rent may not be raised within three years by more than 20% or even 15% in regions which can be determined by the federal states. To date, the capping limit of 15% is applicable in Berlin, Hamburg and many cities in Bavaria. According to the adopted coalition agreement of CDU and SPD, the federal states shall be prospectively legitimated to

reduce the capping limit for regions with a tight rental market to 15% within four years instead of three. However, rent increases due to renovation measures or changes in operating costs are not taken into account with regard to the period of fifteen months as well as to the capping limit. In case the capping limit is not observed, the demand to increase the rent is not entirely void but is capped to the admissible extent.

The landlord may also increase the rent if he has carried out modernization measures. Then, the increase of the annual rent may not amount to more than 11% of the costs spent on the modernization. According to the coalition agreement of the new Federal Government, it shall be reduced to 10%. Finally, the rent may be increased due to changes in operating costs. In that case, the landlord must observe the principle of economic efficiency and may demand an adjustment only to a reasonable amount.

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

Apart from the ceilings of 20% or 15% for the increase in rent up to the reference rent customary in the locality and the cap of 11% because of modernization measures, the maximum lawful amount of rent is determined by the mentioned criminal provisions, i.e. not more than 20% of the customary rent charged for comparable dwellings in times of a limited supply of housing accommodation or 50% of the rent charged for comparable dwellings.

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

The landlord has to declare and to justify all types of unilateral rent increases to the tenant in text form. With regard to an increase in rent up to the customary level in the locality, the declaration must state one of the possible references for the justification of the increase. Usually, the landlord justifies such rent increase by referring to the list of representative rents (*Mietspiegel*), to the extent that the city where the dwelling is situated has one (<http://www.mietspiegelportal.de/>). It is formed from the usual payments that have been agreed or that have been changed in the last four years in the municipality or in a comparable municipality for residential space that is comparable in type, size, furnishings, quality, location, and energy quality and furnishing. If the landlord wants to increase the rent because of modernization measures, the declaration must provide the calculation of the increase based on the incurred costs. Further, an increase in rent because of changes in operating costs requires that the basis of the apportionment is referred to and explained in the declaration.

In general, the tenant owes the unilaterally increased rent from the beginning of the third month after receipt of the demand. However, in the case of an increase in rent up to the customary level in the locality, the tenant has to approve the increase. Nevertheless, if the tenant does not grant his approval by the end of the second month after receiving the declaration although all requirements like the period of fifteen months or the capping limit are met, the landlord may sue for it within three additional months. If, however, the tenant does not approve the rent increase explicitly, but pays the increased rent without any reservation, he grants his approval at least impliedly. The number of unreserved payments that is required to assume

such an approval ranges between one or two and five to six times. Apart from that, the tenant has a special right to terminate the tenancy contract within two months after receipt of the declaration of the increase if the landlord asserts a right to a rent increase. Then, the tenancy ends after three months, and the rent increase does not take effect.

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

Considering the constitutional protection of the tenant's right of occupancy as well as of the inviolability of home, tenants have the right to be left alone in their rented dwelling. Therefore, the landlord is only allowed to enter the dwelling if he has (i) a concrete and legitimate reason, (ii) announced his intention beforehand and (iii) obtained the tenant's consent. Otherwise, he commits the criminal offence of trespass.

Reasons which entitle the landlord to enter the dwelling are for example the implementation of maintenance or modernization measures, the reasonable suspicion of a breach of contract by the tenant, the intention to sell the dwelling and to show it to prospective buyers or tenants as well as the inspection in order to avert imminent dangers. The tenant has to be informed at least twenty-four hours in advance and the inspection should take place at an acceptable time (from 10:00 a.m. to 1:00 p.m. and 3:00 p.m. at the latest to 8:00 p.m.).

Whether the landlord above is entitled to inspect the dwelling periodically without any reason is controversial. While some courts concede landlords the right to inspect the dwelling in intervals of one to two years, other courts deny such a general right on the grounds that periodic inspections are not necessary, since the tenant is obliged anyhow to inform the landlord about defects or dangers.

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

The landlord is obliged to hand all keys over to the tenant in order to enable him to use the rented dwelling without any disturbance. Especially, he may not withhold a key for no apparent reason. If the landlord enters the dwelling by means of an own key, the tenant can terminate the tenancy without notice.

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

The landlord is not entitled to lock the tenant out of the rented dwelling, even if he could terminate the tenancy due to arrears of rent. In case the landlord nevertheless replaces the lock, the tenant is not obliged to pay the rent for as long as he is not able to use the dwelling. Beyond that, the tenant may require possession to be restored.

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

The landlord has, for his claims arising from the tenancy, a statutory right of lien (*Vermieterpfandrecht*) over the things brought upon the dwelling by the tenant. This right may not be asserted for future compensation claims and for rent for periods subsequent to the following years of the tenancy. Furthermore, it does not extend to the things that are not subject to attachment. Objects exempted from attachment are especially things serving the tenant's personal use or his household as well as food, fuel for heating and cooking, and means of lightning required for four weeks by the tenant and his household members.

The right of lien is extinguished upon the removal of the things, provided that the landlord knows about the removal or has not objected to it. The tenant may also release his things from the right of lien by provision of security. If the landlord wants to enforce his claim to grant possession of the tenant's things, he must go to court or he can make use of his limited right of self-help. Accordingly, the landlord is on the one hand entitled to prevent the removal of the things that are subject to his right of lien. On the other hand he may take possession of these things if the tenant moves out. Since most of the tenant's things are exempted from attachment and the realization of pledges is relatively complicated and often not productive, the landlord's right of lien is of little importance for practice.

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?

If the tenancy is entered into for an indefinite period of time, the tenant can give ordinary notice. The notice period amounts to three months and is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter. Agreements on deviating deadlines and notice periods are excluded, but the parties are free to agree on a shorter notice period for a termination on part of the tenant. As against the termination by the landlord, the tenant does not need a justification for giving notice and the notice period remains constant regardless of the duration of the tenancy. The aim of this regulation is to ensure the mobility of tenants. Nevertheless, it is possible to exclude the tenant's right to give ordinary notice up to four years by a corresponding agreement, provided that the landlord's right to termination is excluded for the same period.

- 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 is able to terminate the contract before the agreed date if he can prove a compelling reason. Then, the tenancy ends with immediate effect. This kind of termination may not be excluded and is subject to both unlimited and limited in time tenancy contracts. In general, a compelling reason is deemed to obtain if the party giving notice cannot be reasonably expected to continue the lease until the end of the notice period or until the lease ends in another way, principally because of a

fundamental breach of contractual obligations. Certain examples for compelling reasons that justify a termination without notice are enumerated in the national tenancy law. Accordingly, the tenant can give immediate notice if (1) he is not permitted the use of the rented property in conformity with the contract, in whole or in part, in good time, or is deprived of this use; (2) the dwelling is in such a condition that its use entails a significant endangerment of health or (3) the landlord permanently disturbs the domestic peace. Examples of a significant endangerment of the tenant's health are mildew infestation in the dwelling to a substantial extent. However, in the case that the compelling reason consists in the violation of an obligation under the tenancy, the notice of termination is permitted only after an unheeded warning notice, unless such a warning notice obviously shows no chance of succeeding.

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

In case the tenant wants to move out prior to the expiry of the statutory notice period, for example due to a new job in another city, landlords often agree with it on condition that the tenant can propose a suitable and solvent prospective tenant, who is willing to move in soon.

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)?

If the landlord wants to terminate an open-ended tenancy contract, he may give ordinary notice provided he can prove a justified interest. This restriction does not apply to tenancies on holiday homes, dwellings inhabited by the landlord himself, public houses, residential space in student or other hostels for young people, since these types of tenancies are excluded from the security of tenure.

A justified interest exists in particular if (1) the tenant has culpably and non-trivially violated his contractual duties; (2) the landlord needs the premises for himself, members of his family or of his household or (3) the tenancy contract prevents the landlord from making appropriate commercial use of the premises. Notice of termination for the purpose of increasing the rent is however explicitly excluded.

(1) Violations of contractual duties by the tenant are for example use in breach of contract, default in payment in general, payments not on time, unapproved subletting, as well as noise disturbance and defamation of the landlord or other tenants. In any case, the tenant has to violate his duties culpably and non-trivially, which with regard to default in paying the rent would require that the tenant is in arrears with an amount of at least one monthly rent. A prior warning notice by the landlord is not necessary.

(2) Termination due to personal needs requires that the landlord can prove actual need for him or one of his family or household members. For instance, family members in this sense include *inter alia* parents, children, brothers and sisters, grandchildren, parents-in-law as well as sons- or daughters-in-law and even nieces and nephews. It is not necessary that the family member lives in the same household

as the landlord, but if the landlord wants to terminate the tenancy in order to allow a person other than a family member to move into the dwelling, this person must necessarily be a member of his household. An effective notice of termination requires further that it is based on a reliable plan for the future of the person who wants to move in. Provided the landlord has another suitable dwelling in the same house or housing complex, which is available for rent, he is furthermore obligated to offer the tenant this dwelling as replacement accommodation. Termination for personal needs is finally regarded as an abuse of rights if the landlord could have foreseen his needs at the time of concluding the tenancy contract. However, this applies only in so far as notice is given within the first three years of the tenancy.

(3) Ordinary notice of termination is furthermore allowed if the tenancy contract prevents the landlord from making appropriate commercial use of the premises. The landlord must have the intention to use the premises differently, for example by selling the house or the dwelling, by demolishing the residential building in order to use the plot of land in another way, by dividing a large dwelling into small ones or by executing fundamental refurbishment measures. The possibility to attain a higher amount of rent by renting the residential space to others may not be taken into account in this context. In any case, the intention to use the premises in another way has to be based on comprehensible and reasonable considerations. Additionally, it is required that the landlord would suffer substantial disadvantages by continuing the tenancy contract.

The ordinary notice of termination is subject to a period of notice of three months. It must be given at the latest on the third working day of a calendar month to the end of the second month thereafter. The notice period is extended for the landlord, by three months in each case, five and eight years after the tenant is permitted to use the residential space. For tenancies on dwellings where the landlord lives in the same building it can be extended up to twelve months. Giving valid reason of notice usually requires that the landlord specifies the reason in a notice of termination, which has to be in writing and shall contain a reference to the tenant's right of objection.

- Must the landlord resort to court?

Provided the tenant accepts the notice of termination and vacates the dwelling at the end of the tenancy period, there is no need for the landlord to resort to court. Only if the tenant does not fulfil his obligation to return the rented property and to deliver it vacated, i.e. clear of contributed things, the landlord must submit an action to vacate the dwelling to the local court which lies within the district where the immovable property is situated.

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

In case notice has been given to terminate an open-ended tenancy for ordinary reasons, the tenant may object to the notice of termination and demand continuation if termination of the tenancy would be a hardship for him or his family that is not justifiable even considering the justified interest of the landlord. In particular, advanced age or serious diseases of the tenant are considered as such a hardship to the extent that they would make removal impossible. Additionally, a hardship is also assumed if appropriate substitute residential space cannot be procured on reasonable terms. The tenant must declare the objection in writing to the landlord at the latest two months prior to the date the tenancy is to be terminated.

Provided all these requirements are met, the tenancy is continued as long as it is appropriate. To the extent that an agreement between landlord and tenant cannot be reached, the duration and the terms under which the tenancy is continued are determined by a judge. The decided duration usually amounts to between six months and a maximum of three years. Upon expiry of this period, the tenant may demand a further continuation of the tenancy only due to unforeseen circumstances. However, if it is uncertain from the beginning when the circumstances causing the hardship are expected to cease, the tenancy may be continued for an indefinite period of time.

In addition to objecting to the notice of termination, the tenant may also request during the court proceeding to be allowed to stay for a reasonable additional period of time. The time limit to vacate the dwelling can be extended, but may not amount to longer than one year in total. Tenancies on holiday homes, on residential space in student or other hostels for young people, dwellings inhabited by the landlord himself or public houses are exempted from this protection from eviction as well as from the possibility of objection. Beyond that, the tenant has another chance to avoid or to delay eviction by filing another request. Accordingly, the court may reserve, prohibit or temporarily stay the measure of compulsory enforcement, provided that eviction would entail a hardship that violates principles of good morals. Regarding this extension, the court is not bound to a legal time limit. Such a hardship is assumed if the tenant is incapable of moving out because of diseases that pose a risk to his health or life, e.g. committing suicide. In general, impending homelessness does not constitute a hardship in this sense, since the tenant is responsible to find a new dwelling within the period of time set by the court and there exists also public accommodation for homeless persons. The request is to be filed at the latest within two weeks prior to the date set for vacating the dwelling, unless the grounds on which the request is based came about only after this time or the tenant was prevented from filing the request in due time through no fault on his own.

As a last resort, the tenant may finally file an action raising an objection to the claim being enforced. It is targeted at the assessment that the compulsory enforcement is inadmissible. But such an action may be asserted only insofar as the grounds on which it is based arose after the close of the hearing that was the last opportunity for objections to be asserted.

If the court grants protection according to these provisions, it does not result in the continuation of the tenancy contract, but only the court's permission to continue using the dwelling without a contract.

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

Provided the landlord wants to terminate the tenancy before the end of the rental term, he needs a compelling reason. The landlord can give such a compelling reason if (1) the tenant disturbs the domestic peace; (2) the tenant is in default of the payment of security deposit in the amount of two months' rent; (3) the landlord cannot be reasonably expected to continue the tenancy until the end of the notice period or until the tenancy ends in another way; (4) the tenant violates the rights of the landlords to a substantial degree by substantially endangering the rented property by neglecting to exercise the care incumbent upon him or by allowing a third party to use it without permission; (5) the tenant is in default, on two successive dates, of payment of the rent or of a portion of the rent that is not insignificant, or (6) in a period of time spanning more than two dates is in default of payment of the rent

in an amount that is as much as the amount of rent for two months. In the latter case, termination is excluded if the landlord has by then obtained satisfaction. Furthermore, termination based on delayed payments of rent is ineffective, if at the latest by the end of two months after the eviction claim is pending, the landlord is satisfied or a public authority agrees to satisfy him. However, this will not apply again if a previous termination had already been rendered ineffective under this provision within the last two years.

Also, reasons which are similar to that mentioned above may entitle the landlord to terminate the tenancy without notice. Such similar reasons are for example severe insults against him or his employees as well as criminal acts, threats or false offences willfully reported against him.

Apart from the compelling reason, this kind of termination requires an unheeded warning notice, unless it does not show an obvious chance of succeeding. Afterwards, the landlord may give notice by specifying the reason in a written notice of termination which shall also contain a reference to the tenant's right of objection. Termination must take place within a reasonable period after the landlord obtained knowledge of the reason for termination (a period of five months is still reasonable; but termination cannot be based on an event that is dated back to more than a half year). Otherwise he will lose his right to terminate. This kind of termination is not subject to a period of notice. Therefore, the tenancy ends with immediate effect, but the tenant has a time period of one to up to two weeks to vacate the dwelling.

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

In case of termination before the end of the tenancy period, the tenant may object and demand continuation of the tenancy at most only until the contractually specified date of termination. The same applies to the possibility to request extension of the period to vacate the dwelling during the court proceedings. But with regard to the protection from eviction in case of an immoral hardship, the tenant enjoys the same protection as if an open-ended tenancy has been terminated.

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

If the tenant continues to use the dwelling instead of vacating it after the regular end of the tenancy period, it is first possible that the tenancy is extended for an indefinite period of time. This applies only to the extent that neither the tenant nor the landlord has declared his intention to the contrary to the other party within two weeks. The period commences for the tenant upon continuation of use and for the landlord at the point of time when he obtains knowledge of the continuation. However, this prolongation right is dispositive and may be therefore excluded in the tenancy agreement.

In case a prolongation right is not possible, the landlord may for the duration of retention demand as compensation the agreed rent or the rent that is customarily paid for comparable items in the locality, since the tenant is in default of his duty to return the dwelling. In general, the landlord may also assert further damages provided that the tenant is responsible for the late return.

4.3. Return of the deposit

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

After termination of the tenancy, the landlord has to return the deposit including interest, provided he has no claims against the tenant. To find out whether claims may arise which can be set off against the tenant's claim for reimbursement of the deposit, courts grant the landlord an appropriate period depending on the circumstances of each individual case. Usually, this period should not amount to more than six months.

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

During the tenancy, the landlord is in general prohibited from making use of the security deposit. Only if he has an undisputed, legally recognized or obviously justified claim arising from the tenancy, is he entitled to use the deposit. In that case, the landlord may demand the tenant to replenish the deposit. After termination of the tenancy, he may make deduction from the security deposit for all outstanding debts that have arisen from the tenancy, in particular arrears with rent payments or with utilities as well as claims for damages.

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

4.4. Adjudicating a dispute

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

The competency for litigation regarding private tenancy law lies with the ordinary jurisdiction, i.e. it is enforced in civil courts. Within the civil jurisdiction, the local court (*Amtsgericht*) is competent for conflicts arising out of residential tenancies, independent of the amount in dispute. The place of jurisdiction is usually where the immovable property is situated.

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

If the tenancy case is brought to court, the court of first instance – the local court – shall work towards an out-of-court settlement in every station of the process. For this purpose the court has to hold in particular a conciliatory hearing before the actual

hearing, unless the parties have already undertaken a conciliation procedure under the law of the federal states. For the conciliation proceedings the court can refer the parties to a judge appointed therefor, who is not authorized to decide. Nevertheless, this form of procedure does not necessarily lead to an accelerated adjudication.

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

Instead of bringing tenancy cases to courts, there are also possibilities to get an out-of-court settlement between tenant and landlord. On the one hand, tenants and landlords associations have founded conciliation boards. Some of them are acknowledged as conciliation authorities by the Ministry of Justice of the respective *Land*. Only decisions and settlements of these conciliation boards can be executed. On the other hand, practitioners offer mediation as a method to settle a dispute amicably by finding an agreeable solution for both parties. The results of these procedures however are not enforceable.

Beyond that, most of the federal states (these are: Baden-Württemberg, Bavaria, Brandenburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North-Rhine Westphalia, Rhineland-Palatinate, Saarland, Saxony-Anhalt, Schleswig-Holstein) have established a mandatory pre-trial conciliation procedure, which must be undertaken if the amount in dispute is less than EUR 750.

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?

In order to be entitled to rent a social or subsidized dwelling, the tenant needs a qualification certificate (*Wohnberechtigungsschein*). This certificate is issued by local authorities either for a specific dwelling or for all subsidized dwellings located within the area of a *Land*. It requires that the tenant cannot secure adequate accommodation for himself because of low income or other financial circumstances. In general, the income ceilings amount to EUR 12,000 for a single person household and EUR 18,000 for a two-person household plus EUR 4,000 for every further household member. In addition to German citizens, EU citizens as well as foreigners with a valid long-term residence permit may apply for the qualification certificate. However, despite holding this certificate tenants have no legal claim to get a subsidized dwelling.

This is different with regard to the application for housing allowance. It is granted by local authorities if the tenant can no longer afford the rent. The amount of housing allowance depends on the number of household members, the amount of rent and the total income of the tenant. To this extent, the tenant has a legal claim to receive housing allowance. As well as in case of social or subsidized housing, German citizens, EU citizens and foreigners with a residence permit are entitled to apply for it. Eight of the sixteen federal states (these are: Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North-Rhine Westphalia, Saarland, Schleswig-Holstein, Thuringia) each have their own calculator which assists tenants to find out whether they would have a claim to housing allowance or not. It is available under:

[http://wohngeldrechner.nrw.de/WgRechner/wogp/cgi/call-TSO.rexx?d2443.WEBP.exec\(wgrbstrt\)](http://wohngeldrechner.nrw.de/WgRechner/wogp/cgi/call-TSO.rexx?d2443.WEBP.exec(wgrbstrt)).

- Is any kind of insurance recommendable to a tenant?

First, it is recommendable to a tenant to conclude legal protection insurance (*Rechtsschutzversicherung*), since under German law the costs of litigation, including the legal fees of the winning party and also the court fees, have to be borne by the losing party. Such insurance covers all kinds of legal costs (i.e. court fees, costs for experts and witnesses, lawyer's fee – for the losing party, their own legal costs plus those of the opposing party). Apart from that, it is also advisable to conclude household insurance (*Hausratsversicherung*). It provides protection for all furnishing of the household in case of damages caused by fire, tap water, lightning, storm, hail, burglary or robbery. Finally, tenants should also conclude private liability insurance (*private Haftpflichtversicherung*).

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

To ensure fair and effective access to justice, personally and economically disadvantaged parties who are unable to pay the costs of litigation can apply for legal aid (*Prozesskostenhilfe*). Legal aid is granted if the prosecution or their defence has sufficient prospects of succeeding and does not seem frivolous. If the legal proceedings require parties to be represented by lawyers, the party shall be assigned a lawyer who is willing to so represent the party and whom the party has selected. The effects of granting legal aid are that (1) the *Bund* or *Land* cash office is able to assert legal fees against the party exclusively in accordance with the provisions made by the court; (2) the party is released from the obligation to provide a security deposit for the costs of the proceedings and (3) the lawyer is prohibited from asserting claims for remuneration against the party. However, this does not affect the obligation to reimburse the opponent for the costs it has incurred, i.e. the party, who receives legal aid and loses the litigation, has nevertheless to pay the costs of the winning party.

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

The main organization in Germany advocating the protection of tenant's rights is the German Tenant Association (*Deutscher Mieterbund*, DMB). It is the governing body of over 320 tenant associations. These associations offer comprehensive legal advice and help with tenancy related disputes, provided the tenant is a member of the association. The membership fee currently amounts to between EUR 40 and EUR 90 per year, plus a non-recurring entrance fee of about EUR 15. Usually, legal protection insurance is also included in this fee.

- **DMB Info e.V.** (responsible for the hotline on first advice and for online advice)
Littenstraße 10
10179 Berlin
Tel: 030-223230
Email: info@mieterbund.de

Homepage: <http://www.mieterbund.de/>

- DMB-Hotline for brief information: 0900-1200012 (does not require membership; costs: EUR 2 per minute)
- DMB-Online advice: <http://www.mieterbund24.de/> (requires registration only, not membership; costs: EUR 25; within 6 hours)
- **Regional associations of the sixteen *Länder* which have listed contact details of the local associations on their website:**
 - **Bavaria**
Sonnenstraße 10/III
80331 München
Tel: 089-89057380
Email: info@mieterbund-bayern.org
Homepage: <http://www.mieterbund-landesverband-bayern.de/>
 - **Baden-Württemberg**
Olgastraße 77
70182 Stuttgart
Tel: 0711-2360600
Email: info@mieterbund-bw.de
Homepage: <http://www.mieterbund-bw.de/>
 - **Berlin**
Spichernstraße 1
10777 Berlin
Tel: 030-226260
Email: bmv@berliner-mieterverein.de
Homepage: <http://www.berliner-mieterverein.de/>
 - **Brandenburg**
Am Luftschiffhafen 1
14471 Potsdam
Tel: 0331-27976050
Email: info@mieterbund-brandenburg.de
Homepage: <http://www.mieterbund-brandenburg.de/>
 - **Hamburg**
Beim Strohhause 20
20097 Hamburg
Tel: 040-879790 (general information also for non-members: 040-867979345)
Email: info@mieterverein-hamburg.de
Homepage: <http://www.mieterverein-hamburg.de/>
 - **Hesse**
Adelheidstraße 70
65185 Wiesbaden
Tel: 0611-4114050
Email: info@mieterbund-hessen.de
Homepage: <http://www.mieterbund-hessen.de/>

- **Lower-Saxony and Bremen**
 Herrenstraße 14
 30159 Hannover
 Tel: 0511-121060
 Email: info@dmb-niedersachsen-bremen.de
 Homepage: <http://www.dmb-niedersachsen-bremen.de/>
- **Mecklenburg-Western Pomerania**
 G.-Hauptmann-Straße 19
 18055 Rostock
 Tel: 0381-3752920
 Email: post@mieterbund-mvp.de
 Homepage: <http://www.mieterbund-mvp.de/>
- **North Rhine-Westphalia**
 Oststraße 55
 40211 Düsseldorf
 Tel: 0211-5860090
 Email: mieter@dmb-nrw.de
 Homepage: <http://www.mieterbund-nrw.de/startseite/>
- **Rhineland-Palatinate**
 Löhrstraße 78-80
 56068 Koblenz
 Tel: 0261-17609
 Email: dmb-rhpl@gmx.de
 Homepage: <http://www.mieterbund-rhpl.de/home/>
- **Saarland**
 Karl-Marx-Straße 1
 66111 Saarbrücken
 Tel: 0681-947670
 Email: info@mieterbund-sb.de; info@miet-immobilienrecht-saar.de
 Homepage: <http://www.mietrecht-saar.de/>
- **Saxony**
 Fetscherplatz 3
 01307 Dresden
 Tel: 0351-8664566
 Email: landesverband-sachsen@mieterbund.de
 Homepage: <http://www.mieterbund-sachsen.de/>
- **Saxony-Anhalt**
 Alter Markt 6
 06108 Halle
 Tel: 0345-2021467
 Email: info@mieterbund-sachsen-anhalt.de
 Homepage: <http://www.mieterbund-sachsen-anhalt.de/>
- **Schleswig-Holstein**
 Eggerstedtstraße 1
 24103 Kiel

Tel: 0431-979190
Email: info@mieterbund-schleswig-holstein.de
Homepage: <http://www.mieterbund-schleswig-holstein.de/>

▪ **Thuringia**

Anger 28/Hirschlachufer 83a
99084 Erfurt
Tel: 0361-598050
Email: Info@mieterbund-thueringen.de
Homepage: <http://www.mieterbund-thueringen.de/>

Useful link for searching for the responsible tenant association in general:
<http://www.mieterbund.de/beratung/mieterverein-vor-ort.html>

Except for the general tenant associations, there are special associations for tenant's protection which offer their members also legal advice and help with tenancy related disputes. The membership fee currently amounts to between EUR 48 and EUR 80 per year, plus a non-recurring entrance fee of about EUR 12.

- **Mieterschutzbund e.V.** (responsible for advice throughout Germany)

Office Recklinghausen (Hauptverwaltung)
Kunibertstr. 34
45657 Recklinghausen
Tel.: 02361-406470
Email: office@mieterschutzbund.de
Homepage: <http://www.mieterschutzbund.de/start.php?nav=11>

- **Regional associations for tenant's protection:**

• **Berlin**

Konstanzer Straße 61
10707 Berlin
Tel: 030-921023010
Email: zentrale@mieterschutzbund-berlin.de
Homepage: <http://www.mieterschutzbund-berlin.de/>

• **Bremer Mieterschutzbund**

Am Wall 162
28195 Bremen
Tel: 0421-3378455
Email: mail@bremermieterschutzbund.de
Homepage: <http://www.bremermieterschutzbund.de/>

• **Hamburg**

Schillerstraße 47-49
22767 Hamburg (Altona)
Tel: 040-395315; 040-392829
Email: info@mieterschutz-hamburg.de
Homepage: <http://www.mieterschutz-hamburg.de/>

GREECE

Tenant's Rights Brochure

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1. Introductory information

- Introduction: The national rental market
 - Current supply and demand situation

According to the 2001 national Census data, 723,346 Greek households, corresponding to 19.8 % of total Greek households lived in rented dwellings. Moreover, according to the same data 4.53 % of all dwellings were found vacant and available for rent. As well as that, according to journalistic sources of 2012, 160,000 new built (after 2006) dwellings were vacant, whereas according to a survey conducted by a private statistical company in 2014, 10.4% of apartments and 9.4 % of single houses are vacant and available for rent.

Based on the above, we can arrive to the conclusion that no actual problem in this field can be reported. The above is confirmed by common day experience.

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

There are no specific problems of Greek national rental market from the perspective of tenants that can be reported.

- Significance of different forms of rental tenure
 - Private renting

Private renting is the only possibility within Greece as Greek law does not provide for any possibility of housing with a public task in the rental sector.

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

Greek law does not provide for any housing with a public task.

- General recommendations to foreigners on how to find a rental home

Greek experience does not reveal any major difficulties as to foreigners’ attempt to find a rental home, provided that such persons are equipped with the necessary residence permits (non-EU citizens). Therefore, foreigners should act the same way as a national, i.e. by checking the ads published in newspapers and on the internet, as well as address a professional real estate agent. Finally, despite the fact that most of Greek households do have a member who could communicate in English, it is, nevertheless, advisable for a foreigner who does not speak Greek to ask a native speaker to come along to the viewing of the dwelling in order to facilitate communication.

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

The only “major” problem which could be reported in this respect would be the fact that under Greek law, the conclusion of an open ended contract is considered as

valid. Therefore, landlord may terminate the tenancy without any justification in relatively short notice periods.

- *Important legal terms related to tenancy law*

Greek	Translation into English
Μίσθωση (Misthosi)	Tenancy
Εκμισθωτής (Ekmisthotis)	Landlord
Ιδιοκτήτης (Idioktitis)	Owner
Μισθωτής (Misthotis)	Tenant
Μίσθιο (Misthio)	Dwelling
Μίσθωμα (Misthoma)	Rent
Μίσθωση ορίστου χρόνου (Misthosi aoristou xronou)	Open ended tenancy
Μίσθωση ορισμένου χρόνου (Misthosi orismenou xronou)	Tenancy for a fixed time
Εγγύηση (Egiissi)	Security Deposit
Καταγγελία (Katagelia)	Termination
Ελάττωμα (Elatoma)	Defect
Υπομίσθωση (Ipomisthosi)	Sublease/subletting

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?

Greek Law lacks any modernized national antidiscrimination legislation. The only relevant provisions are found within Law 729/1979, which only describes criminal offenses related to discriminative actions. As a matter of fact, and due to the explicit European law obligation of Greece to transfer into national law the relevant EU directives, the establishment of national administration legislation has recently provoked severe political debate. During 2013, Greek government has unsuccessfully attempted twice to pass through the parliament such measures, while the competent Minister has recently announced that this is one of his main priorities.

Thus, the only relevant legislation which comes into play in this respect would be art. 5 (2) of the Greek constitution, which explicitly prohibits every discrimination based on nationality, language as well as religious or political beliefs.

It is clear that any restrictions on the choice of tenant, which would be the result of such discrimination practices, would be absolutely null, as it would directly violate the Constitution. However, as far as the tenancy law field is concerned, no such cases have ever been reported.

- 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?

Greek law does not provide for any specific questions that a landlord is allowed or prohibited to make to a potential tenant. Every question which could provoke the disclosure of tenant's personal data should be deemed unlawful.

- 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)?

Greek law does not provide for any reservation fee charged by the landlord to allow the prospective tenant to participate in the selection process. On top of that, Greek rental market does not show any examples of such practices.

- 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)?

There is no regulation providing any lawful check on the personal and financial status of a potential tenant that the landlord could betake to. Any such check, including the provision of a salary statement, would rely on the tenant's willingness to provide such data. On the contrary, if the landlord achieves by any means to gather such information, this action would directly violate the provisions of Law no 2472/1997 on the protection of personal data, and would attract civil and criminal liability. Moreover, no kind of credit reference agencies accessible by private individuals operate within the Greek territory.

The only lawful procedure that could be undertaken in order for a person to have access to another's tax declaration would be through a special order issued by the public prosecutor. However, in cases where the reason of access pertains to landlord's intent to conclude a tenancy contract, such an order would not be issued due to lack of legal interest of the part of landlord.

- 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?

Pursuant to the provision of art. 197 Law 4072/2012, which regulates the profession of a real estate agent, the main service a real estate agent provides, consists to the suggestion of opportunities, or the intervention for the conclusion of contracts on real estates, and especially of sales, exchanges, tenancies, leasing etc.

Thus, real estate agents undertake the obligation, on behalf of the landlord, to find a potential tenant, and to subsequently conclude the tenancy agreement on the basis of the mandate they have received by their client. In this respect, estate agents usually post ads informing the potential agents that a specific dwelling is available for rent, present the dwelling to the interested persons, give information on its facilities, negotiate the amount of the rent – in accordance with landlord's will – and bring the parties in contact in order for the tenancy contract to be concluded.

Finally, there are no specific bodies or institution assisting the tenant in the search of housing.

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

Greek Law does not provide for any "blacklists" or equivalent mechanisms of

bad landlords/tenants. Moreover, there is no system for rating and labelling preferred landlords/tenants.

2.2. The rental agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?

Pursuant to Greek tenancy law, the conclusion of a tenancy contract doesn't require any special form. Thus, tenancy contract, being a non-formal contract, can be validly concluded either in writing or orally, even tacitly, irrespectively of whether it refers to a movable or an immovable. However, pursuant to the provision of article 77 (1) of Law 2238/1994 "on the Tax Income Code", private written tenancy contracts should be submitted with the competent tax authority within one month from their conclusion, either by the landlord or by the tenant. It should be noted that no special fee applies for above registration.

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

As already explained hereinabove, tenancy contracts are non-formal contracts, and, therefore, can be concluded orally or even tacitly. Accordingly there are no mandatory minimum requirements that have to be **stated** in a tenancy contract.

Nevertheless, regarding the **essential elements** that a contract is required to include, in order to be qualified as a tenancy contract, these are the following:

1. Leasehold: The object of a tenancy contract is to hand over the use of a thing, which is defined as the "leasehold". The notion of a thing, provided by pertains to every corporeal, impersonal, self-existent object susceptible of human appropriation. Finally, part of the dwelling can also be the object of a tenancy contract.

2. Rent: Rent is the consideration owed by the tenant for the handover of the use of the dwelling by the landlord. Rent usually consists to an amount of money; however, it can also, either totally or partially, be agreed to a non-pecuniary performance.

3. Agreement to hand over the use: Such an agreement is the last essential element of a tenancy contract and distinguishes the latter from similar contracts.

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

The Parties to a tenancy contract enjoy absolute freedom in terms of stipulating the duration of the tenancy contract they conclude. Therefore, both an open-ended as well as a limited - even in miniscule time - contract would be conceivable under Greek law.

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

Regarding rent payment, the Parties are free to agree upon when rent is due.

According to Greek law, in case of absence of such agreement, then the usual terms come into force, which are considered as the terms imposed by the local usages of transactions. According to usual practice in case of tenancies of immovable, rent is paid in advance and on a monthly basis. Finally, if such local usages do not exist, then rent is paid upon expiry of the contract.

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

Landlord's main obligation deriving from the tenancy contract is to hand over the use of the dwelling to the tenant. Moreover, landlord's obligation to maintain the dwelling appropriate for the agreed use makes explicitly part of the above main obligation. It clearly derives from the above that landlord is responsible for all kind of maintenance works and repairs that are essential in order for the dwelling to be maintained appropriate for the agreed use.

Art. 591 GCC regulates tenant's rights towards landlord related to expenses of the dwelling born by the latter. Thus, expenses are distinguished to the essential and the profitable ones. Regarding essential expenses, these are defined as the expenses which have to be made in order for the dwelling to be maintained appropriate for the agreed use. Pursuant to the provision of art. 591 (1) GCC, tenant has a direct claim against landlord to pay off every expense was born by him, provided that it falls under the notion of essential expenses.

Nevertheless, it is accepted that tenant has the above claim only if he proceeded to the expenses in order to avoid essential, direct and forthcoming danger which could destroy or deteriorate the dwelling. On the contrary, if the repair does not need to be performed immediately, tenant's claim is lawful only upon relevant notice to the landlord.

Regarding "profitable expenses", these are considered the expenses which somehow augment the value of the dwelling. According to the provision of art. 591 (2) GCC, such expenses can be claimed by landlord following the provisions on "management of another's affairs (in Greek: «Διοίκηση Αλλοτρίων»)" (736-737 GCC). Therefore, such expenses may be reimbursed, only if tenant proceeded based on the real or presumed will of the landlord.

However, given that pursuant to the provision of art. 592 GCC, tenant is not liable for damages or alterations that result from the agreed use of the dwelling, it derives *a contrario*, that landlord should not be held liable for repairs due to improper use of the tenant. Therefore, such maintenance works and repairs can be lawfully assigned to the tenant.

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

The Parties are free to agree upon who is expected to provide furnishings and major appliances. According to the vast majority of Greek tenancies, tenant is usually the party who brings in furnishings.

- 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)?

It is highly advisable that tenant has an inventory made in order to avoid future liability.

- Any other usual contractual clauses of relevance to 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.)?

Pursuant to the provisions of art. 1386 and 1389 GCC, the spouses have the reciprocal obligation to cohabit as well as to contribute jointly to the needs of the family. The question which inevitably arises is whether above obligations also include the obligation of the spouse-tenant to concede to the other spouse the co-use of the dwelling. According to the principle of good faith in the execution of obligations (art. 288 GCC), the tenant is entitled with the right to house in the dwelling his close relatives, except if the tenancy contract explicitly stipulates that such an action is forbidden. However, in such cases, due to the advanced social protection reserved to the institution of the family by constitutional provisions of law (art. 21 of the Greek Constitution), it should be accepted that if the tenant-spouse houses his family, despite the explicit contractual prohibition, such action would not constitute a breach of the contract.

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

Greek Law does not provide for any explicit obligation of the tenant to take over and make real use of the dwelling. Thus, tenant who does not take over or use the dwelling is not found in default; nevertheless, he remains liable to pay the agreed rent.

However, such an obligation could, either explicitly or even tacitly, emanate from the contracting parties' agreement. For example, in cases where the dwelling is damaged due the fact that it is not being used, tenant should be considered as having the obligation to live in the dwelling. In addition to this, the obligation in question may also result from the application of the general clause of good faith, when non-use of the dwelling deteriorates its rental value. Thus, it has been decided that such cases fall under the notion of bad use of the dwelling, attracting tenant's relevant liability

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

Separation

In case of separation of a married couple, the court may concede the exclusive use of the dwelling used as the primary family residence, or part of it, to one of the spouses, independently of who the owner is or of who is entitled with the right to use the dwelling towards its owner. Evidently, problems arise when the court decides to concede the use of the family dwelling to the spouse who was not the contracting party to the tenancy agreement.

It should be firstly noted that even after such a judgment, there is no alteration as to the parties of the contract, which is still valid between the landlord and the initial

tenant. Thus, the initial tenant remains liable towards the landlord for the execution of his obligations deriving from the tenancy contract. The tenant is also entitled with the right to terminate the contract upon expiry or to deny its renewal. In such a case, the contract would be validly dissolved, and the spouse, to whom the court judgment conceded the use, should be liable to return the dwelling. However, the latter would most probably have a tort claim against the spouse-tenant, provided that the conditions of tort liability apply.

Divorce

Nevertheless, when the marriage is irrevocably dissolved by a divorce court judgment the reciprocal obligations of spouses for cohabitation and joint contribution to the family needs cease to exist. Therefore, the spouse-tenant is entitled with the right to demand the dwelling from the spouse to whom the use of the family residence was conceded.

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

Greek law does not provide for any possibility that the student/tenant moving out is replaced by another, without relevant permission of the landlord. However, this could be the object of an agreement between the contracting parties.

- death of tenant;

In case of death of tenant, the rights and obligations deriving from the tenancy contract are inherited to the tenant's heirs, who are subrogated thereto. However, tenant's heirs are afforded with the right to validly terminate the contract, irrespective of any contractually fixed term.

- bankruptcy of the landlord;

Bankruptcy of the landlord has no effect whatsoever to the tenancy, which continues to be valid.

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

The point of reference regarding subletting possibilities relies on the will of the contracting parties. Thus, subletting is freely allowed in the absence of an opposite agreement. It is, however, clear that in case of subletting, the initial lessor remains liable towards the landlord, for the sub-tenant's fault. Greek practice does not show any examples of abusive subletting.

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

The point of reference as to the legal consequences of the alienation of ownership over the contract in force, is whether the latter can be proved by a "*document of certified date*".

1. Cases where the tenancy is proved by a document of certified date.

Tenant is protected against the new owner of the dwelling, who is subrogated

to the rights and obligation of the former owner, under the condition that the contract is proved by a document of certified date. In particular, the above apply under the following conditions:

- i. The tenancy contract should be valid and the landlord should be the real owner of the dwelling when the contract was concluded. Thus, if the landlord was not the real owner, the subsequent sale of the immovable from the real owner does not fall into art. 614 GCC scope of application and the new owner is not subrogated to the rights and obligations of the landlord. Therefore, subtenant is not protected if the landlord sales the dwelling.
- ii. The above provision applies only to leases of immovable things.
- iii. The contract should be proved by a document, which bears a certified date either at the time of the conclusion of the contract, or even after. However, the document should have acquired a certified date **before the transfer of the ownership**. As to the notion of documents with “certified date”, these are the “public documents”, as well as private documents which are somehow certified by a public authority (e.g. a notary public, tax registry etc.)
- iv. The transfer of the ownership should take place after the conclusion of the contract and during its validity.
- v. The parties should not have agreed on the contrary

2. Cases where the tenancy is not proved by a document of certified date

If the tenancy is not proved by a document with a certified date, the new owner is entitled with the right to terminate the contract

- **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?

Contracts of supply are concluded either by the tenant or by the landlord. However it is highly advisable that tenant concludes such contracts, in order for landlord not to be held liable towards the supplier in case of tenant’s insolvency.

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

The question of distribution among the parties is subject to their will, as there is no specific regulation in this respect. However, it is accepted that utilities belong to the “expenses for the use” of the dwelling, which, under the principle of good faith, should be borne by the tenant.

Standard practice reveals that utilities are paid by tenants. The vast majority of tenancy contracts include a relevant term.

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

According to Greek law, landlord is liable for any kind of taxes imposed on the dwelling. However, the Parties may agree to the contrary.

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

Shifting condominium costs onto the tenant is absolutely lawful under Greek law as practice shows that the above constitutes a common and usual contractual agreement of the Parties.

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

There is no regulation regarding the lawful amount of a deposit, and, consequently, the latter is fixed upon the contracting parties' agreement. It usually amounts to one or two monthly rents

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

There is no special regulation obliging the landlord to hold a special account for the deposit, although, the contracting parties can freely agree to such an action. Nevertheless, it is considerably rare, especially in cases of residential tenancies that the tenant requires from the landlord to create a special account only for the purposes of the deposit. On the contrary, tenant usually credits the agreed amount to the landlord's bank account, with the special reference that the deposited amount corresponds to the agreed guarantee deposit.

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

Although additional guarantees or a personal guarantor should be deemed lawful under Greek law, common day practice reveals that such practices are not usual in residential tenancies.

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

Deposit is mainly purposed to cover any damages that occur to the dwelling and which lie beyond to common usage. As well as that, landlord very often covers unpaid expenses for utilities which were to be borne by the tenant (such as water and electricity supply etc.). Finally, landlord may cover every monetary claim he may be entitled to against the tenant, and which derive from the tenancy contract

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)?

Greek law distinguishes between real and legal defects of the dwelling, as well as absence of agreed qualities of the dwelling.

Therefore, every defect which partially or totally obstructs the agreed use of the thing by the lessee is considered to be a real defect. The main characteristic of the real defect is the thing's incompleteness regarding its nature, and which has a negative effect to the value or the usefulness of the thing. In order to ascertain whether a thing is defective or not, reference should be made to every specific contract; the specific will of the parties i.e. "as what" or "for what purpose" was the thing leased, plays crucial role.

Furthermore, the notion of quality of the dwelling pertains to every characteristic which refers either to its natural standing or to its legal, real or economic relations. Consequently, 'agreed quality' is every such quality, the existence of which is not only agreed between the parties, but for which the landlord also guarantees. The agreement as to the existence of such quality should be part of the contract

Finally, the dwelling should be free from any legal defects that could obstruct the agreed use. It is to be noted that in relation to legal defects it is not sufficient for a third party to have a right over the leased thing, as is the case in the contract of sale. It is, on top of that, necessary that said right renders the agreed use partially or totally impossible.

According to Greek courts, defects such as mould and humidity should be considered as real defects. As well as that, defects that are not related to the dwelling itself, but refer to its external space, such as exposure to noise, smoke or stink are considered as real defects of the dwelling. Moreover, damages caused to the dwelling from third parties should also be considered as a real defect of the dwelling, as such damages hinder the tenant from enjoying the agreed use of the dwelling

- 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)

Greek law affords the tenant with the following rights in case of a defective dwelling:

1. Right to cure the defect: Tenant is entitled with the right to claim the cure of the defect, or the remedy of the agreed quality. Above right reflects tenant's principal claim for handover of the dwelling proper for the agreed use. If landlord is found in default in curing the defect or remedying the agreed quality, tenant may deny paying the rent till landlord fulfills his obligation (374 GCC). Alternatively tenant may proceed himself with curing the defect or remedying the agreed quality and claim expenses occurred
2. Right to lower or deny payment of the rent: To what regards the rent deduction level, this should be calculated according to the level of the use disturbance caused from the defect. Thus, after taking into consideration the agreed rent, a comparison between the values of the defective dwelling, and of the dwelling without the defect should be made. On the other hand, non-payment of rent presupposes the use of the dwelling is completely impeded.
3. Compensation: Such right aims at bringing the tenant to the position he would have been if the dwelling was not defective, and covers tenant's damage

which is causally connected with the defect, as well as further damage caused to tenant's goods due to the defect.

4. Tenant may terminate the contract.

- Repairs of the dwelling

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

Landlord's main obligation deriving from the tenancy contract is to hand over the use of the dwelling to the tenant. Moreover, landlord's obligation to maintain the dwelling appropriate for the agreed use makes explicitly part of the above main obligation. It clearly derives from the above that landlord is responsible for all kind of maintenance works and repairs that are essential in order for the dwelling to be maintained appropriate for the agreed use.

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

Art. 591 GCC regulates tenant's rights towards landlord related to expenses of the dwelling born by the latter. Thus, expenses are distinguished to the essential and the profitable ones. Regarding essential expenses, these are defined as the expenses which have to be made in order for the dwelling to be maintained appropriate for the agreed use. Pursuant to the provision of art. 591 (1) GCC, tenant has a direct claim against landlord to pay off every expense was born by him, provided that it falls under the notion of essential expenses.

Nevertheless, it is accepted that tenant has the above claim only if he proceeded to the expenses in order to avoid essential, direct and forthcoming danger which could destroy or deteriorate the dwelling. On the contrary, if the repair does not need to be performed immediately, tenant's claim is lawful only upon relevant notice to the landlord.

- Alterations of the dwelling

- Is the tenant allowed to make other changes to the dwelling?

As a general rule, it should be noted that tenant is responsible for making good and diligent use of the dwelling, as well for returning it in the same condition he received it. On top of that, there is no special regulation prohibiting tenant to make objective improvements to the dwelling. Therefore, the point of reference as to the changes or alterations that the tenant is allowed to make should be seen in correlation with the dwelling's agreed use.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

If it was agreed that the dwelling would be used as a handicap's residence, it is obvious that tenant would not only be allowed to build a special elevator, but he would also be entitled with the right to claim relevant expenses from landlord

- Affixing antennas and dishes

Affixing antennas should also be considered as an allowed alteration for a residential dwelling.

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

Repainting and drilling the walls in order to hang pictures, should be considered as allowed alterations. However, tenant should be considered liable for reinstating the dwelling in the condition he received it.

- Uses of the dwelling

The point of reference as to the allowed uses of the dwelling relies upon the contracting parties will.

- Are the following uses allowed or prohibited?

- keeping domestic animals

Provided that no agreement to the contrary has been made between the Parties, then keeping domestic animals should be considered as an allowed use. However, special attention should be drawn to the statutes of the condominium, which may prohibit such use.

- producing smells

Producing smells should be considered as a prohibited use of the dwelling if such smells disturbs the respective use of neighbouring dwellings.

- receiving guests over night

Receiving guests over night should be considered as a prohibited uses of the dwelling if such practices disturb the respective use of neighbouring dwellings.

- fixing pamphlets outside

Reference should be made to the contracting parties' agreement.

- small-scale commercial activity

If the tenancy is concluded exclusively for residential purposes, then even small-scale commercial activity should be considered prohibited.

3.2. Landlord's rights

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

Greek law does not provide for any form of rent control.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?

Greek law does not provide for any 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 charged lawfully?

Greek law does not provide for any cap or ceiling which determines the maximum rent that may be charged lawfully.

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

There is no special procedure to be followed for rent increases.

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

The principle of good faith imposes some ancillary obligations on the part of the tenant. Thus, it is accepted that tenant is obliged to tolerate landlord's visits to dwelling. However, the purpose of such visits should be strictly delimited to the ones that are absolutely essential. Thus, according to the jurisprudence, tenant bears the obligation to tolerate landlord entering the premises, if such visits are deemed essential for confirming the existence of a defect or any kind of mal-function of the dwelling, in order to find out whether tenant makes good use of the dwelling and in order for a new potential buyer or tenant to be able to examine the dwelling

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

There is no special provision of law regulating the question of whether landlord is allowed to keep a set of keys of the rented apartment. Thus, such an issue relies upon the free will of the contracting parties

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

Under no circumstances may landlord lock a tenant out of the rented premises for not paying the rent. Such an action would directly violate the law and constitutes the offense provided by 331 of the Greek Penal Code. Landlord should address the competent judicial authorities in order to enforce his claims against tenant.

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

Greek law does not provide for any statutory right of the landlord to take or seize tenant's personal property in case of rent arrears.

4. Ending the tenancy

4.1. Termination by the tenant

- Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?

In case of open ended contracts tenant may freely terminate the tenancy by giving an ordinary notice respecting the following deadlines:

1. Five days prior notice in case of tenancies fixed per week.
2. Fifteen days prior notice in case of tenancies fixed per month.
3. Three months prior notice for all other cases.

- 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 cases where a tenant may terminate a tenancy before the end of the rental term are the following:

1. Termination due to non-delivery of the use (The existence of real or legal defects of the dwelling is included in this case).
2. Termination due to risk of tenant's health.
3. Termination due to transfer of public servants.

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

Greek law does not provide for such a right of the tenant, however, this could be validly agreed between the contracting parties.

4.2. Termination by the landlord

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

In the event of an open ended contract, landlord may terminate the tenancy contract under the same conditions as the tenant. Therefore, landlord should give termination notice respecting the following deadlines:

1. Five days prior notice in case of tenancies fixed per week.
2. Fifteen days prior notice in case of tenancies fixed per month.
3. Three months prior notice for all other cases.

- Must the landlord resort to court?

If tenant denies to return the dwelling in case of an open-ended contract and despite the fact that landlord has given a proper notice, then the latter should file an action asking for the return of the dwelling.

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

Greek law does not provide for any special defences in favour of the tenant against an action for eviction. Tenant may only question the facts of each case and the relevant termination notice. However, no social statutory restrictions whatsoever in favour of certain types of tenants apply.

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

Landlord may terminate the tenancy before the end of the rental term in the following cases:

1. In case tenant makes bad use of the dwelling.
2. In case tenant owes rents in arrears.

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

If tenant does not leave after the regular end of the tenancy, then the tenancy, provided that landlord consents to the tenant's stay, is renewed for an indefinite period of time. However, if landlord opposes thereto and asks for the return of the dwelling, then tenant is subject to an eviction action.

4.3. Return of the deposit

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

Landlord is obliged to return the tenant's security deposit when he regains possession of the dwelling and provided that he has no claim against the tenant deriving from the tenancy contract and which can be lawfully covered by the deposit.

- What deductions can the landlord make from the security deposit?

Security deposit is mainly purposed to cover any damages that occur to the dwelling and which lie beyond to common usage. As well as that, landlord very often covers unpaid expenses for utilities which were to be borne by the tenant (such as water and electricity supply etc.). Finally, landlord may cover every monetary claim he may be entitled to against the tenant, and which derive from the tenancy contract

- In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

In case of a furnished dwelling, landlord should not be entitled to make a deduction for damages, if such damages result from the ordinary use of the furniture.

4.4. Adjudicating a dispute

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

Greek procedural law does not provide for specialized courts for adjudication of tenancy disputes. Therefore, the Court of Peace is competent for adjudicating tenancy disputes when the monthly rent does not exceed the amount of 600 €, whereas the Single-Member Court of First Instance is competent for the rest of disputes related to tenancies. However, both of the above Courts should follow a special procedure which exclusively applies to tenancy law disputes.

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

The only case of an accelerated form of procedure known in Greek law is the one of an ex parte eviction order issued in cases where tenant owes rent in arrears.

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

Conciliation, mediation as well as arbitration are well-known alternative dispute resolution methods within Greek law. However, they are very rarely used in residential tenancy cases.

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?

Greek law does not provide for any social subsidized housing possibilities in the rental sector.

- Is any kind of insurance recommendable to a tenant?

It should be in the first place cited that there is no provision of Greek Law which imposes an obligation whatsoever either on the owner of a dwelling or on the tenant to conclude an insurance contract in respect to the dwelling. The conclusion of such a contract is, therefore, subject to the personal will of the interested person. The dangers that are most commonly insured regarding the buildings are against fire and other natural catastrophes such as earthquake, flood etc., while third party liability insurance of the tenant is not commonly used. Finally, should be noted that it is permitted to include a clause in the tenancy contract regarding the obligation to procure insurance, although this is not that usually met in common day practice.

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

Greek law does provide for legal aid measures, however, they are rarely used in common day practice.

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

Greek law does not provide for any institutions to which the tenant may refer in order to have his or her rights protected.

HUNGARY

Tenant's Rights Brochure

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1. Introductory information

- Introduction on the national rental market

In Hungary, the size of the housing stock reached 4.4 million units by 2011, of which 3.9 million units were used as a place of residence ('inhabited' in the Hungarian Census' terms, Census, 2012). As indicated in the table "*Tenure structure in Hungary (inhabited units) 1980-2011*", the vast majority of housing units are owner-occupied; with a roughly 90% owner occupation rate, Hungary can be considered one of the "super home-ownership" states. After 1990, intensive privatization of public housing stock has led to the heavy depletion of this sub-sector, leaving it around 3% of the entire housing stock.

Table 1 . Tenure structure in Hungary (inhabited units) 1980-2011

	1980	1990	2001	2011
Owner-occupied	71%	74%	92%	92%
Private rental	3%	3%	4%	4%
Public rental	26%	23%	4%	3%
Other	0%	0%	1%	1%
Total	100%	100%	100%	100%

*CSO Census data for 1980, 1990, 2001 and 2011

Private residential renting in Hungary is limited by a number of legal and financial factors. Nonetheless, the official tenure statistics and national censuses are not considered fully reliable by the pollsters themselves: private rental is recorded to be around 4% of the full housing stock, while pollsters believe that many of the residences reported as 'vacant' are in fact privately let, but go unreported towards tax authorities.

In Hungary, owner-occupation is the dominant tenure form, but one has to keep in mind that available tenure statistics are not fully accurate. The share of the private rental sector is unanimously considered underestimated by practically all actors and professionals in residential renting, due to widespread tax avoidance. According to expert estimates, the share of private rentals is more likely to be around 8% of the inhabited housing stock. Besides private rental and public function rental, a fairly large share of the population lives in 'rent free tenure'.¹⁴⁵

- Current supply and demand situation

Housing construction substantially decreased from 1990, partly because of the economic recession of the 1990s, and partly because of the dampening demographic pressure. From 2008, the construction activity declined substantially because of the economic crisis; the construction sector has been stagnating ever since. Nonetheless, the composition of the housing stock improved in terms of both size and comfort level. However, housing consumption has not reached the European average in terms of space and comfort level: although the overall housing situation

¹⁴⁵ Eurostat (SILC) - Distribution of population by tenure status, type of household and income group, 2012.

cannot be considered low relative to the GDP level of the country, it lags far behind the EU15 level.¹⁴⁶

Residential tenancy is relatively low on an EU-28 comparison. Accidental landlords are the typical providers in the private rental sector, and municipalities are the main social landlords. The most typical form of private rental tenure is an individual landlord contracted to an individual tenant (or multiple individuals, e.g. a family). The term of the contract is typically short, one or two years, or even less, with students only staying for 10 months being a preferred “safe” option among many landlords.

The public rental sector offers affordable housing, but the demand is several times higher than the supply: the full number of households legally eligible for social rental housing is estimated to be around 300,000, about three times higher than existing habitable social rental units; and vacancies announced by municipalities are often met with multiple times the applications. In the private rental sector, the rental costs are too high to be considered affordable, partly because of the legal uncertainties (leading to risks on both the supply and the demand side) and the inappropriate subsidy and tax policy, which strongly limits demand. Nonetheless, there clearly is a strong need for a larger and more reliable private rental sector.

- Main current problems of the national rental market from the perspective of tenants
 - Tax evasion, which pushes a large number of private rentals into shadow economy. In the case of an “informal rental”, the landlord usually concludes a valid rental contract with tenants, although they often evade tax payments after the rental income.
 - Subsequent lack of predictable contracts: most issues are left to individual agreements, no clear guidelines in conflict resolution (e.g. who renovates, and who pays for the renovation; what happens if the tenant is late with payment, what happens if landlord refuses to return the deposit etc.).
 - The current legal regulation is pro-landlord, and does not ensure thorough protection of the tenant in a number of issues, e.g. termination of the tenancy (30 day notice is sufficient for both parties, which makes renting a very unpredictable tenure form for the tenant).
 - Affordability issues: renting is hard to predict for landlord, as tenants may ‘disappear’ and leave large debts behind. As a result, landlords build the risk of non-payment and arrears into the rent, which raises the level of market rent significantly.
 - - Significance of different forms of rental tenure
 - Private renting

While home ownership is the predominant tenure form, private rental is dominant within residential leases. However, due to its permissive regulation, the general non-enforceability of contracts, and the subsequent higher relative private rent levels, private residential renting faces serious limitations. According to official statistics,

¹⁴⁶ EU Housing Statistics 2010: *Housing Statistics in the European Union*, Ed. Kees Dol & Marietta Haffner, (OTB Research Institute for the Built Environment, Delft University of Technology).

private rentals account for 4% of the full housing stock, although expert estimates place it around 8%.

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

In Hungary, rentals with and without a public task are clearly distinguished. As described earlier, official statistics show public rental to be around 3% and private rental at around 4% of the inhabited housing stock, although complementary information suggests slightly different percentages. As the typical social landlords are municipalities, which duly report their rental units, statistics on public function rentals can be considered reliable. Nonetheless, we can clearly state that the social rental sector has changed from a ‘universal’ to a ‘residualized’ sector in the last 20 years. The supply for social rentals (and even ‘cost based rentals’, which is public rental but with a rent level closer to market prices) is well below the demand, and the number of eligible households.

- General recommendations to foreigners on how to find a rental home

Although municipal housing may be lawfully available for all EU and EEA citizens, municipal decrees often give preference to long-time local residents with a disadvantageous social or economic situation. Due to this, and to the scarce supply of municipal housing, it is unlikely for foreign citizens without longstanding permanent residence in Hungary to obtain a municipal or social rental apartment. Accordingly this brochure focuses primarily on the private rental sector, and the main rules and practices of which the average renter coming from outside Hungary should be aware.

One important issue that foreign renters need to consider is that the vast majority of Hungary’s landlords do not speak foreign languages, which makes dealing with them very complicated, even beyond legal and financial difficulties. Real estate agencies can be very helpful in this regard. A number of online real estate rental services are available, too. For example, the websites <http://realestatehungary.hu/> and <http://www.alberlet.hu/en> are essentially for Hungarians, but they are available in English as well. However, agencies and services specializing on a foreign audience tend to charge significantly higher fees; they may be very helpful for would-be renters with little knowledge of the language and a stable financial background, but less appropriate for prospective tenants with a tighter budget. The latter might have to take the more complicated road of getting informal (personal) help from locals, or getting to know the basics of the language.

While all administrative issues should go quite smoothly for EU and EEA citizens in every field of life in Hungary, the prevalence of the black market makes private rental particularly simple for all renters with a strong purchasing power – and particularly risky for all renters with more limited means. Furthermore, prospective renters from outside the EU/EEA may have to face discrimination based on their cultural background or geographic origin.

While nominally Hungary is one of the least expensive countries of the EU, foreigners may find many of the rental units overpriced when considering their quality (this again due to risks being built into rents).

- Main problems and “traps” in tenancy law from the perspective of tenants
1. Hungarian tenancy law does not secure an undisturbed, long-term tenancy relationship for the tenant. The legislation provides that the landlord may terminate open-ended tenancy contracts any time with a notice until the 15th day of the month, to take effect on the last day of the following month. In addition, landlords usually also provide for the right of ordinary termination in the case of contracts concluded for a determined period.
 2. In most cases, Hungarian tenancy law gives priority to the agreement of the parties. Furthermore, even in those cases where the law lays down certain rights and obligations, the legal practice considers that parties are free to deviate from these rules. Therefore, the legislation cannot be expected to address the potential conflict situations and it is crucial to examine the content of the tenancy agreement and make sure that it does not unilaterally favour the landlord.
 3. Widespread tax evasion of landlords pushes a large part of the sector into the shadow economy. This leads, on the one hand to part of the tenancy relationships being undocumented, others dissimulated as free use. In these cases, landlords are willing to charge lower prices but the resolution of legal conflicts becomes very difficult. On the other hand, tax evasion also often results in a reluctance of landlords to agree to the tenant’s registration at the local municipality, a declarative act necessary for accessing local services such as nursery schools and schools. Registration is, however, a right of tenants, also possible with a copy of the tenancy contract, without the landlord’s express agreement.
 4. Court procedures take a long time, and their outcome is not entirely predictable in tenancy matters. Therefore, most lawyers are advising their clients to endeavour to reach an amicable solution instead of litigation.
 5. Evictions are difficult to obtain and until final court decision, the tenant may claim the protection of its possession against the landlord. In order to avoid the resulting risks, landlords are often requiring the conclusion of a tenancy agreement in front of a notary public, including an undertaking by the tenant to leave the dwelling in the case of termination. As agreements concluded in front of a notary public may be directly executed (i.e. without court decision), tenants need to pay special attention not end up in an unfavourable situation (e.g. not being able to contest unlawful termination before eviction).

Important legal terms related to tenancy law

Hungarian	English
Albérlet	Sub-tenancy (colloquially used as a synonym of tenancy)
Albérlő	Sub-tenant (colloquially used as a synonym of tenant)
Bérlet	Tenancy
Bérlő	Tenant
Bérbeadó	Landlord
Bérelti szerződés	Tenancy contract
Bíróság	(Civil) court
Értesítés	Notice
Felmondás	Termination
Fizetés	Payment
Határozatlan idejű	Indefinite term
Határozott idejű	Definite term
Hiba	Defect
Ingatlan	Real estate
Javítás	Repair
Kaució	Deposit
Kilakoltatás	Eviction
Közös költség	Common costs (shared costs in multifamily buildings, usually condominiums and cooperatives)
Lakbér	Rent
Nettó lakbér	Net rent (excluding common costs and utilities)
Bruttó lakbér	Gross rent (including common costs and utilities)
Szerződés	Contract
Szerződéskötés	Conclusion of contract
Szerződésszegés	Breach of contract
Rezsi	Utilities
Társasház	Condominium
Tulajdonos	Owner
Végrehajtó	Bailiff
Zálog	Pledge

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?

Act 125/2003 on equal treatment and the promotion of the equality of chances (“Antidiscrimination Act”) applies to tenancy contracts as well. The Antidiscrimination Act provides that *“natural persons and groups of persons residing in the territory of Hungary, legal persons and organisations without legal personality need to be treated with the same respect and diligence, and with equal considerations for the individual perspectives”*. The Antidiscrimination Act further provides that persons or a group of persons cannot be subject to direct or indirect discrimination based on their real or

perceived characteristics, in particular their gender, race, colour, nationality, belonging to a nationality, mother tongue, handicap, health situation, religious or political belief, marital status, motherhood (pregnancy) or fatherhood, sexual orientation, age, social origin, financial situation, part time work or determined work contract, belonging to a representative body/advocacy group, etc.

The equal treatment obligation applies in the first place to public bodies. In the field of housing, a specific provision prohibits direct or indirect discrimination regarding housing subsidies, reductions or interest subsidy by the State or the municipalities; as well as in the course of the sale or lease of State-owned or municipality-owned dwellings and building plots.

In the case of private landlords, the Antidiscrimination Act provides that they have to respect the requirement of equal treatment when making an open offer for the conclusion of a contract or asking for an offer. This situation would also include the selection of tenants by a private landlord in case a newspaper or internet advertising is placed. There is however no standing practice in such cases and proving discrimination may often be difficult in an individual case.

- 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?

Hungarian tenancy law does not address the phase of selection of tenants. Thus, the questions that may be asked by the landlord, the consequences of discriminative questions, and the tenant's right or prohibition to give a false answer are not addressed either.

Formal regulation is very limited in this regard. Landlords can generally be expected to assess their prospective tenants' legal and financial situation; and only to the extent they need to know that the tenant will be able to cover rent and utilities. Most landlords will avoid asking any questions that do not directly influence the safety of the dwelling and the profitability of their contract (e.g. despite Hungary's relatively strict take on same sex couples, the typical landlord will not turn down a tenant based on sexual orientation). On the other hand, many will discriminate based on ethnicity if they associate low income with an ethnic group (e.g. Roma population, immigrants from third world countries), although most of them will do so covertly.

- 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)?

This procedure is very unusual on the Hungarian rental market and is illegal in the case of public sector rentals.

- 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)?

On the private rental market, informal checks are usual, which are often limited to the landlord assessing the tenant based on visual cues, or the landlord asking general questions about the tenant's job, the goal of moving to the rented apartment etc. A central information system on 'bad landlords' or 'bad tenants' is not available in

Hungary.

- 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?

Real estate agents assist in the selection of tenants and landlords; they merely facilitate matching the parties, but do not provide an in-depth assessment of either party's reliability. They do not take formal responsibility for the outcome; although in practice some agents may (informally) provide the option of finding a replacement for the landlord if one tenant leaves after a very short period (e.g. 3 months).

There are no formal associations helping tenants to find suitable rental housing. The National Association of Tenants provided legal aid until 2002, when it had to discontinue its activity due to lack of funding. This aid, however, aimed at helping tenants who already reside in a rented dwelling, rather than assist tenants in finding a place to rent.

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

There is no full and generally available blacklist of bad landlords/tenants. There are attempts on behalf of real estate agencies as well as individuals to create such blacklists; however, their publication is considered a violation of privacy law. Therefore, the lists remain informal, limited to a number of individuals who agree to share their negative experience, or internal to real estate agencies. Real estate agencies may claim to verify tenants based on constantly updated blacklists, but there is no reliable information on the completeness of these lists.

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)?

Tenancy contracts need to be concluded in writing in order to be valid, in both the public and the private rental sector. In line with the civil law practice, the requirement for written form is considered to be met if the declarations of the parties are signed by the corresponding party (these do not need to be in one single document). Agreement by postal correspondence, telegrams and telefax may also be recognized as a contract concluded in writing.

Apart from the written form, the Hungarian legislation does not provide for further formal requirements for the conclusion of the tenancy contract. There is no fee stamp required, and contracts do not need to be registered. At the same time, it is of course in principle mandatory for the landlord to declare the incomes from the tenancy contract in the context of the regular tax declarations.

The parties have the option to conclude the contract in front of a notary public, which

makes it directly enforceable. This costs about one or two months' rent.

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

Hungarian tenancy law does not define mandatory minimum requirements of a tenancy contract. However, for the valid conclusion of a contract, the parties need to agree in the essential terms. The most basic ones are the identification of the dwelling (typically the address) and the amount of monthly rent.

The legal environment of private renting is flexible to the extent that in some cases even these may be omitted; however, it is recommended to have at least as much clearly stated in the contract. Other aspects of the tenancy may be agreed in the contract, although it is not required for its validity.

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

Tenancy contracts may be time limited or open-ended, according to the parties' agreement. The law does not provide for mandatory maximum or minimum duration, and there is no provision on the prolongation of tenancy contracts either.

The main difference between limited time and open-ended contracts lay in the possibilities for termination and enforcement: open-ended contracts can be terminated by virtue of law any time with appropriate notice, while this option is not available for tenancy contracts for a determined period. In line with general practice, however, the parties may agree to provide for such an option in time limited contracts, too. Another significant difference is that in the case of time limited contracts, eviction may be directly initiated after the expiry of the term.

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

Hungarian tenancy law does not specify the indications necessary for specifying the obligation of rent payment. In any case, it is recommended to agree on the periodicity of rent payment (typically per month), the due date of rent payment and the method of payment. It is also recommended to fix the method and regularity of payment of the utilities.

- Repairs, furnishings, and other usual content of importance to tenant

In Hungarian tenancy law, parties have a large freedom to agree on the maintenance and furnishings of the dwelling, as well as and other details of the tenancy relationship.

- Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

Under Hungarian tenancy law, the parties may freely agree on the sharing of responsibilities for the maintenance of the building, the dwelling and its equipment.

As a rule, the landlord needs to ensure the maintenance of the building, the continuous running of the central devices of the building and the fitting of defects in the premises in common use and in their equipment. The parties may, however, decide otherwise, in which case the tenant is entitled to rent reduction.

The bearing of the costs of maintenance, renewal, and replacement of the floors, windows and the equipment of the dwelling is subject to the agreement of the parties. In the absence of such an agreement, the costs of maintenance and renewal are borne by the tenant and the costs of replacement and exchange by the landlord.

In the case of municipal rentals on a social basis, the maintenance, renewal and replacement obligations mentioned above are borne by the tenant, who will be entitled to a corresponding rent reduction.

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

As a main rule, the landlord is expected to provide major appliances. According to tenancy law, the landlord is bound to hand over the dwelling to the tenant together with the appliances corresponding to the comfort category of the dwelling, in a state suitable for proper use. The dwelling is suitable for proper use if the parts of the central equipment of the building located in the dwelling and the appliances of the dwelling are functioning.

The parties may however agree that instead of the landlord, the tenant makes the dwelling suitable for proper use and equips it with the appliances corresponding to its comfort category. This agreement needs to lay down the reimbursement of the related costs and its conditions,

The furnished or unfurnished state of the dwelling is however left entirely to the discretion of the parties. Landlords advertise dwellings in a furnished or unfurnished state. In the case of furnished dwellings, the details of the furniture may be discussed among the parties and landlords are often willing to try to accommodate the tenants' wishes.

- 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)?

An inventory of furnishings and of other equipment is not mandatory, but it is recommended to avoid difficulties at the end of the tenancy relationship. Typically, an inventory may be prepared by the landlord and annexed to the contract upon agreement of the tenant.

- Any other usual contractual clauses of relevance to the tenant

In line with the main governing principle of freedom of contract, private tenancy agreements may address any aspect of relevance to the parties. The clauses included by landlords are usually formed by the landlord's previous experience with tenants and typically cover issues such as deposit, termination options, and

consequences of termination (undertaking by the tenant to move out), allowed uses and details of the use (possibility to keep pets, make noises), possibility to accommodate other persons and to sublet, cases of compulsory notification of the landlord, etc.

- 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.)?

In the case of private dwellings, the tenant may only accommodate his or her minor child and the grandchild born during their cohabitation without the agreement of the landlord. For other persons moving in with the tenant, the written consent of the landlord is needed. In the case of joint tenancy or co-tenancy, the written consent of the other joint tenant or co-tenant is also needed.

The tenants of municipal dwellings can freely accommodate their closest relatives, meaning their spouse, children, their accommodated child's children, or their parents. In all other cases, the consent of the municipality is required and the conditions for the consent are provided in the relevant municipal decrees. The persons accepted to move in with the tenant are lawful users of the dwelling, although they are themselves not in the position of the tenant and are not in a legal relationship with the landlord; and their right to use the dwelling depends on the terms of the tenancy contract.

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

In the case of private dwellings, there is no such obligation. However, in line with the freedom of contract, the parties may provide so in the tenancy agreement.

In municipal dwellings, the municipal decree may provide that the tenant is obliged to live in the dwelling. In this case, the tenant must notify the landlord if he/she intends to take a leave for more than two months. Unless the failure to notify can be justified, undeclared absence could be grounds for the termination of the contract, which is justified by the strong demand for municipal (affordable) housing.

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

Divorce or separation may indeed affect the tenancy agreement. In these cases, too, Hungarian legislation gives priority to the agreement of the parties, guaranteeing at the same time the right of use of the dwelling of the common minor child.

If the parties cannot agree, they can demand the decision of a civil court. In case the parties were joint tenants, the main rule is the sharing of the use of the dwelling among the parties (this means that the parties may use certain rooms and other premises exclusively, others jointly). In case one of the parties was the individual tenant, the main rule is that the Court grants this party the right to use the dwelling.

The shared use of the dwelling is nonetheless also possible in certain circumstances, in particular in order to ensure the habitation of the minor child.

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

With regard to an apartment shared among students, Hungarian law does not contain any specific rules; instead, the general rules regarding shared tenancies apply. Sharing a dwelling is possible in the form of joint tenancy (when all tenants are entitled to use the whole dwelling and they conclude a joint agreement with the landlord) or co-tenancy (when tenants may use a specific room and certain premises of the dwelling exclusively, others jointly and they conclude individual agreements with the landlord).

In both cases, the moving in of a new tenant is only possible upon agreement with the landlord (in the case of joint tenancy, by amending the contract, in the case of co-tenancy, by concluding a new co-tenancy agreement with the landlord).

- death of tenant;

In the case of private tenancy, Hungarian law does not foresee an automatic right of continuation in the event of the death of the tenant. Such rights are only foreseen in the case of municipal dwellings. In this case, as a rule, those persons who had the right to move in with the tenant and who lived with the tenant at the time of his/her death may continue the tenancy (the spouse, the tenant's child and the child of the co-habiting child, the tenant's parent, in this order if they don't agree otherwise).

Under certain conditions, upon agreement of the landlord, the maintainer may also continue the tenancy of both private and public dwellings. In this case, the maintainer has priority over the other persons entitled to continue the tenancy. In either case, the person continuing the tenancy is obliged to ensure the use of the dwelling for those who lived rightfully in the dwelling at the time of the death of the tenant.

- bankruptcy of the landlord;

In the case of bankruptcy of the landlord, in theory, the tenant may continue to use the dwelling, unless the agreement between the landlord and the mortgagor specifies that the dwelling has to be auctioned in an inhabited state and the tenancy agreement was concluded despite this provision. However, in practice, landlords would seek to terminate the tenancy agreement in such a case, as the inhabited state significantly lowers the market price of the dwelling.

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

In Hungary, in everyday language, subletting is often used as a synonym of lease. Under Hungarian law, however, the legal term of subletting refers to the sublease of the dwelling or part of the dwelling by the tenant.

The tenant is permitted to sublet the apartment or part of it upon the agreement of the

landlord. In order to be valid, the sublease contract needs to be concluded in writing. In the case of municipal dwellings, the conditions of agreeing to subletting are defined in the relevant municipal decree.

In view of the priority of the principle of freedom of contract and the lack of significant tenant protection, the phenomenon of abuse of subletting is not a problem in Hungary.

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

In principle, yes, the sale of the dwelling in itself does not affect tenancy, unless it is specified otherwise in the tenancy contract (e.g. a contract clause could state that the tenancy is terminated with the sale of the dwelling).

However, the market price of an inhabited dwelling is significantly lower, and therefore landlords would typically seek to terminate the tenancy contract in the case of sale. Tenancy agreements often contain a general right of termination by the landlord, which could be used in such a case. In the alternative, a landlord would typically endeavor to agree with the tenant to an amount of compensation to leave earlier.

- 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?

In Hungary, there is no unified legal framework regulating the system of public services. Therefore, there is no general definition or categorization of these services either. The relevant rules are contained in the sector laws (e.g. Act 209 of 2011 on Water Public Utility Supply, Act 18 of 2005 on District Heating, Act 86 of 2007 on Electricity). In addition, the conditions are provided in the general non-negotiable service agreements of the providers.

The usual utilities that can be considered “basic” are the supply of gas, electricity, water and sewage services, district heating and waste management (the latter two may qualify as communal services); and the maintenance of the building (condominium fee). Additional services may include phone (mobile phone), television, radio and internet services, postal services, etc.

As a result of the fragmented regulation, there are also differences among the different utilities as regards the position of consumer. In the case of gas and electricity, the consumer is the direct user of the services. In the case of drinking water supply, district heating and waste management, the consumer is the community of inhabitants of the dwelling, and the owner of the flat is the “separate user” or “fee payer”.

In practice, the landlord and the tenant can agree which one of them will contract with the utility providers. Landlords will however typically prefer to remain the contracting party for a number of reasons (e.g. control over consumption, avoidance of additional administrative fees, and in many cases tax evasion). Landlords have a strong

incentive to closely follow the payment of utilities as in reality, irrespective of the option chosen, the owner will be held responsible for the arrears made by the tenant.

Utility services could either be paid directly by the tenants, in which case the tenant pays by payment order, and presents the proof of payment to the landlord; or they could be paid by the landlord, who will then show the paid orders to the tenant. In any case, both solutions suppose a regular direct contact between the landlord and the tenant.

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

Hungarian tenancy law does not address the payment of utilities, which is therefore subject to the agreement of the parties. The landlord can lawfully demand that the tenant cover all the costs of the utilities that they use while living in the dwelling. In the case of condominiums, this usually also means the 'common cost' of condominiums, which covers the general management, cleaning, maintenance of the shared parts of the building etc. The 'common cost' also often contains a part paid into the building renovation fund, which is typically a long term goal benefiting the owner. Although in the strict sense this part of the fee is not related to the actual use by the tenant, in practice the full amount of 'common cost' is charged to the tenant.

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

As mentioned previously, in Hungary, the payment of service fees is subject to the agreement of the parties. In line with the general practice, the waste collection fees, as fees relating to the use of the dwelling are borne by the tenant. Additional costs not directly related to the actual use would primarily be addressed to the landlord (e.g. a contribution to road repair) and typically also borne by the owner.

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

As above, the sharing of the payment of common costs of a condominium is not regulated by law. Accordingly, landlords usually charge the whole amount to the tenants, although it may include fees to be used for longer term goals beyond the maintenance of the building.

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

The lawful amount is, as of March 2014, up to three months' rent. In practice, landlords often accept a lower amount, e.g. 1-2 months' rent. On the high end of the market though, some landlords may charge significantly higher deposits (e.g. up to 6 months' rent). As of March 2014, the law provides that in this case, the tenant may turn to court to lower the excessive amount of deposit.

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

There is no specific regulation in place regarding the management of the deposit during the tenancy. It is therefore up to the parties to agree on the management, including on the beneficiary of the interests. In the absence of such an agreement, the landlord is free to decide on these issues.

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

The legislation does not exclude that the parties agree on the provision of additional guarantees in the case of tenancy relationships (e.g. a personal guarantor). However, it is not common to have recourse to guarantees other than the deposit,

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

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)?

'Defect' of a dwelling does not have a general definition in Hungary. The landlord has to warrant that the dwelling corresponds to the provisions of the contract during tenancy. Furthermore, as mentioned previously, as a main rule, the landlord needs to ensure the maintenance of the building and its central devices, and the fixing of defects in the premises in common use and in their equipment; and – unless otherwise agreed by the parties – bear the costs of replacement and exchange of the floors and tiles, doors, windows and the equipment of the dwelling.

In lack of a legal regulation of defects, the agreement of the parties and a case-by-case assessment is relevant. Mould and humidity would typically qualify as a defect. Exposure to noise could also qualify as a defect in particular if the level of noise would affect the proper use of the dwelling (e.g. if it goes beyond the limits of acceptable noise defined in the legislation on environmental noise levels). In the case of occupation by third parties, the tenant is entitled to demand protection of possession on its own right, in a non-litigious procedure.

- 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)

In line with the general provisions on warranty, in the case of defects, the tenant may ask for repair, request an appropriate lowering of the rent payment, correct the defect on the cost of the landlord or – in the case of an important defect – terminate the tenancy relationship.

In line with the provisions of tenancy law and court practice, if a tenant notices a warranted defect in the rented dwelling, he/she has to inform the landlord in writing about it and request the landlord to repair the defect. If the landlord does not fix the defect communicated to him within the appropriate deadline specified by the tenant in the written notice, the tenant has the right to fix the defect, and demand compensation from the landlord.

With regard to the maintenance obligation of the landlord outside the scope of warranty, Hungarian tenancy law provides that the landlord needs to carry out his/her maintenance obligations:

- in the case of life threatening defects, defects endangering the condition of the building, and the defects practically impeding the proper use of the dwelling or of the neighbouring dwelling without delay,
- in the case of other defects at the time of the maintenance or renewal of the building.

In case the landlord does not correct the defects requiring immediate intervention, the tenant may do so and request the reimbursement of the costs in one sum from the landlord.

In case of other defects, if the landlord does not carry out his/her maintenance obligation despite the request from the tenant, at the time of the maintenance or renewal of the dwelling, the tenant may ask the court to oblige the landlord to correct the defect, or may carry out the works instead and on the expenses of the landlord.

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

As mentioned above, in line with the landlord's warranty obligation, he/she needs to do all repairs necessary to ensure that the dwelling corresponds to the contractual provisions. Furthermore, unless the parties agree otherwise, the landlord needs to ensure the maintenance of the building and its central devices, and the fixing of defects in the premises in common use and in their equipment; and – unless otherwise agreed by the parties – bear the costs of replacement and exchange of the floors and tiles, doors, windows and the equipment of the dwelling.

It follows from the previous answer that in the absence of relevant provisions of the tenancy contract, the landlord is not bound to specific deadlines to fix a defect that only means an inconvenience to the tenant (e.g. a dripping tap, even if it drives up the water utility charges). The formal or informal agreement of the parties is decisive on such issues.

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

Under Hungarian tenancy law, tenants may make repairs at their own expenses only in the circumstances mentioned above. In these cases, tenants are entitled to ask for the reimbursement of the justified costs from the landlord but may not unilaterally deduct repair costs from the rent.

In line with the principle of freedom of agreement, however, the parties may foresee more extensive rights of the tenant to make repairs at his/her own expense, and provide for the right of the tenant to deduct corresponding costs from the rent payment.

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

As mentioned above, with the exception of defects requiring immediate intervention, the tenant is in principle not entitled to make changes to the dwelling on its own initiative, without the agreement of the landlord, unless the tenancy contract provides otherwise. This applies to all types of permanent changes, including adaptations for disability, affixing antennas and repainting walls.

In the case of small-scale and reversible changes related to the use of the dwelling (e.g. drilling the walls), it is also advisable to reach a general agreement with the landlord at the start of the tenancy relationship.

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

Hungarian tenancy law merely provides that the tenant and the persons living together with the tenant must use the dwelling in a proper manner and in line with the tenancy contract.

In practice, keeping animals and using the dwelling for commercial purposes would be possible only upon agreement of the landlord. Receiving guests overnight would typically be comprised in the proper use of the dwelling. Fixing pamphlets does not seem problematic either, unless by virtue of their content they disturb the neighbours to an extent contrary to the requirements of cohabitation. Producing smells would create a problem if it goes beyond proper use and disturbs neighbours to a great extent. In case the tenant behaves in a way flagrantly contrary to the requirements of cohabitation, the landlord may terminate the tenancy relationship.

3.2. Landlord's rights

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

In private rental, there is no rent control in force. The parties are free to agree in the amount of rent which needs to be stated in the contract. Hungarian tenancy law foresees that if the parties cannot agree, they may ask the court to determine the

amount of rent. This is however not typical at the beginning of a tenancy relationship: if the parties cannot agree on the rent, the contract would not be concluded.

In municipal rental, there is no rent control either, but the different categories of dwellings from the point of view of the level of rent (rental based on social grounds, cost based and market based rental) and the criteria for determining the amount of rent in each case are defined by tenancy law. The exact level of rent is defined in the pertaining municipal decree.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?
 - Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?

In private rental, rent increases are not regulated either. Similar to the rent amount, rent increases are subject to the free agreement of the parties. In practice, most tenancy contracts are short term, and the parties rarely agree in a gradual increase method.

In municipal rental, there are no general rules on rent increases. The relevant provisions are defined in the pertaining municipal decree.

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

Hungarian tenancy law does not regulate rent increases. It merely provides that if the parties cannot agree on the modification of the rent, they may request the court to determine the rent increase. In line with court practice, this possibility may be used, however, only if the general civil law conditions of contract amendment by the court are met.

In practice, if the rent increase is not provided in the tenancy agreement, the modification of the rent would depend on the negotiation of the parties. If the negotiations are unsuccessful, the likely outcome is the termination of the tenancy relationship. In the case the landlord intends to increase rent for time limited tenancy agreements, he/she would typically make the renewal of the tenancy relationship subject to the increase. In the past years, however, rent levels remained generally stable due to the stagnation of the construction and the housing market.

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

The landlord has the right and the duty to control the proper use of the dwelling and the respect of the tenancy agreement and may for this purpose enter the premises. The regularity of such controls depends on the tenancy agreement: the legislation foresees at least one occasion per year, or several occasions according to the

provisions of the contract (or, in the case of municipal dwellings, the municipal decree).

In this case, the tenant is obliged to ensure entry to the dwelling at an appropriate time and to tolerate the control. In the same way, the landlord has a right of entry in case the correction of a defect in the dwelling is necessary due to an extraordinary harmful event, or in case of danger.

In other cases, however, the landlord may lawfully enter the premises only with the tenant's permission. In case of non-respect of this obligation, the tenant may request non-litigious protection of his/her possession against the landlord.

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

This matter is not regulated in Hungary. Therefore, nothing prevents the landlord to keep a set of keys, and keeping keys is the general practice of landlords. However, as mentioned above, outside the cases of control and emergency repairs, the landlord may only enter the dwelling with the tenant's consent.

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

No, this practice would be illegal. The tenant is entitled to the protection of his/her possession against everybody, even against the landlord. If the tenant seriously breaches the contract, e.g. does not pay the rent, the landlord needs to first call for payment and may then terminate the contract respecting the relevant deadlines. In case the tenant refuses to leave despite termination by the landlord, eviction may only be ordered by the courts once termination was confirmed by a final court decision. Eviction is then carried out by a judicial executor.

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

The landlord has a statutory lien over the property of the tenant in the dwelling in order to secure the payment of the rent and the costs. As long as such lien exists, the landlord may prohibit the transportation of such property from the dwelling. In line with the general rules on the enforcement of a lien, this means that if a tenant accumulates rent arrears towards the landlord or utility arrears towards the service providers, the landlord may initiate the sale of the asset or propose to take the asset to compensate for the arrears.

4. Ending the tenancy

4.1. Termination by the tenant

- Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?

In the case of open ended contracts, either of the parties may terminate the contract until the 15th day of the month, to take effect on the last day of the following month. In case the termination does not respect this deadline, the tenancy relationship shall be

regarded as terminated on the last day of the second month following the termination.

- 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)?

Hungarian tenancy law does not address the right of termination of the tenant in the case of time limited tenancy agreements. The parties may define the relevant conditions in the tenancy agreement, and it is indeed common and recommended to do so.

Furthermore, in line with the rules on warranty, if the landlord does not make sure that the dwelling corresponds to the provisions of the contract and the defect is significant, the tenant is entitled to terminate the agreement. Difficulty with the neighbours would most probably not qualify as such a defect. The bad state of the dwelling, however, may lead to justified termination under the warranty rules.

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

Hungarian tenancy law does not provide for this option. Parties may however include such clause in the tenancy agreement. In the absence thereof, the issue would be subject to the negotiation of the parties. This means that even if the tenant finds a suitable replacement tenant, in the absence of relevant contract provision, he/she may leave earlier only if the landlord agrees.

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)?

As mentioned above, in the case of open ended contracts, any of the parties may terminate the tenancy contract until the 15th day of the month, to take effect on the last day of the following month. In case the termination does not respect this deadline, the tenancy relationship shall be regarded terminated on the last day of the second month following the termination.

- Must the landlord resort to court?

No, in the case of open ended contracts, the landlord may terminate the contract with a simple notice. However, if the tenant refuses to leave the dwelling and the parties cannot agree, the landlord needs to resort to court to confirm the legality of termination and order the emptying of the dwelling by the tenant.

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

In Hungarian tenancy law, as a rule, eviction may only be ordered following court procedure (with the exception of time limited tenancies where the term has expired

and directly enforceable undertakings by the tenant). In the course of the eviction procedure, there is no longer a possibility for the tenant to raise objections on the substance of the matter. Execution may however be suspended one time upon the request of the tenant, for a period up to 6 months. Furthermore, each year, there is a winter moratorium in place for the eviction of natural persons, usually in the period between 1 December and 1 March (in 2013, this period was extended from 9 November 2013 to 31 April 2014).

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

Hungarian tenancy law does not provide for a right of ordinary termination of the landlord in the case of time limited tenancy agreements. It is however common for landlords to include such rights in the tenancy contract. In this case, the conditions of the contractual provisions apply.

Furthermore, tenancy law provides for the possibility of the landlord to terminate the tenancy agreement for non-compliance. Accordingly, the landlord may terminate the tenancy relationship following prior request to the tenant, with a termination period of at least 15 days, taking effect on the last day of the month following termination, if the tenant or a person living with the tenant behaves in a way flagrantly contrary to the requirements of cohabitation with the landlord or the neighbours, or if they use the dwelling or the area for common use improperly or contrary to the content of the contract.

The termination by the landlord does not need to be preceded by a request to the tenant if the behaviour in question is so grave that the landlord cannot be expected to maintain the tenancy relationship. In this case, the termination needs to be communicated within 8 days of becoming aware of the behaviour.

The landlord may also terminate the tenancy agreement in the case of lack of rent payment. Also in this case, the landlord first needs to request the tenant in writing to pay, with a warning on the consequences. If the tenant does not comply with the request within eight days, the landlord may terminate the tenancy relationship within a further eight day period.

The legislation does not provide for defences of the tenant. However, if the tenant disputes the legality of termination, he/she may turn to the court. As mentioned above, eviction may not be ordered without final court decision confirming the legality of termination.

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

If the tenant refuses to leave the dwelling after the expiry of the term of tenancy, the landlord may initiate a judicial execution procedure to evict the tenant. In this case, eviction may be ordered in a non-litigious procedure and is carried out by a judicial executor.

4.3. Return of the deposit

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

Hungarian tenancy law does not contain specific rules on the return of the deposit. In line with the general rules on deposit (a form of lien), the deposit needs to be returned when the secured claim and the legal relationship serving as a basis for the secured obligations (in this case, the tenancy relationship) ends. This typically happens simultaneously to the handover of the dwelling by the tenant.

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

Hungarian tenancy law does not address the allowed uses of the security deposit. However, in line with the general legal provisions, the function of deposit is to ensure direct compensation in case the tenant fails to fulfil a contractual obligation (e.g. does not pay the rent or causes damages beyond ordinary use). Therefore, unless specifically provided by the contract, the deposit may not be used to compensate for the consequences of ordinary use.

4.4. Adjudicating a dispute

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

In Hungary, ordinary civil courts are responsible for the adjudication for tenancy disputes. There are no specialized courts for this type of cases.

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

Tenancy disputes are handled in accordance with normal procedures; no specific possibility for acceleration is foreseen in these cases. Unfortunately, this means that litigation may take several years despite legislative efforts to limit the possibilities to unduly prolong the procedures.

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

In Hungary, there is no compulsory or institutionalized alternative dispute resolution, but the parties may decide to resort to private mediation services. In fact, in the case of tenancy disputes, lawyers are in most cases advising their clients to try to find a common agreement.

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?

The conditions of becoming tenant in a public dwelling (most often owned by a municipality or a ministry) are regulated in the individual municipal or ministerial decree. While ministry or other central government organization owned apartments are usually allocated to the employees of the organization in question, municipal dwellings are let out according to a mix of social and economic conditions, in three categories: lease based on social situation, cost based and market based lease.

In principle, municipal dwellings are available to EU and EEA citizens; however, a vast majority of municipal decrees prescribes preference for persons who have been living in the municipality for a number of years; and a justifiable need for public sector tenancy is expected even in cost based or market rent municipal apartments. In the end, it is very unlikely for most foreign citizens to obtain a municipal tenancy. The most likely candidates could be immigrants who settle in one particular municipality, although they too would probably be crowded out by local low income households, due to the scarcity of municipal dwellings.

Housing allowance is tied to an income limit – in 2014, this is around HUF 71,250, or about EUR 230 per statistical unit. (Statistical units: in a one person household, the allowance would coincide with the EUR 230 limit, in a 2 adult household 230 has to be multiplied by 1,9; for 2 adults and a child, by 2,7 and so on; the law considers that in a larger household, members can allocate resources more reasonably). This allowance is regulated by the social law and is targeted towards the lowest income households. A candidate for the allowance has to submit an application to the municipal notarial office, who will assess eligibility.

- Is any kind of insurance recommendable to a tenant?

As the ultimate interest in the state of the dwelling lies with the landlord, insurances against damages to the apartment may be recommended for them, rather than for the tenants. However, responsibility for the safety of the tenant's possessions inside the dwelling remains with the tenant, so if he/she keeps any objects of value in the apartment, he/she might want to consider an insurance scheme for the movable possessions.

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

Legal aid services in non-litigious matters as well as in litigations are available to the socially disadvantaged. For example, among other situations, legal aid services are available for persons with a monthly income not exceeding the minimum amount of pension, i.e. HUF 28,500 (approximately EUR 91.3).

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

The following organizations provide general legal advice for fairly straightforward cases. In more complicated situations, they will suggest the tenant contact a lawyer. However, in the most widespread cases, they may be helpful.

1. General (governmental) legal aid service:
Jogi Segítségnyújtó Szolgálat <http://kih.gov.hu/ugyfelszolgalat3>
2. Equal Treatment Authority (Egyenlő Bánásmód Hatóság):
1024 Budapest, Margit krt. 85.
Tel.: (06-1)336-7843 | Fax: (06-1)336-7445
ebh@ebh.gov.hu
3. Hungarian Civil Liberties Union: Társaság a Szabadságjogokért (TASZ)
1084 Budapest, Víg u. 28.
Tel.: (06-1)209-0046 | Fax: (06-1)279-0755
jogsegely@tasz.hu

IRELAND (Republic of)

Tenant's Rights Brochure

Mark Jordan

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1. Introductory information

- Introduction on the national rental market
 - Current supply and demand situation

The housing market in Ireland is dominated by owner occupied dwellings (70%), slightly below the EU average 71%. Both the number and proportionate share of owner occupied dwellings increased steadily throughout the twentieth century and continuing until the 1990s. Since then the number has increased albeit at a weaker pace, as the number and proportionate share of private rented dwellings began to increase at a small but consistent pace. This trend accelerated sharply during the late 2000s when the private rented sector began to record rapid growth, increasing in size by about 50% from 2006 to 2011.

The rented sector falls into three components:

Renting without a public task		
Private renting	18.5%	(305,000)
'Social' renting/renting with a public task	9%	(143,000)
consisting of:		
Local authorities (public)	(7.8%)	(129,000)
Housing associations (social)	(1%)	(14,000)

The private rental sector caters for a diverse range of groups including students, young professionals, migrants and elderly persons. However, the sector also caters for many lower income households, with over a third of private renters relying on income support to pay their rent. Partly this may be attributed to the inadequate social housing stock which has resulted in long waiting lists for the allocation of public/social housing (with waiting times of over two year common).

During the 1990s and 2000s there was a general oversupply of housing and in the wake of the housing market collapse in 2007 there followed steep declines in rents. However since late 2013 and continuing into 2014, there have been increases in rents. This has been driven primarily by increases in urban areas, particularly in Dublin. With regard to regulation, the private rented sector is regulated by the Residential Tenancies Act 2004 while the social rented sector remains largely unregulated.

- Main current problems of the national rental market from the perspective of tenants
 - gross under supply of public/social housing and associated long waiting times;
 - strong demand for private rented accommodation;
 - rising rents;

- lack of social sector security
- poor condition of rental properties;
- rent arrears;
- anti-social behaviour; and
- disputes about the return of deposits.
-

- o Significance of different forms of rental tenure

The rights of both landlord and tenant vary according to whether the tenant is renting in the private rental market or is renting housing with a public task i.e. renting from a local authority or voluntary and co-operative body (e.g. housing association).

- Private renting

Private landlords operate in a regime of market rents and may grant fixed term or periodic (e.g. monthly) tenancies. However all tenancies are governed by the Residential Tenancies Act 2004, which implies a range of rights and duties into all tenancies which cannot be contracted out and which govern the fundamental matters of the tenancy including the setting of rent, the carrying out of repairs, termination, deposit protection and dispute resolution. Once a fixed term tenancy or periodic tenancy runs for six months then the tenant will automatically acquire a Part 4 tenancy and will their security will be extended for a further three and half year period, during which time the landlord's powers of termination are reduced although not extinguished.

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

Local authorities are the main providers of housing with a public task in the Ireland. This is rented accommodation provided to eligible households experiencing housing need by the council which is cheaper than in the private rented sector. Matching of landlord and tenant does not take place through a market, as is the case in the private rented sector. Instead, local authorities provide social housing supports to households based on need through a complex allocation system. In practice, after a tenant is allocated a dwelling in accordance with social housing legislation, the local authority specifies the terms and conditions of a letting agreement between itself and a tenant with weekly tenancies common.

Most local authority tenancy agreements contain a raft of provisions restricting the tenant's actions with regard to the dwelling. However in general minor restrictions are not vigorously enforced and often more substantial clauses such as provisions concerning sub-letting may be ignored in practice. However, legally the local authority may seek a court order for possession on foot of almost any breach of the tenancy agreement, and while in practice the local authority only employ such powers as a last resort, security of tenure for local authority tenants must be viewed, in light of this power, as being weak.

2. Looking for a place to live

2.1. Rights of the prospective tenant

- Finding a tenancy

Many properties for rent in the private rented sector are advertised online via sites such as daft.ie or via the classifieds on local and regional newspapers. Interested parties may contact the advertising party, usually the landlord or letting agent (the landlord's representative) and arrange a viewing of the property. Generally, this will entail a guided viewing of the property by the landlord or letting agent where the tenant may ask questions and inspect the property. It is important that the tenant makes sure that the property is in good working order e.g. that there is no damp or inadequate ventilation etc. The rent and other most important matters are often negotiable. Where the tenant is happy with the property they may make an offer to the landlord or letting agent. In the event of an agreement the landlord will often require a security deposit, generally one month's rent, be paid. Throughout each party has various legal rights and obligations which govern key aspects of the relationship. In the event of a dispute, then regard must be had to tenancy law.

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

Estate agents provide a number of services in the Irish residential sector ranging from providing basic advice and information through to agency and complete property management services. Amongst the main services provided are; a property appraisal service during which the letting agent will advise on the current rental value of the property as well as a range of insurance services for landlords. In addition, letting agents provide a means of marketing a rental property either through in store advertisement or via online mediums such as sherryfitzgerald.ie, daft.ie etc.

- 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)?

There are a number of checks which the landlord can perform on the personal and financial status of the tenant. Prior to letting a dwelling the landlord will often be concerned as to whether or not the tenant will be able to honour the tenancy agreement. In order to reduce some of the risk arising from this interaction the landlord or letting agency will often seek to carry out a range of checks on the tenant. These checks usually include credit referencing, bank referencing, employment referencing, and landlord referencing as well as personal referencing. There is nothing in law to prevent a landlord from asking for a salary statement but she cannot compel the prospective tenant to produce one. However, such a refusal may adversely affect the tenants standing. In addition to direct enquiries from the tenant the landlord may resort to a credit information agency, however such practice would not be usual. With regard to housing with a public task, housing is allocated after a

household satisfies an income requirement with documented proof of income required.

- 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?

Anti-discrimination provisions apply to landlords in both the private and social rented sectors. When a landlord is letting accommodation he must ensure that no person or group of persons is treated less favourably than any other person or group of persons because of their gender, civil status, family status, religion, sexual orientation, age, disability, race (including colour, nationality, ethnic or national origins) or membership of the Traveller community. The landlord should not discriminate against a tenant or prospective tenant because of their entitlement to Housing or other Benefits and should not advertise vacant properties in a manner that could be described as discriminatory. When dealing with persons with a disability a landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants.

2.2. The rental agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary? Is registration necessary Etc)

While it is possible to create a tenancy informally every landlord must provide the tenant with a rent book setting out basic information (rent, deposit etc) concerning the tenancy. In practice all tenancies are granted in writing, not least to ensure that the landlord is able to enforce terms that are clear.

- What is the mandatory content of a contract?

A tenancy agreement can only be concluded by an agreement to grant exclusive possession of self-contained accommodation for a rent. These matters can be agreed orally, but they should be recorded in writing. It is necessary that the object of the letting is for residential purposes, so that the tenancy is assigned to the private sector, but it is not necessary to state that the tenancy will be RTA 2004 tenancy as this is the default for a private sector letting.

- Which data and information should be contained in a contract?

The rent book must include the address of the rented dwelling, the name and address of the landlord and his agent, the name of the tenant, the terms of the tenancy, the amount of rent, when and how it is to be paid, (e.g. cash, cheque, standing order), details of other payments (e.g., telephone, TV) and the amount and purpose of any deposit paid and the conditions under which it will be returned to the tenant as well as a statement of information on basic rights and duties of landlords and tenants. If the landlord fails to provide a rent book, he will be guilty of an offence.

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

In general practice the term of the lease should be stated however failure to state a term is not fatal. In the private rented sector the tenancy will usually either be a fixed term tenancy or a periodic tenancy. A fixed term tenancy may be created for any fixed term and there is no legal maximum or minimum duration. Periodic tenancies, on the other hand, run for successive periods and include yearly tenancies, i.e. tenancies which run from year to year and tenancies for lesser periods which run for successive periods i.e. monthly and weekly. The differences between the periodic and fixed term tenancy, have become less important in the private rented sector since the introduction of the Part 4 tenancy in 2004. All residential tenancies are RTA tenancies unless expressly excluded. Where a tenancy has been in existence for 6 months, and during this time the landlord has not served a valid notice of termination, a Part 4 tenancy will automatically come into operation with the result that the tenant will be allowed to remain in occupation for a further three and a half years which will renew every four years provided valid notice of termination has not been served.

- How are rents set?

The RTA 2004 provided that rents in the private rented sector must be at a market rate and any rent which deviated from the market rate would be illegal. The Act provided that once the rate was agreed upon, it was open to annual review with the result that it could be reviewed upward or downward once per annum in order to better reflect market rates. The Act defined rent review broadly and as such it left the method of reviewing the rent rate open to the parties who could decide their own rent review formula so long as the method chosen did not result in a rent which deviated from the market rate. Market rent is defined as the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling having regard to the other terms of the tenancy as well as the letting values of a similarly placed tenancies.

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

The landlord is primarily responsible for maintenance and repairs of the dwelling and cannot shift the costs for most kinds of repairs onto the tenant except where the tenant is responsible for damage done to the property which is beyond normal wear and tear.

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

It is open to the landlord and tenant to agree whether or not the dwelling will be fully furnished or not. However, generally the landlord will provide furnishings and/or major appliances.

- 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)?

It is highly advisable that the tenant have an inventory made so as to avoid future liability for losses and deteriorations. Furthermore, where possible the tenant should take photos to record the condition of the dwelling upon moving in.

- 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.)?

In the private sector, this is a matter of contractual negotiation between landlord and tenant. Today it is generally assumed that a tenant may live with a spouse, civil partner or cohabitee (of whatever gender), but it is usual for a couple to take a tenancy as joint tenants to make occupation rights clear. It is usual also for children to live with their parents and for the tenant to share with other family members, but this should be negotiated with the landlord.

In the social sector this is again a matter for the tenancy agreement. However, family members will have been identified during the allocation process. Tenants should tell their landlord who is in occupation, and landlords may require tenants to disclose this information. Occupancy of the apartment will be limited to a certain number of people. The limit will usually be set by the overcrowding rules.

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

This may be an express term of a tenancy agreement. In a RTA 2004 tenancy the landlord is under a duty to allow the tenant to enjoy peaceful and exclusive occupation of the dwelling. That is, the tenant, upon taking possession of the dwelling, has the right to be maintained in possession and the landlord must not do anything that would deprive or partially deprive him of this.

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

This depends, first, upon whether the couple are joint tenants or not.

If they are joint tenants, a notice to quit can be served by any one of the co-tenants and it will bring the tenancy to an end. The court has power to make an occupation order in all cases involving married or unmarried couples, with or without children, and this includes power to exclude one party from all rights of occupation.

If a property is vested in one party, the effects of relationship breakdown can be capricious. The correct thing to do here is to apply to the family court which can order a transfer of a tenancy on divorce (and its equivalents) and also under the jurisdiction over children..

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

A student moving out may be replaced by motion of the other students. Under the RTA 2004, tenants can take in licensees who then later may become a tenant.

- death of tenant;

Where a tenancy is held jointly, necessarily by joint tenants, death of one party will effect a survivorship, by which the estate is passed to the survivor who will continue as the tenant automatically after the death. However, the effect of the death of a tenant on a tenancy will vary according to the nature of the tenancy and the agreement between the parties.

A Part 4 tenancy will generally end on the death of a tenant. However, where the dwelling, at the time of the death of the tenant concerned, was occupied by the partner of the tenant, a child of the tenant or a parent of the tenant then that family member may choose to become a tenant or tenants of the dwelling on the same terms of the original tenant (now deceased).

Practice about succession to tenancies varies from authority to authority. Where a person wishes to succeed to a tenancy they must apply for a transfer of tenancy, but the applicant has no automatic right to succeed to the tenancy. Instead, the tenancy may or may not be transferred to the tenant's spouse or to a member of the tenant's immediate family normally resident in the dwelling at the date of the tenant's death as the awarding of tenancies is at the discretion of the Council. In reaching a decision the council will usually have regard include the number of years which the relative lived in the house.

- bankruptcy of the landlord;

Payment of rent will be diverted to the trustee in bankruptcy. The trustee in bankruptcy is likely to want to sell the property and will be able to do so at a higher price if vacant possession is offered, so it is likely that the tenant will be asked to move.

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

In order for the creation of a sub tenancy in the private rented or social rented sectors prior consent from the landlord is an essential requirement as is usually set out in the tenancy agreement. Under the RTA 2004 a tenant may not sublet without the written consent of the landlord. In the event that the landlord consents to the sub-letting then the tenant will become a landlord upon letting a sub-tenancy. As such they will be regulated with all of the obligations set out above which relate to the landlord under the RTA 2004.

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

As a tenancy is proprietary in character it will therefore bind a purchaser. However, where a landlord is likely to want to sell the property it is likely that the tenant will be asked to move as vacant possession will usually fetch a higher price. Under the RTA 2004 the landlord may bring a private tenancy to an end where he intends to sell the property within three months. When terminating a part 4 tenancy on this ground the landlord must intend to enter an enforceable agreement to transfer the whole of his interest in the dwelling for full consideration within three months.

- Costs and Utility Charges
 - What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities? Which utilities may be charged from the tenant by the landlord? What is the standard practice?

Parties are free to apportion responsibility for arranging for utilities in the tenancy agreement however generally speaking the landlord will usually assume responsibility for connecting certain utilities, particularly water supply, electricity, heating etc. However, generally the tenant will take over responsibility for making payments in respect of utilities encountered during the term of the tenancy. For instance with regard to electricity, common practice would be for the landlord to ensure that the property is connected to the national grid before letting and upon letting the tenant would take over responsibility for paying for the electricity for the duration of their lease.

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

Payment of the local property tax is the responsibility of the property owner.

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

The function of the deposit is to provide security for the landlord.

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

A security deposit is normally paid by a tenant to a landlord or agent at the commencement of a tenancy. The landlord or agent hold the deposit of the duration of the tenancy and at the end of a tenancy the landlord, or their agent, is under a duty to return the deposit within a reasonable timeframe.

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)?

Housing must be fit for human habitation. In 2008 the Irish Government introduced a new legal minimum standard for housing quality in the rented sector. The Housing (Standards for Rented Houses) Regulations 2008 set out a legal minimum standard for housing quality which the rented premises must not fall below. The regulations cover a range of areas including structural condition, sanitary facilities, heating facilities, food preparation and storage and laundry, ventilation, lighting, fire safety and refuse facilities. The regulations apply to all rented dwellings however some provisions apply only to private rented accommodation.

Traditionally a defect would be associated with the physical or structural condition of the dwelling. Noise from a building site or from noisy neighbours may constitute a nuisance¹⁴⁷ for which the appropriate remedy would be an order for an injunction.

- 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)

As set out above the lease is a contract and therefore the usual contract law remedies are available. These include injunctions, court action for debt, rescission and damages. A number of additional remedies are available under general landlord and tenant law, for the tenant these include retention of rent and abatement. However, statute has intervened to alter the availability of these remedies. The landlord has a number of additional remedies arising under general landlord and tenant law.

RTA 2004 tenancies

The Private Residential Tenancies Board have a wide range of remedies at their disposal. These include the awarding of damages to provide compensation. With regard to a right of repair, the RTA 2004 does not provide an express right of repair rather where a landlord has failed to adhere to the repairing standard; the tenant must afford the landlord the opportunity to cure the failure in a reasonable time. Where the landlord fails to do so, the tenant may take an action to the Board who can order that the landlord carry out the repair.

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

The landlord is primarily responsible for repair and maintenance of the dwelling. In RTA tenancies a detailed framework of rights and obligations applying to both parties will dictate responsibility for maintenance works and repairs.

¹⁴⁷ Environmental Protection Agency Act 1992 s. 108; Environmental Protection Agency Act (Noise) Regulations 1994; SI No. 179/1994; as amended.

There is no obligation on an RTA tenant to carry out repairs or maintenance of the dwelling the subject of the tenancy. Instead the responsibility of the tenant is not to do any act 'that would cause a deterioration in the condition the dwelling was in at the commencement of the tenancy.' However, normal wear and tear due to everyday usage is expected and therefore the test is whether the deterioration in the condition of the dwelling is over and above that of normal wear and tear. In establishing this, there are a number of relevant factors which must be taken into account. Firstly, the time that has elapsed from the commencement of the tenancy, secondly, the extent of occupation of the dwelling the landlord must have reasonably foreseen would occur since the commencement of the tenancy; and finally, any other relevant matters. If the tenant causes damage in excess of normal wear and then this will amount to a breach of his tenancy obligations and he must take steps as the landlord may reasonable require to be taken for the purpose of restoring the dwelling to the condition it was at the commencement of the tenancy or to pay any costs incurred by the landlord in taking such steps 'as are reasonable' to restore the dwelling to the condition it was at the commencement of the tenancy. It is often the case that a dispute may arise as to what amounts to normal wear and tear and indeed it may be difficult to draw a line around normal wear and tear. It is quite clear that the landlord cannot expect the dwelling to be in a similar condition as it was at the commencement of the tenancy. The longer the term of the tenancy then the more likely it is that there will be a greater deterioration in the condition of the dwelling. The landlord is entitled to seek compensation for any damage caused which is over and above normal wear and tear however he must be able to substantiate the claim with sufficient evidence.

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

The tenant is under no statutory obligation to carry out repairs and indeed the landlord is not allowed to impose any repairing obligations on the tenant, but if the landlord has failed to carry out pressing repairs in a reasonable time after notice to do so the tenant may carry out the repairs at their own expense and then seek payment from the landlord to reimburse them for their outlay.

- Alterations of the dwelling

- Is the tenant allowed to make other changes to the dwelling?

The extent to which the tenant is allowed to make improvements or changes to the dwelling depends primarily on the lease agreement as parties are free to include terms governing alterations of the dwelling and indeed the modern residential lease will usually contain a term restricting the tenant from carrying out improvements or alterations of the dwelling without the landlords prior consent.

However, the RTA 2004 has had a significant impact in this area by placing the tenant under a duty to not alter or improve the dwelling without the written consent of the landlord. Where the alteration or improvement consists only of repairing, painting and decorating, or any of those things, the landlord may not unreasonably withhold consent.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

When dealing with persons with a disability a landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants.

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

The lease will generally contain a clause prohibiting use of the dwelling which could result in a nuisance; this could relate keeping animals, odours, receiving guests etc. It is illegal for landlords and letting agents to discriminate against a tenant if they are disabled. This means that the landlord must not treat the tenant less favourably than a non-disabled person because of their disability. With regard to keeping animals this means that the landlord is not allowed to refuse to let the tenant keep a guide dog or other assistance dog under a 'no pets' rule, Using or allowing the house to be used for immoral or illegal purposes is a ground for recovery of possession. Also the Unfair Terms in Consumer Contracts Regulations apply here. An unfair term in a standard consumer contract is a term that is significantly weighted against the consumer. Any term found by a Court to be unfair, is ineffective.¹⁴⁸

3.2. Landlord's rights

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

Again this needs to be considered sectorally as market rents prevail in the private rented sector while differential rents, related to tenant's income, apply in local authority tenancies..

Private rental market

The RTA 2004 provided that rents in the private rented sector must be at a market rate and any rent which deviated from the market rate would be illegal. Market rent is defined as the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling having regard to the other terms of the tenancy as well as the letting values of a similarly placed tenancies.

Rent increases in 'houses with public task'

Local authority tenancies

¹⁴⁸ Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms In Consumer Contracts, transposed into Irish law by the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27/1995) as amended by S.I. No. 307/2000 and S.I. No. 160/2013.

Local authority rents are set on a differential basis and are related to the household's ability to pay, so where the household's income is low then the rent will be low and should the household's income increase then the rent will increase proportionally.

- Rent and the implementation of rent increases
 - When is a rent increase legal?

In the private rented sector the RTA 2004 provided that once the rate was agreed upon, it was open to annual review with the result that it could be reviewed upward or downward once per annum in order to better reflect market rates. The Act defined rent review broadly and as such it left the method of reviewing the rent rate open to the parties who could decide their own rent review formula so long as the method chosen did not result in a rent which deviated from the market rate..

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

The landlord has a right of reasonable access which he may rely upon to enter the dwelling in order to inspect the condition of the dwelling, to carry out repairs or to show prospective tenants around. In order to avail of rights of access the landlord must give the tenants at least 24 hours' notice and access must be limited to reasonable times of the day. Where the tenant refuses the landlord reasonable access then the landlord may not be liable for the repairs..

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

It would not be unusual for the landlord or representative of the landlord to retain a set of keys to the rented dwelling in order to inspect the dwelling, carry out repairs or to show prospective tenants around. However, the landlord does not have a general right of access, rather, as set out above, the landlord has a right of reasonable access. This in turn is largely dependent on the landlord giving the tenant sufficient notice. Should the landlord attempt to exercise excessive access of the dwelling this could constitute an unfair exclusion of the landlord's duty to allow the tenant peaceful and exclusive possession.

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

A landlord is not permitted to lock a tenant out of the rented dwelling. In the event that the landlord has given notice to quit but the tenant has refused to leave the landlord can only remove the tenant with court possession order, during which the tenant will be allowed to lodge a defence. There are detailed provisions governing rent arrears. Any landlord who operates in breach of the RTA 2004 could be liable to pay damages in compensation to the tenant.

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

The landlord does not have a right to take or seize a tenant's personal property in the rented dwelling.

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?

Where the tenant wishes to terminate the tenancy they must give the landlord valid notice. Any notice of termination for tenancies of houses let for rent or other valuable consideration, whether by landlord or tenant, must be in writing and must be served not less than 4 weeks before the date on which it is to take effect.¹⁴⁹ This minimum notice period applies to all residential tenancies regardless of whether the tenancy is a fixed term tenancy, a periodic tenancy or a Part 4 tenancy of under 6 months duration. Otherwise, where a tenancy is regulated by the RTA 2004 then the period of required notice will vary according to the duration of the tenancy in the manner set out below. Alternatively where the tenant fails to provide a valid notice of termination then he runs the risk of forfeiting some or all of his deposit. Although the notice periods set out below comprise a statutory minimum parties are free to agree to a longer notice period.

Termination by tenant under the RTA 2004	
Duration of tenancy	Notice period
Less than 6 months	28 days
6 or more months but less than 1 year	35 days
1 year or more but less than 2 years	42 days
2 or more years	56 days

For tenancies which are not regulated by the RTA 2004, the notice period is determined by the nature of the agreement, subject to the statutory minimum of twenty eight days.

- 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)?

Parties are free to include an early termination or break clause. In the event that parties fail to include an early termination clause, they remain free to come to a mutual agreement which allows for termination prior to expiry of the term provided that a valid notice period is given. Where the tenancy is a fixed term tenancy the tenant is not allowed to unilaterally terminate the tenancy and any such action may cause the tenant to be liable in damages to the landlord and he may be required to continue to pay rent for the duration of the term. However, the tenant may terminate the tenancy where the landlord has breached his obligations or has refused to

¹⁴⁹ Housing (Miscellaneous Provisions) Act 1992, s.16.

consent to the tenant assigning or subletting. Where the tenant wishes to leave the tenancy upon expiry of the term, he must give notice to the landlord of at least 28 days. In the event that the tenant is seeking to bring about a termination due a landlord breach of obligation, the tenant must first notify the landlord of the failure in writing and give the landlord the opportunity to remedy the failure in a reasonable time. The landlord does not have a right to compensation where an early termination has been brought about in a manner which complies with the notice requirements of the RTA 2004. It is only when the tenant deviates from the required procedure that a landlord may claim compensation. Where the landlord is in breach of tenancy obligations the tenant may give a shorter notice period. As set out above the tenant must afford the landlord the opportunity to remedy a breach however where a landlord fails to remedy the breach then the tenant may give 28 days' notice. The main exception to this general rule is where there is imminent danger to the tenant due to the landlords breach; in this situation the tenant may give 7 days' notice..

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

Tenancies in the residential sector would rarely provide for the tenant to propose a replacement tenant for one who leaves but there is nothing to prevent a tenant finding a replacement he wants to assign to. This might be appropriate where a flat is taken by a group of students to avoid the problem that a notice by one joint tenant would end the tenancy of all the others. However, such clauses are rare and in general the landlord will find a replacement tenant without the previous tenant's assistance.

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

An RTA tenancy can only be terminated by one party serving a valid notice of termination upon the other in accordance with Part 5 of the Act.¹⁵⁰ The landlord seeking a termination must give a certain period of notice to the other party. The notice period will depend on the duration of the tenancy; the longer the duration of the tenancy, the longer the notice period required. However, in the case where the landlord wishes to terminate the tenancy as a result of anti-social behaviour or behaviour which threatens to damage or does actually damage the fabric of the

¹⁵⁰ RTA 2004, ss 57 and 58.

dwelling then only a seven day notice period is required.¹⁵¹ Anti-social behaviour is defined by section 17 to mean;

- engaging in behaviour that constitutes commission of an offence;
- engaging in behaviour that causes or could cause fear, danger, injury, damage or loss to any person living, working or otherwise lawfully in the dwelling concerned or its vicinity ;
- engage, persistently, in behaviour that prevents or interferes with the peaceful occupation by any person residing in that dwelling or in a neighbourhood dwelling¹⁵²

Termination by landlord of RTA tenancy	
Duration of tenancy	Notice period
Less than 6 months	28 days
6 or more months but less than 1 year	35 days
1 year or more but less than 2 years	42 days
2 years or more but less than 3 years	56 days
3 years or more but less than 4 years	84 days
4 or more years	112 days

Failure to provide the correct notice period will result in an invalid notice of termination and this will cause the tenancy to continue to operate, potentially resulting in the attraction of Part 4 tenancy status. As such where a landlord fails to provide a valid notice of termination he will run the risk of the tenancy running for a period in excess of the original term envisaged. It is an offence for a landlord to take any action in reliance on an invalid notice of termination which he knew or ought to have known was invalid.¹⁵³ Parties are allowed to deviate from the general notice periods where there has been a breach of obligation on the part of the other party. Where the tenant is in breach due to anti-social behaviour on their part the landlord may only give notice of 7 days. However the landlord must produce sufficient evidence. Anti-social behaviour is defined by statute and it is important to set out that a single incident may constitute ASB. Where the breach relates to rent arrears then special rule regarding rent arrears apply as set out below. The landlord has a duty to mitigate the loss from unlawful termination of the tenancy and should make efforts to fill a vacant tenancy.¹⁵⁴

¹⁵¹ *Ibid.*, s. 67(2).

¹⁵² *Ibid.*, s. 17.

¹⁵³ *Ibid.*, s. 74.

¹⁵⁴ *Kinney and Anor v O'Doherty* TR 26/DR1039/2008.

Part 4 tenancy

As set out earlier, where a tenancy which is governed by the RTA 2004 has been in operation for six months and a valid notice of termination has not been served then a Part 4 tenancy will come into operation with an array of legal consequences for both parties. This affects the termination procedure. In particular, a landlord can only bring about a termination of a Part 4 tenancy on one of six grounds and in doing so he must adhere to the particular requirements of any one of those six grounds¹⁵⁵ in addition to complying with the normal procedural requirements set out above.¹⁵⁶

Breach of the tenancy: In the first instance a landlord may terminate a Part 4 tenancy where a tenant has failed to comply with his obligations. However, the mere presence of a breach is not usually¹⁵⁷ sufficient to allow a landlord to terminate the tenancy, rather the landlord must first afford the tenant the opportunity to right the wrong complained of by notifying the tenant of the breach and allowing the tenant reasonable time¹⁵⁸ to correct the failure. Where the tenant fails to remedy the issues within the time then the landlord is entitled to terminate the tenancy.¹⁵⁹ Where the breach relied upon relates to rent arrears the landlord must first successfully navigate a more complex termination procedure prior to bringing the tenancy to an end. The landlord must notify the tenant of his breach and afford him a reasonable time to remedy the breach. In addition the landlord must serve the tenant with a 14 day warning letter in relation to their rent arrears.¹⁶⁰ This notice must detail the arrears and give the tenant a reasonable period of time to remedy the breach. If the tenant fails to remedy the breach then the landlord must serve a second notice informing the tenant that the rent is due and giving the tenant a further 14 days to pay. Should the tenant fail again then the landlord may terminate the tenancy by serving a notice of termination. In this scenario the landlord is only required to give 28 days' notice.¹⁶¹

Where the dwelling is no longer suitable: Aside from breach of obligation, a landlord may bring a Part 4 tenancy to an end where the dwelling is no longer suitable for its purposes. In particular, regard is to be had to the number of bed spaces as well as the composition of the household.

In contemplation of sale: The landlord may also bring a Part 4 tenancy to an end where he intends to sell the property within three months. When terminating a part 4 tenancy on this ground the landlord must intend to enter

¹⁵⁵ RTA 2004, s. 34.

¹⁵⁶ RTA 2004, Part 5.

¹⁵⁷ In serious cases, particularly in the event of anti-social behaviour, the presence of the breach will be sufficient in isolation and there the landlord will not be required to give the tenant an opportunity to remedy their behaviour.

¹⁵⁸ In *Canty v Private Residential Tenancies Board* [2007] IEHC 243 there was a failure to pay rent, and the landlord gave the errant tenant three days to remedy the issue. The court found that this period was not reasonable and instead substituted a 14 days period. As such the period of time given will depend on the nature of the breach complained of and is by nature a relative condition.

¹⁵⁹ *Barrington-Martin and O'Neill and Anor* TR66/DR695/2007, July 9, 2007.

¹⁶⁰ RTA 2004, s. 67(3).

¹⁶¹ RTA 2004 s. 67(2).

an enforceable agreement to transfer the whole of his interest in the dwelling for full consideration within three months.¹⁶²

Dwelling required for landlords own use: The landlord may also bring a part 4 tenancy to an end where a landlord requires the dwelling for his own uses. However, where the landlord seeks to terminate on this ground he must provide an additional statement to the tenant stating the identity of the new occupants and where the landlord is not one for the occupants the statement must set out the relationship between the new occupants and the landlord, as well as setting out the expected duration of occupation. In addition, where the dwelling becomes available for letting within 6 months then the landlord is obliged to offer the dwelling to the previous tenants.¹⁶³

Substantial refurbishment: The landlord may also bring a Part 4 tenancy to an end where he intends to substantially refurbish or renovate the dwelling. This ground may only be relied on where the manner of renovation requires the dwelling to be vacated. When seeking to terminate a tenancy on this ground the landlord must supply the tenant with a statement detailing the nature of the reservation and should a tenancy of the dwelling become available then the landlord is obliged to offer the tenant a tenancy.¹⁶⁴ Where the landlord wishes to terminate a Part 4 tenancy but is unable to rely on one of the 6 permitted grounds he must either serve notice on or after the end of the fourth year or serve notice during the first six months of the tenancy.

4.3. Return of the deposit

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

A security deposit is normally paid by a tenant to a landlord or agent at the commencement of a tenancy. The landlord or agent hold the deposit of the duration of the tenancy and at the end of a tenancy the landlord, or their agent, is under a duty to return the deposit within a reasonable timeframe.

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

In the event that the tenant causes damage to the dwelling in excess of normal wear and tear, the landlord will be able to use part or all of the deposit to offset the cost of repair. Alternatively where there is rent outstanding at the end of the tenancy the landlord may retain some or all of the deposit to cover the arrears. Finally where the tenant owes money for utility bills at the end of the tenancy and the utility bill is in the landlords name then he may withhold some or all of the deposit to cover these costs.

¹⁶² *O’Gorman v. Slattery* TR36/DR236/2007, 28 March 2007 where a landlord served a notice of termination on the basis of sale however the tenant failed vacate and arrears. In response the landlord changed locks prevent tenant from gaining access. The tenancy tribunal found that changing the locks constituted an unlawful termination of the tenancy and awarded €9,000 compensation for inconvenience. Also see *Boyne v. Hanaway* TR49/DR1262/2008.

¹⁶³ *Barrett v. Ward* TR135/DR963/2007, 31 March 2008, landlord failed to offer the dwelling to the previous tenants and was imposed with paying compensation of €3,300 to the tenants.

¹⁶⁴ *Hewer v. Williams* TR21/DR427&1252/2008, 30 July 2008.

The majority of disputes before the Private Residential Tenancies Board concern allegations of illegal retention of the deposit. The extent of the number of claims has forced the Government to consider introducing a deposit protection scheme.

4.4. Adjudicating a dispute

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

The RTA 2004 substantially reformed the law regulating the relationship of landlord and tenant with respect to private residential tenancies. In particular, the Act established the Private Residential Tenancies Board which was charged with primary responsibility for regulating the residential tenancies sector. The Board was empowered to provide alternative dispute resolution mechanisms, including mediation and arbitration and ultimately a hearing before a board from the Private Residential Tenancies Board. Any private tenant has the right make an application to the Board for dispute resolution services.

Total disputes dealt with by the Private Residential Tenancies Board 2012

Nature of dispute	Total Disputes 2012
Deposit retention	836
Rent arrears	719
Breach of landlord obligations	462
Breach of tenant obligations	424
Invalid Notice of termination	419
Standard and maintenance of dwelling	369
Overholding	283
Unlawful termination of tenancy (Illegal eviction)	202
Other	116
Anti-social behaviour	115
Breach of fixed term lease	113
Damage in excess of normal wear and tear	105
Rent more than market rate	61

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?

Local authorities are the main providers of housing with a public task in the Ireland. This is rented accommodation provided to eligible households experiencing housing need by the council which is cheaper than in the private rented sector. Matching of landlord and tenant does not take place through a market, as is the case in the private rented sector. Instead, local authorities provide social housing supports to households based on need. The local authority is under a statutory duty to carry out a housing need assessment within its functional area at regular intervals, (triennially). However, it is only when a local authority receives an application for social housing support from an eligible household that the matching process will begin. Any person over the age of 18 can apply for local authority housing in Ireland and where their application is successful they may be housed in a house or flat, or in supported or sheltered accommodation. Where the applicant has special needs the authority may be able to match that person with suitable accommodation. There are a number of stages to the application process. In order to qualify the applicant must have a legal right to remain in the State on a long term basis, be eligible for social housing and in need of social housing. The range of groups who enjoy legal residency rights includes:

- naturalised citizens;
- non-EEA nationals married to/in civil partnership with an Irish citizen may be considered as part of a joint application for that household, provided he/she holds a valid Stamp 4 and in this case no specific length of prior residence is required;
- UK nationals, again no specific length of prior residence or employment is required;
- European Economic Area nationals apply for social housing support from housing authorities provided that they are employed or self-employed in the State. EEA nationals who are unemployed may apply so long as their lack of employment is due to illness or accident or they are recorded as involuntarily unemployed after having been employed for longer than a year, and they are registered as a job-seeker with Department of Social Protection and FÁS;
- Non EEA nationals married to or in civil partnership with a non-Irish EEA national will be accorded the same rights and entitlements as their EEA national spouse or civil partner with regard to social housing supports;
- Non-EEA nationals with an Irish citizen spouse/civil partner or EEA spouse/civil partner;
- Asylum seekers are not eligible to be considered for social housing support;

- A non-EEA national who has been granted Refugee, Programme Refugee, or Subsidiary Protection status is eligible to be considered for social housing support;
- Non-EEA nationals with an Irish citizen child may apply for social housing support provided that the child is emotionally and financially dependent on them, and that he/she has been granted a Stamp 4 by Department of Justice on that basis and currently continues to hold that valid Stamp 4.

Once a household has a legal right to reside in the country, that household may submit an application form to the local authority. Upon receipt of the application the housing authority will assess whether the applicant is eligible for social housing. In order to be eligible an applicant will have to satisfy an income test and will have to show that they do not have suitable alternative accommodation. A household will be regarded as having suitable alternative accommodation where a member of the household has property that the household could reasonably be expected to live in. However a property will not be regarded as alternative accommodation where it is occupied by someone who is divorced or legally separated from a member of the household, or whose civil partnership with a household member has been dissolved, it would be overcrowded if the household lived in it, it is unfit for human habitation or it would not adequately meet the accommodation requirements of a household member with a disability.

Once the applicant has been determined eligible for social housing support the authority will then assess whether the housing is in need of social housing. This involves the authority assessing the current accommodation of the applicant. Where such accommodation is temporary, overcrowded, unfit for human habitation, is not suited to the accommodation requirements of a household member with a disability, is shared with another household or is unsuitable for the household in another material way, or where the current accommodation's mortgage has been classified as unsustainable as part of the Mortgage Arrears Resolution Process (MARF) laid down by the Central Bank, then the applicant will demonstrate a need for social housing and the household will be accepted by the authority as being eligible for and in need of social housing supports and placed on a housing waiting list. These lists vary in length greatly from area to area as each housing authority draws up its own rules for deciding order of priority on the waiting list. However these lists generally include people who are homeless, people with special housing needs as well as people seeking a transfer to another Council property. The allocation of local authority housing is subject to equality legislation prohibiting discrimination on 9 grounds.

In Ireland, the majority of housing waiting lists are processed in a manner which is geared towards prioritising certain groups over others according to housing need. Housing authorities in urban areas often use a points based system with households apportioned points based on a number of criteria including length of time on housing

waiting list. However in some regions housing authorities are introducing choice based housing allocation systems.

When housing becomes available it is allocated to households at the top of the waiting list. While a household is free to refuse a certain allocation the local authority may reduce that household's priority on the waiting list where the authority considers that there is not a good reason for refusing the offer, and this is more likely where the household has refused more than one offer. Where an application for housing has been refused or where a household on a housing list considers that the local authority has treated them unfairly by not allocating them a house the household may apply to the Office of the Ombudsman where the issue may be reviewed.

Homelessness

Providing housing support to homeless persons forms a major aspect of local authorities housing functions. While the Housing Act 1988 did not place a duty on housing authorities to provide housing to people who are homeless, it placed responsibility on the local authority to consider the needs of homeless persons and respond accordingly. Under that Act local authorities are empowered to provide funding to voluntary bodies for the provision of emergency accommodation and long term housing for people who are homeless. Furthermore, the authority is required to carry out assessments every three years of the number of people who are homeless in their administrative area as part of the housing needs assessment. Homeless persons may apply for social housing supports in the same way as any other household and they will be assessed in the framework set out above. However, they are given overall priority for housing.

Rent Supplement

Rent Supplement provides financial assistance on the basis of need, to those private rented sector tenants who are experiencing difficulties in paying their rent. The objective of the scheme is to provide short-term income support to assist with reasonable accommodation costs of eligible persons living in private rented accommodation who are unable to provide for their accommodation costs from their own resources, and who do not have accommodation available to them from another source. Successful applicants must fulfil various income and housing requirements. Applicants must not be in full time employment or in full time education, and are means tested and also subject to a habitual residence test. In determining habitual residence it is presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless the person has been present in the State or any other part of the Common Travel Area for a continuous period of two years ending on that date. However, a deciding officer is required to also take into account all the circumstances of the case including, in particular, the length and continuity of residence in the State or in any other particular country, the length and purpose of any absence from the State, the nature and pattern of the person's employment, the person's main centre of interest;

and the future intentions of the person concerned as they appear from all the circumstances. The accommodation must be suitable for the applicant's needs and the rent is capped to a maximum set by the local authority.

Housing Assistance Payment

In 2013 the Government announced plans to overhaul the rent supplement scheme, replacing it with a housing assistance payment which will allow recipients of rent supplement who take up full-time employment to retain a portion of their payments. This change will lead to all of the social housing services provided by the State coming together under the local authority system. Under the housing assistance payment scheme applicants will source their own accommodation within the private rented market and the tenancy agreement will be between the Housing Assistance Payment recipient and the private landlord. The local authority will pay the new assistance payment on the tenant's behalf directly to the landlord. This change was designed to reduce the possibility of landlords requiring illegal top up payments. The tenant will pay a rental contribution to the local authority based on the differential rent scheme for the relevant local authority; therefore the exact amount will depend on a tenant's ability to pay.

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

Issues relating to costs, delays and uncertainty have meant that for many tenants and landlords the courts did not represent an efficient method of resolving general disputes. In many ways the dispute resolution reforms introduced by the Private Residential Tenancies Board have gone a long way towards providing a fair, transparent, cost-effective and relatively efficient system. For non RTA tenancies, the courts remain the primary forum for dispute resolution and this can be problematic as legal aid is not generally available for any dispute concerning rights and interests in or over land.

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

Ireland has perhaps the least developed tenant representation framework in Western Europe. There is no national association to represent the interests of private rental tenants in the legislative process. Nor is there a national association to represent local authority tenants. However, some organisations (e.g. Threshold) provide support facilities to tenants.

ITALY

Tenant's Rights Brochure

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1. Introductory information

- Introduction on the national rental market
 - o Current supply and demand situation

Since the 1990s the Italian housing market had seen for many years a progressive increase in homeownership and a corresponding reduction in tenancies. The onset of the economic crisis, with the drastic reduction of new bank loans, stopped this trend, and in 2012 for the first time there was a slight increase in the percentage of households living in rented dwellings, which is nowadays about 21.8% of the total, and a reduction in the percentage of households living in ownership (67.2%). The remaining part of dwellings is occupied through free loans (commodatum) or usufructory tenancies.

The crisis has negatively affected rent affordability for many households, as so far rents have not decreased as much as the average household income. Public dwellings, where about 5.5% Italian households live, are a limited help, especially in bigger cities where thousands households are waiting to receive a dwelling.

A significant demand of houses to rent comes from immigrants from Second or Third World countries, whose number has drastically increased since 2000s. The vast majority of them live in rented dwellings, often of low quality and in the most dilapidated parts of the towns.

In the coming years the number of new immigrants is expected to increase at a much slower rate than in the past, while the Italian population is expected to decrease. Therefore, the population will slightly and gradually increase overall in the next decades.

For these reasons in next years the main challenge for housing policies seems to be providing low-income households (among which a significant role is played by young people and immigrants) with suitable dwellings at affordable prices, counteracting phenomena such as difficulty to leave parents' house and housing segregation. At the same time particular attention shall be given to the fact that the population tends to concentrate in certain metropolitan areas of the country, especially in the North, abandoning the poorest areas of the country – a situation which requires careful measures, regarding also urban and housing planning.

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

- Rent affordability: rents have not decreased as much as the average income during the years of the crisis. The problem is particularly evident in the biggest Italian cities, while it tends to disappear in the smaller towns and in the country.
- Shortage of social dwellings: the demand of social dwellings largely exceeds supply, especially in the biggest cities, as especially in the past decades many public dwellings have been sold to the occupants and only a limited number of new dwellings have been realized.
- Black market: tenants shall be careful about landlords who do not want to make a written contract or to register the contract or to indicate in the contract the full rent, in order not to pay the corresponding taxes.

o Significance of different forms of rental tenure

▪ Private renting

Private renting concerns about 16% of the Italian households, which means about 75% of the tenancy market. Two principal kinds of tenancies are possible:

- 'free market tenancies', for which parties are free to establish most of the contractual conditions, such as the amount of rent and the rent increase, but not, for example, the minimum duration; they represent the vast majority of tenancy contracts (about 4/5);
- 'assisted tenancies', for which some clauses, including in particular a clause regarding the amount of rent, shall be fixed in accordance with legal limits which consider location and kind of dwelling; despite some normative and fiscal incentives introduced by the legislator, they represent only about 1/5 of the tenancy market.

▪ "Housing with a public task" (e.g. dwellings offered by housing associations, public bodies etc)

This form of tenure concerns about 5.5% of the households living on rent. It is possible to distinguish two different kinds of tenancies with public task:

- 'public housing' deals with dwellings owned by public entities; the available dwellings are offered on rent through an announcement of selection in every Municipality generally once in a year. Households shall lack suitable accommodation and have the other requirements indicated in the announcement; rents are very low in comparison to market prices.
- 'social housing' includes different rental schemes, which all share the purpose to offer on rent dwellings at lower prices than on the market to households in need. They are generally realized through various forms of partnership between public and private entities and also the conditions to assigns them varies accordingly. This sector is not particularly developed yet but in these years it has been growing.

o General recommendations to foreigners on how to find a rental home

A foreigner looking for a house on rent in Italy should first of all consider that people often do not speak English well and tenancy contracts are practically always written only in Italian. The assistance of an estate agent might be useful, but consider that in Italy there is a wide number of them, so it is advisable to look for an agent who is regarded as expert and reliable. It is always important to check the dwelling personally before executing the contract and to pay attention to landlords who do not want to execute a regular contract for fiscal reasons (for example, the tenancy contract regarding a residential dwelling shall always be done in writing).

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

- Be careful that the contract clearly indicates all the expenses bearing on the tenant, such as the amount of condominium expenses, other 'additional burdens', taxes.
 - In case of assistance by an estate agent clear since the beginning the amount of the fee and who (tenant, landlord or both) shall pay for it.
 - Before executing the contract, check carefully if the dwelling has evident defects: the tenant is generally not guaranteed for defects he could easily recognize.
 - Consider that rules for energy saving have recently introduced some necessary elements to indicate in the contract.
 - Consider that payment of rents exceeding 999.99 euro cannot be done cash.
- Important legal terms related to tenancy law

Italian	Translation into English
Addizione	Addition
Aggiornamento del canone	Rent increase
Assegnatario (di alloggio pubblico)	Grantee (of public dwelling)
Canone	Rent
Cauzione	Deposit
Certificato di agibilità	Certificate of conformity to standards
Commissione	Brokerage fee
Contratto a canone concordato	Tenancy with rent ceiling
Contratto a canone libero	Tenancy with free rent
Disdetta	Notice to quit
Guasto	Failure
Imposta di bollo	Stamp fee
Imposta di registro	Registration fee
Miglioramento	Improvement
Molestia	Nuisance
Morosità	Delayed payment
Oneri accessori	Utilities
Piccola manutenzione	Minor maintenance work
Prelazione (diritto di)	Preemption (right)
Riscatto (diritto di)	Redemption (right)
Sfratto	Eviction
Sublocazione	Sublease
Successione	Right of succession
Vizio	Vice

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?

The Italian law expressly regulates the principle of 'equal treatment', specifically with regard to 'access to goods and services, including dwelling' (Art. 3 Leg. Decree 9 July 2003, n. 215). A further provision in the Immigration Act prohibits discrimination '*based on race, color, ancestry, national or ethnic origin, religion*', mentioning again, among the relevant fields, access to dwellings (Art. 43 Leg. Decree 25 July 1998, n. 286). This provision is expressly extended to Italian and EU-citizens and to stateless people.

Save the respect of these rules, the private landlord is absolutely free to choose the tenant he prefers. In public tenancies, on the contrary, the choice shall normally be made following the list of households having the necessary requirements to receive public dwellings.

- 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?

In the absence of specific provisions and case law on this matter, it is possible to say that personal questions should be allowed only when they are effectively relevant in order to protect the landlord's legitimate interests. In this case the prospective tenant shall answer saying the truth.

In case of illegitimate questions, it is doubtful whether there is a right to lie because a similar behavior could be regarded as unfair.

- 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)?

The estate agent can demand a fee for his activity only when the contract is validly executed as a consequence of his intervention. Anyway, this rule can be freely derogated by the parties, indicating, for example, an anticipated payment.

A "reservation fee" for the landlord seems to be extremely unusual in Italy, and no case law under this matter can be found.

- 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)?

Asking for a salary statement or requiring a credit report seem to be quite unusual in Italy, especially for small private owners, which comprise the wide majority of Italian landlords. Information is more frequently gathered through informal interviews of prospective tenants, estate agents, previous landlords, employers.

Similar checks regarding tenant's personal and financial data require the tenant's consent. In case of refusal, the landlord may decide not to execute the contract, provided that this is not a discriminatory behavior.

- 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?

The traditional role of estate agents is to make potential landlords and tenants meet each other. In addition, estate agents often provide further services such as organizing viewings of the dwelling, assisting parties during negotiations and execution of the contract, searching for relevant documents regarding the dwelling. In general they shall provide their clients with all the relevant information they know or they could have known using the required diligence. Estate agents are also responsible, together with the parties, for the registration at 'Agenzia delle entrate' of the contracts executed because of their intervention and for the payment of the related taxes, when these contracts are not drafted or authenticated by a public notary.

Similar services of brokerage are in some cases offered also by local public institutions, tenants' associations or other private organizations.

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

In recent years, the economic crisis and subsequently the drastic increase in non-regular payment of rents led to a debate regarding the possibility to develop blacklists of non-performer tenants.

At the end of 2012 a group of private people created a web-site called *Registro Nazionale degli Sfratti* (i.e. National Register of Evictions: www.registronazionalefratti.com) with the aim to publish on-line all the Italian decisions regarding notices to quit in default of regular payment.

A different approach is followed by the web-site www.referenzepubbliche.it, where anyone can give a good or bad reference regarding a tenant. The web-site does not show the whole reference but simply says if a certain person has a positive or negative reference and then suggests contacting the author of the reference for further information.

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)?

Tenancies of residential dwellings shall always be executed in writing. The prevailing opinion is that this rule applies also to 'dwellings with a public interest' and houses with cadastral rent A/1, A/8 and A/9. In case the contract lacks the written form, it is invalid, but the legislator grants the tenant the right to obtain from the Court that the

contract is validated and the rent is fixed in an amount that cannot exceed the amount established for 'assisted tenancies', which is on average half than the market price. In case the tenant previously paid a higher rent, he has also the right to have the difference refunded.

Registration at 'Agenzia delle Entrate' is compulsory for all the contracts regarding properties which last more than 30 days in a year. The registration shall be done within 30 days from the execution of contract or from the running of its effects, if earlier. Lack of registration makes the contract null and void, but according to widespread opinion, the contract is simply unenforceable until the registration is not done.

Registration in most cases implies also the payment of a 'registration fee' (2% of the annual rent for every year of duration). These expenses normally bear equally on the landlord and on the tenant, but parties, save in case of 'assisted tenancies', for which the rule is compulsory, are free to make a different agreement. But also in similar cases for the law they are always jointly and severally responsible for the payment.

A further tax, called a 'stamp fee', is due in case of execution of any juridical act: it shall be paid in proportion with the number of pages of the contract (one stamp of 16 Euro for 4 pages sides) before the 30th day of the month in which the contract is executed.

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

A tenancy contract must identify the parties and the rented dwelling and the amount of rent, specifying the residential (or non-residential or mixed) purpose of the tenancy. In addition to these mandatory minimum requirements, it is advisable that the contract includes also further elements in order to avoid legal uncertainty, even though in most cases, in the absence of an agreement between the parties, legal provisions find automatic application. Among these elements, it is possible to mention the duration of the contract, the moment of beginning, the rooms and the other out-buildings composing the dwelling, the allocation of costs for utilities, maintenance and repairs, allowed changes to the dwelling, possibility of subletting, and prescriptions on when and how the rent is to be paid.

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

Tenancies for residential dwellings must respect a minimum term of duration. The legislator regulates two different possibilities:

- 'free market tenancies': the duration is four + four years, which means that after four years the contract is automatically renewed for further four years, save that the landlord gives notice six months in advance for one of the reasons expressly indicated by the law (see Art. 3 Law n. 431/1998);
- 'assisted tenancies': the duration is three + two years, which means that after three years, in case the parties do not agree to renew the contract, it is automatically prolonged for further two years, save that the landlord gives notice six months in advance for one of the reasons expressly indicated by the law (see Art. 3 Law n. 431/1998).

The tenant can terminate the contract at any time with six months notice, for 'serious reasons'.

The legislator provides the possibility to execute contracts with shorter duration for proven landlord's or tenant's necessities; in this case the duration shall be between one and 18 months and they are not renewable. In case of contracts executed by students in order to attend university courses in a town where they do not have residence, the duration shall be between six and 36 months and they can be renewed just one time.

The limits of minimum duration do not apply to 'holiday tenancies', i.e. the renting of a dwelling only for holiday purposes.

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

Parties must indicate the amount of rent for the use of the dwelling.

It is advisable that parties indicate also the payment of further sums, such as expenses for the condominium, for the utilities, for maintenance and repairs. Otherwise these will be regulated in accordance with Civil Code or special statutes rules. Clauses requiring a forfeited sum for these 'additional expenses' are considered valid.

Moreover, parties should indicate when and how the rent is to be paid.

As for the former aspect, in case parties do not specify anything in the contract, the whole sum can be demanded on the first day of every period of time agreed for the payment. In case the parties do not indicate periods of time, the whole payment could be demanded at the beginning of the contract, according to general Civil Code rules, but it is suggested that for tenancy contracts the applicable rule is the monthly payment (the first day), as this temporal division has substantially become a widespread custom all over Italy. In any case, anticipated payments exceeding three months' rent are prohibited.

As for the modalities of payment, it is worth considering that sums from 1,000 Euro on cannot be paid cash but only through bank transfer or bank check.

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

According to the Italian law, landlords shall take care of both ordinary and extraordinary maintenance of the dwelling, provided that damages are not determined by the tenant; the latter is responsible only for minor maintenance works ('small repairs'), provided that they are a consequence of wear and tear and not of the age of the dwelling or of fortuitous events.

These rules are generally considered non-mandatory, so it is possible that parties decide that the tenant pays ordinary and/or extraordinary expenses.

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

As for appliances, the landlord is expected to provide a dwelling which has all the requirements to receive the 'certificate of conformity to standards' (in Italian: *certificato di agibilità*), which means, among the other things, minimum height of the rooms, minimum floor area for every occupant and for certain kind of rooms, sufficient natural light, heating system, minimum facilities for the bathroom and the kitchen and so on.

A dwelling without this certificate cannot be used, even though the occupant cannot be punished. In case the dwelling lacks these requirements the tenant can discharge the contract for breach.

As for furniture, Italian law grants to the parties the right to execute tenancies for residential dwellings both with and without furniture.

- o 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)?

Parties generally describe in the contract characteristics and existing defects of the dwelling, in order to avoid future claims and responsibility both for the landlord and the tenant. In case of tenancies regarding dwellings with furniture, a more detailed inventory of furnishings is usually provided and it is advisable to enclose it to the contract.

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

The other most common clauses regard:

- security deposit;
- delivery of the dwelling;
- accessibility to the dwelling for the landlord;
- responsibility for damages;
- subletting or assignment of the contract;
- termination of the contract.

- Parties to the contract

- o Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?

Tenants, in the absence of an agreement to the contrary with the landlord, are entitled to reside in the dwelling with other people, as this is coherent with the exclusive right to use and enjoy the dwelling for residential purposes.

The Court of Cassazione (18 June 2012, n. 9931) said that a clause forbidding to 'host not temporarily people not included among the family members' shall be considered null and void because it contradicts Art. 2 of the Italian Constitution, which protects the fundamental human rights both of individuals and collective groups and the duty of solidarity. The specific case regarded a friend of the tenant, but it is evident that the arguments used want to extend this freedom in the widest sense, notwithstanding the effective relationship between the tenant and the tenant's guests.

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

As for private tenancies, living in the dwelling is normally considered as a mere possibility for the tenant, though some limits to the tenant's freedom exist.

First of all, in case the tenant does not regularly occupy the dwelling without a legitimate reason, the landlord has the right not to renew the contract after the first expiration term of four or three years (Art. 3, subs. 1, lett. f) Law n. 431/1998).

Secondly, the regular use of the property may sometimes be necessary in order to properly take care of the dwelling with diligence, as required by the law.

Finally, parties are free to agree a similar duty for the tenant.

The situation is different for public dwellings: in the regional rules, non-use of the dwelling is almost always included among the reasons for which the contract with the grantee can be discharged. The relevant term which can bring to this consequence is generally six continuous months of non-occupation, provided that the grantee has not received an authorization by the landlord to do so for particular reasons.

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

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

In case of judicial separation and divorce, the spouse to whom the judge recognizes the right to live in the family house succeeds in the contract becoming tenant. A similar right is normally granted to the parent who receives the children in custody or with whom the over-18 children live. This principle is extended to interruptions of *more uxorio* cohabitations (a continuous and permanent relationship between two people 'as if they were spouses'); an agreement is necessary between the partners to leave the family house to one of them, who will live there with the children of the couple.

In case of consensual separation or nullity of the marriage, the same change of the tenant is possible provided that the spouses reach an agreement in this sense. This principle is extended to *de facto* separations (*i.e.* a long-lasting interruption of life together between husband and wife, even though not formalized).

The presence of children of the couple has been considered a necessary element in order to apply the above mentioned rules to non-married couples. This implies that people of the same sex cannot invoke this rule. A similar interpretation, though in some occasions criticized, has been always confirmed by the Constitutional Court so far.

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

In case of apartments shared among students, no special provisions can be found under this aspect. Therefore, when the contract is executed by the landlord and a plurality of students, if one of the latter withdraws from the contract, the other students cannot choose a new tenant without the landlord's consent. Instead, in case the contract is executed by one student who has the right to sublet (totally or

partially) the rooms of the dwelling, there is no a change of the original parties of the contract, but simply one or more new contracts of subletting are executed.

- death of tenant;

According to the general provisions on succession law, tenancy contracts continue with the heirs of tenants. Law n. 392/1978 extends this right to the spouse and the relatives who lived together with the tenant.

This rule is confirmed also for public housing (Art. 12 D.P.R. 30 December 1972, n. 1035 states that the dwelling is given to the spouse and the children of the dead grantee).

The same principle has been extended to *more uxorio* cohabitants. In this case the presence of children of the couple is not required, so it is more likely that this rule can be applied also to homosexual partners, even though non case law in this sense can be found yet.

The succession in the contract equally regards all the mentioned people, and for them, as for the landlord's heirs, it is automatic and binding.

- bankruptcy of the landlord;

The Bankruptcy Act (Art. 80 Royal Decree n. 267/1942) expressly provides that in the case of landlord's bankruptcy the trustee in bankruptcy succeeds in the contract.

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

As for private tenancies, the tenant has the right to sublet the property in its entirety only with the landlord's consent. On the contrary, the tenant is normally entitled to partially sublet his dwelling, provided that he informs his landlord about both the identity of the new tenant, the duration of the contract and the rooms given for subletting. 'Partial' subletting means limited only to some rooms of the dwelling.

These rules can be derogated and parties may agree to limit or extend the right to sublet the dwelling.

In case a landlord executes a sublease agreement even though there is no a principal tenancy contract, in order to avoid a direct obligation towards the landlord, this contract shall be interpreted as a normal tenancy contract, notwithstanding the formal definition given by the parties.

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

The tenancy contract has effect towards the new owner of the dwelling provided that it was executed at a certain previous date before the sale of the dwelling. In case of tenancies lasting more than nine years, a further requirement is necessary: the transcription in the Register of Properties. If this is absent, the contract has effect towards the new owner only for nine years, also in this case provided that it was executed at a certain date before the sale.

A further possibility, in the absence of a suitable document attesting the beginning of the tenancy, gives relevance to the fact is that the tenant already has possession of the dwelling before its sale: in this case the contract has effect towards the new owner for the minimum legal duration.

Finally, the new owner is in any case bound to the tenancy contract in case of a specific agreement in this sense with the previous owner.

When the tenancy contract has effect towards the new owner, the latter integrally replaces the original owner both 'in rights and in obligations'. This means that also the tenant is bound to the contract and cannot decide to freely withdraw from it.

- Costs and Utility Charges

- o 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?

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

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

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

The Italian law does not regulate in a uniform way the concept of 'utilities'.

Among these it is possible to include water, gas, electricity, lift, autoclave, alarm, driveway, caretaker, waste collection, road repair and so on.

A part of these services (which are in common among a plurality of tenants or in a condominium) is defined as 'additional burdens' and is regulated by Arts 9 and 10 Law n. 392/1978, in the absence of a different agreement between the parties. The general principle is that these expenses bear on the tenant, even though towards the condominium the landlord is always the only subject responsible for the payment.

A detailed regulation of utilities expenses is provided for 'assisted tenancies' in the Intermin. Decree 30 December 2002 (Enclosure G), and in this case it is mandatory.

The so called 'indivisible services' offered by Municipalities, such as road repair, lighting, security services and so on since 2014 are paid through a single tax, called *TASI*, which bears, for a percentage between 10 and 30% decided by each Municipality, on the occupant of the dwelling and for the remaining part on the owner. Waste collection is paid through another tax, called *TARI*, which completely bears on the occupant of the dwelling.

'Utilities' in Italian law are generally distinguished from the activities for the maintenance of the dwelling or of the building in general, as these are not properly considered as services for the tenant.

As for utilities such as electricity, water, heating regarding the single dwelling, the landlord has the duty to provide all the necessary systems and the other facilities in order to receive them. After that, the supply of the services and their payment are not considered as a duty included in the tenancy contract. For this reason, when rules can be derogated, parties normally specify that the tenant has the duty to manage the supply of these utilities and to pay the corresponding expenses.

In case the landlord remains party of the contracts regarding the supply of these utilities, he will be formally responsible for their management and payment. In the absence of a specific agreement with the tenant it is also doubtful that he can demand to be refunded for these expenses. For this reason in practice such a solution is generally avoided, even though this implies that every tenant shall substitute the previous one in the contracts regarding the utilities, generally paying a fee.

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

The law establishes that the deposit cannot exceed three months' rent. Nevertheless the prevailing opinion is that, in case of 'free market tenancies', this rule can be freely derogated. In case of 'assisted tenancies' the limit is instead mandatory in the tenant's favour, which means that it can be derogated only if introducing better conditions for the tenant.

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

The deposit produces legal interests which shall be given to the tenant at the end of every year. This rule can also be derogated in case of 'free market tenancies'. The only limit is that parties shall indicate since the beginning of the contract these sums within the amount of rent due to the landlord.

In case of 'assisted tenancies', the payment of interests cannot be derogated save in case the minimum duration of the contract is within four years (without considering the two years' legal prorogation).

The tenant is entitled to receive the interest every year, even in defect of an express request. Anyway, the landlord can withhold the interest in case of breach of the contract by the tenant, if the interest can be compensated with the amount due by the tenant.

Interests on the interests (so called 'anatocismo') may be demanded through civil proceedings only for interests which are due for more than six months.

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

A deposit is surely the most common guarantee in tenancy law, practically always provided in the contracts.

In addition, the law provides a particular kind of lien – classified as 'movable special privilege' – concerning the tenant's things which furnish the rented dwelling. The privilege regards also sub-tenants' and third people's things which can be found in the dwelling. For the latter there is an exception in case the landlord is aware that these things do not belong to the tenant. Its field of application is limited to furniture and does not concern, for example, sums of money, jewels, clothes and other similar things that can be found in the dwelling.

Also personal guarantees are quite often required, especially for students or young tenants.

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

The deposit is a form of guarantee for any kind of breach of the contract by the tenant, such as non payment of rent or utilities, damages to the dwelling and so on. At the end of the contract, the landlord can refuse to give the sum back but he cannot automatically retain it: he shall file a civil proceeding in order to ascertain the amount and be authorized to retain it.

3. During the tenancy

3.1. Tenant's rights

- Defects and disturbances
 - o 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)?

The Italian Civil Code provides for different remedies according to the type of problems affecting the dwelling. These may be a) 'vices', b) 'failures', c) 'nuisances'.

a) 'Vices' affect the original structure of the dwelling and its quality, and not simply its state of maintenance. They include, for example, damp, when this is due to original defects in the construction of the building; malfunctioning of housing systems, when they were wrongly projected or installed; lack of the certificate of conformity to standards, or of other necessary licenses for the agreed use.

All these vices are relevant in case they significantly affect the possibility to use and enjoy the property. But the tenant cannot invoke remedies in case vices were known or easily recognizable when the contract was executed.

Parties may agree to exclude the guarantee for vices, save in case the landlord fraudulently concealed the vices or when these are so relevant that make the use of the dwelling impossible. Finally, in case vices are seriously dangerous for the tenant's or his family's or his employee's health, the tenant can discharge the contract, even though he knew the vices or he had agreed to limit or exclude the landlord's responsibility.

b) 'Failures' indicate damages occurred to the dwelling because of age, fortuitousness, 'wear-and-tear'. The landlord's duty concerns both ordinary and extraordinary repairs, provided that they affect the agreed use of the dwelling, but not 'small repairs'.

c) 'Nuisances' include problems such as the exposition to noise, coming from a building site, or from neighbours and so on, as well as damages or occupation by third parties.

It is important the distinction between factual and legal nuisances. Legal nuisances regard a third party who claims a right over the rented thing, which affects the tenant's full enjoyment: the most usual case is that a subject claims a 'real' right over the thing, contrasting with the rights granted to the tenant. Factual nuisances, on the contrary, regard third parties' behaviors, not claiming any right over the thing but simply disturbing the tenant's detention: this can be, for example, a water damage from a neighboring property.

- o 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)

In case of 'vices', the tenant may alternatively demand to discharge the contract or to reduce the rent, but he cannot demand that the landlord carries out works to eliminate the vices of the dwelling. Authors suggest that once the tenant has filed a brief in order to discharge the contract, it is then no longer possible to ask for the reduction of the rent (i.e. the continuation of the contract).

In addition, the tenant may ask for compensation for damages, in case the landlord does not give evidence that he was not aware, without any fault, of the vices when the dwelling was handed over.

In case of 'failures', the landlord must restore the dwelling. In case of non-performance of such obligation, the contract can be discharged if the breach is of 'significant importance', and compensation of damages can be demanded.

In case of 'legal nuisances', the landlord shall take the necessary actions in order to guarantee his tenant's position, otherwise the latter can discharge the contract by breach and ask compensation for damages.

Finally, in case of 'factual nuisances', there is no a guarantee by the landlord, because the tenant is entitled to directly adopt the necessary actions: the tenant can invoke an injunction for recovery, in case he is violently or covertly deprived of the possession over the thing, and he can also claim the compensation for damages.

- Repairs of the dwelling

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

The landlord's duty concerns both ordinary and extra-ordinary repairs, provided that they affect the agreed use of the dwelling. In these cases the landlord shall restore the property to its original state. We can mention among them damages to heating and other systems, pipes, external walls, windows, doors, and so on. Obviously damage due to the tenant or his family or his guests shall not be repaired by the landlord.

The landlord's duty does not include either 'small repairs': these concern damages caused by wear-and-tear, which can be repaired with a limited cost. For example, damage to water taps, handles, glass and so on. These repairs must be done directly by the tenant, who cannot ask to be refunded.

In any case these rules can be freely derogated by the parties.

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

The replacement of the original performance with another one is possible only in case the creditor agrees, even though the offered performance has a higher value.

The tenant can carry out urgent repairs giving prompt notice to the landlord, but even in this case the former does not have the right to reduce the rent but can only ask for a refund.

- Alterations of the dwelling

- o Is the tenant allowed to make other changes to the dwelling?

According to the Civil code rules, 'improvements' and 'additions' to the dwelling by the tenant are allowed, even without an express consent by the owner, in derogation to its exclusive right. On the contrary, any other change of the dwelling which cannot be classified as an improvement or as an addition shall be considered illicit: in particular the Court cleared that the limit is represented by works changing 'the nature and the use' of the rented thing.

Anyway, the rules regarding improvements and additions can be derogated and in practice contracts often limit or exclude the tenants' right to carry out similar changes of the dwelling, at least without the owner's consent.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)
- Affixing antennas and dishes
- Repainting and drilling the walls (to hang pictures etc.)

Under these aspects no derogatory provisions can be found, so the general rules described above apply.

As for adaptations to disability, it is necessary to consider whether works are so relevant that they cannot be included among improvements or additions. On the contrary, in case of minimal alterations, such as repainting and drilling the walls, unjustified refusal by the landlord could be considered abusive.

- Uses of the dwelling

- o Are the following uses allowed or prohibited?

Preliminarily, it is worth remembering that the tenant has the duty to take care of the dwelling and use it in accordance with the terms expressly agreed in the contract or in a way which is implicit given the circumstances.

- keeping domestic animals

Parties are normally free to agree in a tenancy contract that the tenant cannot occupy the dwelling with animals. Doubts arise in case similar limitations do not correspond to an objective interest of the landlord (or of the owner), but it does not seem that Italian Courts have had the occasion to consider similar clauses as abusive.

- producing smells

In the Italian law there are no specific provisions regarding limits to smells in tenancy contracts. Therefore, limits may descend from the rule regarding 'discharges' (in Italian 'immissioni'). This provision finds application to every property and regards not

only smells but also noises, pollution, heat and so on. The principle is that the owner cannot avoid these discharges coming from another property, save that they exceed the normal tolerability, having regard to the conditions of the places. This is an elastic parameter that shall be evaluated by judges in accordance with the specific circumstances of the case.

- receiving guests over night

Limits regarding the possibility for the tenant to receive guests could in theory be stipulated in the contract, but they would be probably considered as abusive if not grounded on an objective and legitimate interest of the landlord (or of the owner). This is the impression if we consider some recent decisions of the Italian Cassazione, which considered null and void a clause excluding the right for the tenant to host not temporarily a person outside the family. This clause has been considered to contradict the duty of solidarity and the protection of relationships among members of a family, among partners and also among simple friends. The generic prohibition to host even temporarily guests in the dwelling should be even more easily considered illegitimate in the absence of objective reasons of the party.

- fixing pamphlets outside

In case the tenancy contract does not provide anything regarding the faculty to fix pamphlets outside the dwelling, the landlord could probably not force the tenant to remove them, as this could be included among the possible uses of a residential dwelling. A prohibition could anyway derive from a specific clause in the contract. As this could be interpreted as a form of limitation of the tenant's freedom of expression, it would be probably considered legitimate only if grounded on serious and objective reasons. Similar arguments are valid also in case limitations are inserted in the regulation of the condominium. However, it seems that the Courts have not dealt with this specific problem yet. Case law regards instead the only partially similar matter of signs (e.g. regarding commercial activities) on the front of a condominium. These cases have stressed the importance that the signs do not alter the esthetics of the front, in accordance with the rules regarding common parts of the building.

- small-scale commercial activity

The distinction between rentals for residential uses and rents for commercial (*rectius*: non-residential) uses is one of the most important in the Italian tenancy law. Therefore, it is absolutely licit and usual that the landlord limits the use of the rented dwelling to one of these, even though mixed uses are possible according to the Italian law.

3.2. Landlord's rights

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

In private tenancies rent control is nowadays limited to a special regime that parties may freely decided to adopt: the so called 'assisted tenancies'. The choice of fixed rents is compulsory only in case of 'temporary contracts' (*i.e.* contracts with a

duration below the minimum legal term), allowed in order to 'satisfy particular necessities of the parties'.

The amount of rents is fixed through local agreements among the most representative landlords' and tenants' associations. These agreements generally use as parameters the location and the characteristics of the dwelling: every Municipality is divided into 'uniform areas' which have similar characteristics and similar housing market values; dwellings are divided in classes according to parameters such as kind of dwelling, age, conditions, services, parking areas and so on. In consideration of these elements the table provides a maximum and a minimum parameter for every squared meter of the dwelling. The result of this multiplication gives the range of the applicable rent. Actually, the only binding limit is the maximum because parties may freely decide to agree an even lower rent.

In case parties agree for a higher rent, the clause is null and void. Nevertheless, within six months from the moment when the dwelling is effectively returned, the tenant can claim to have the excessive rent refunded; in case the contract is still effective between the parties, the tenant may demand that the judge modify the contract in accordance with the legal limits.

- Rent and the implementation of rent increases
 - o 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 charged lawfully?

In case of 'free market tenancies', parties are normally considered free to agree about rent increase clauses in the amount and with the frequency they prefer. Nevertheless, in case the landlord opts for a particular regime of taxation of the income from rents (called 'cedolare secca') any form of rent increase is prohibited.

In case of 'assisted tenancies', on the contrary, the content of rent increase clauses shall respect the limits indicated by the Intermin. Decree 30 December 2002. According to these provisions, the contract may provide for a rent increase only if this is allowed by local agreements between associations of landlords and tenants and in any case it cannot exceed 75% of the ISTAT rate: this is the percentage of annual inflation calculated by the National Institute of Statistics.

With regard to 'temporary contracts', such as the contracts for university students, rent increase clauses are not allowed: as the duration of these contracts is below the ordinary legal term, the legislator excluded the necessity to update the rent during the contract.

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

According to the prevailing opinion, a rent increase is valid only in case it is decided by the parties since the beginning of the contract and this agreement is registered at the 'Agenzia delle Entrate'. The rationale of these rules is that the legislator wants to

avoid that when the tenant is already occupying the dwelling, the landlord may exploit this situation in order to obtain more favorable contractual conditions. Besides, this rule attempts to prevent that parties indicate a fictitious rent in the registered contract and establish the real rent in another non-registered agreement.

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

In general terms, the landlord is not allowed to enter the tenant's dwelling without his prior permission, and would commit a criminal offence if he would do so.

In partial derogation of this principle, there might be exceptional circumstances in which the landlord is entitled to enter the tenant's apartment, even without the tenant's permission – for example, if the landlord must repair the building and the tenant prevents him, without any legitimate reason, from entering the dwelling.

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

No case law can be found with regard to this issue. However, the landlord does probably have a right to possess one set of keys. In any case, the fact that the landlord has the keys cannot be considered as an implicit authorization to enter the premises without respecting the conditions described above.

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

In case the tenant does not regularly pay the rent or breaches the contract in other ways, the landlord has not the right to lock him out of the dwelling without a judicial order. In the absence of this, the landlord would be responsible.

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

The law provides a particular kind of lien on the tenant's things which furnish the rented dwelling. This privilege does not limit the right of the tenant to dispose of the things, but it simply gives the landlord the right to be paid first, relative to other creditors of the tenant, in case the thing is attached and sold. In addition, in case the tenant removes things from the dwelling without the landlord's consent, the latter maintains the lien over them, provided that he seizes the things within fifteen days from their removal. In partial derogation of this principle, the privilege has no effect against the third party who bought the things without being aware of the privilege.

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?

Italian law requires that tenancy contracts for residential dwellings have a minimum duration. From the tenant's point of view, this is eight years in case of 'free market tenancies' and five years in case of 'assisted tenancies'. Shorter minimum durations are provided in case of particular necessities of one of the parties ('temporary contracts') or for contracts executed by student in order to attend university courses in a town where they do not have residence ('student contracts'). Tenancies executed exclusively for holiday purposes do not have a minimum legal duration.

- 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)?

At the expiration of the above mentioned terms, the tenant is always free to terminate the contract with six months' notice.

In addition, the tenant has the right to terminate the contract at any time with six months' notice in case of 'serious reasons'. These events shall have the following characteristics: unpredictable, supervening to the execution of the contract, not depending on the tenant's responsibility and making the continuation of the contract particularly burdensome. They can regard both personal situations of the tenant and objective conditions of the dwelling: among them we can mention diseases, particular economic difficulties, working, studying, family circumstances which make the dwelling not suitable anymore, annoying behaviours by the landlord. Courts tend to require that the tenant expressly indicates the reason for the termination in the notice, so that its legitimacy can be checked.

All these rules are meant to protect the tenant. Therefore, they can be derogated only in his favour – for example, allowing termination at any time without specific reasons or with shorter terms of notice.

In addition, the tenant may terminate the contract in case of an important breach by the landlord. This means that the landlord did not correctly perform one of his duties.

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

The tenant does not have the right to replace himself with another tenant without the landlord's consent. Nevertheless, a similar offer may help to find an agreement with the landlord for an early termination.

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)?

As already said for the tenant, the Italian law requires that tenancy contracts for residential dwellings have a minimum duration. From the landlord's point of view, this is four + four years in case of 'free market tenancies' and three + two years in case of 'assisted tenancies'. After either eight or five years, respectively, from the beginning of the contract, the landlord is free to terminate the contract giving six months' notice to the other side.

o Must the landlord resort to court?

In case the tenant spontaneously leaves the dwelling, it is not necessary for the landlord to resort to the Court. Nevertheless, the law grants two possibilities: the landlord may send notice to quit at least six months before the expiration date of the contract, together with the summons to appear, so that he can immediately start a judicial procedure and obtain an order to quit the dwelling: he can then use this decision against the tenant in case the latter does not leave the dwelling when the contract expires; otherwise, the landlord can send notice to quit and summons to appear only after he has already given simple notice, just in case the tenant does not spontaneously leave the dwelling. Surely the latter option is the most usual, except for cases in which the landlord is already sure that the tenant will not leave the dwelling after the expiration.

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

The tenant may contest before a Court the landlord's right to carry out the eviction giving evidence that the minimum legal term of duration was not respected.

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?
- 'Free market tenancies' and 'assisted tenancies' can be terminated by the landlord at the first expiration date (respectively of four and three years) only for one of the reasons expressly indicated by the law: a) when the landlord wants to use the dwelling for himself or for his spouse, parents, children, relatives within the second level for a residential, commercial, craft or professional activity; b) when the landlord is a public, cultural or religious legal entity which wants to use the dwelling for its own purposes, provided that it provides the tenant with another adequate and fully available dwelling; c) when the tenant has at disposal a free and adequate dwelling in the same municipality; d) when the building is seriously damaged and needs repairs which are prevented by the presence of the tenant; e) when the building shall be integrally repaired, or destroyed or elevated (in the latter case, the tenant shall live at the top floor and the building needs to be evacuated); f) when the tenant does not continuously occupy the dwelling without a legitimate reason, save cases of

succession in the contract; g) when the landlord wants to sell the dwelling, provided that he does not own other residential dwellings, in addition to his own house; a pre-emption right is granted to the tenant in similar cases. These rules are considered unilaterally imperative, which means that they cannot be derogated from in favour of the landlord.

- In addition, also the landlord can discharge the contract in case of an important breach by the tenant. The most common case is delay in rent payment for more than 20 days or non-payment of 'additional burdens' corresponding to over two months' rent. In this case the landlord shall resort to Court: a summary proceeding may rapidly grant the landlord an order of eviction towards the tenant; only in case of opposition by the latter, ordinary proceedings begin.

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

In case of early termination for landlord's necessities, the tenant is entitled to contest the landlord's stated grounds before a Court in order to prevent eviction.

In case of termination for non-payment of rents or other sums, the tenant can avoid eviction in this way: at the first hearing the tenant can offer the payment of the sums due, plus interests and legal expenses. If these conditions are met, the proceedings cannot bring to the eviction. In case of proved difficulties of the tenant, the judge can fix a term within 90 days for the required payment. This measure can be invoked by the tenant for not more than three times in four years. But in case the breach is the consequence of economic difficulties of the tenant, which arose after the execution of the contract and were caused by unemployment, disease or other serious difficulties, the procedure can be used until four times and the judge can fix the above indicated term to pay within 120 days.

- 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 case the tenant does not immediately leave the dwelling, not even after the judicial procedure of eviction, a further judicial procedure for the forced execution of the decision is necessary.

This procedure grants the landlord the right to demand that police intervene in order to put into effect the order to leave the dwelling.

4.3. Return of the deposit

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

When the contract expires, the landlord is obliged to give back the same amount of money (or other fungible things) received. More exactly, it has been clarified that the duty to give the deposit back arises only when the tenant effectively leaves the dwelling.

- What deductions can the landlord make from the security deposit?

The landlord, at the end of the contract, can refuse to give all or part of the sum back in case of compensation with an unpaid credit towards the tenant. Nevertheless, the landlord cannot automatically retain the sum: he must resort to Court in order to ascertain the amount due and be authorized to retain it.

- o In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

In case of tenancies regarding dwellings with furniture, the landlord cannot make a deduction from the deposit in case of wear and tear due to the use of the things, because this is included in the rent payment. Vice-versa, in case of damages exceeding the normal depreciation of the goods, the tenant is held responsible and the landlord can demand a corresponding amount of the deposit.

4.4. Adjudicating a dispute

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

Italian law does not provide special courts to deal with tenancy disputes, but only some particular procedures.

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

The choice of procedure is voluntarily made by the subject who files the proceedings. In particular, law provides some special and facultative rules to use in case of evictions, both in case of expiration of the contract and in default of regular payment. As these summary procedures can be rather rapid and effective, they are generally preferred to the ordinary procedure for tenancy law disputes.

The eviction procedures may be grounded on a) expiration of the contract or termination by the landlord, b) non regular payment of the rent.

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

Since June 2013 the procedure of mediation has become compulsory for disputes concerning tenancy law. The duty will be in force for the next four years, and at mid-term a survey about its results will be carried out in order to verify the opportunity to save or change this system.

Mediation consists of an attempt to solve the controversy before a mediator; this procedure shall be necessarily attempted before resorting to Court. This does not imply that parties shall reach an agreement and not even that mediator can take a binding decision without both parties' consent.

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?

In order to get 'public' or 'social' dwellings, interested persons have to send an application and participate in the selection procedures regularly held by municipalities in order to assign available dwellings. Rules are indicated by every region, and further specifications are indicated by each municipality; but in general terms, it is necessary that the grantee has not another suitable dwelling and that the personal income or the global household income is below a certain amount. Applications can be generally made in the municipality where the person has residence or works. Eligible persons are Italian citizens, EU-citizens and other foreigners with a regular residence-permit; in some occasions a minimum period of residence in the region is required. In case of exceptional situations of housing need, dwellings can be assigned also without selection procedures.

The Social Fund for Rents is among the most important housing allowances. This instrument is financed by the state, the regions and the municipalities and is managed locally by the latter. Its aim is to help people pay rents, taking account of two elements: the amount of the income and the incidence of the rent on it. The fund is given by each municipality to all the people who have the said requirements and who ask for it, dividing among them the funds at disposal every year.

- Is any kind of insurance recommendable to a tenant?

Insurance policies for the tenant are not usual in Italy. In contrast, they are extremely common in case of a bank loan to purchase a house.

An insurance policy for damages caused to the building or to third parties can be compulsory when expressly required by the rules of the condominium.

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

Italian law provides a general service of free legal aid in case a person gives evidence that he is not able to afford legal expenses (so called 'gratuito patrocinio').

In addition to this, tenants' associations make agreements with lawyers in order to obtain more favourable prices for their associates. Legal assistance – for example, regarding negotiations and execution of the contract – is often provided directly by these associations.

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

The following trade unions of tenants offer services, and are widespread through local offices in many cities all over the country:

SUNIA – Sindacato Nazionale Unitario Inquilini e Assegnatari
Via Gioberti, 54 – Roma
info@sunia.it
<http://www.sunia.it/>

SICET – Sindacato Inquilini Casa e Territorio
Via Crescimbeni, 25 – Roma
Tel. 064958701 / 064958736
Fax 064958646
sicet@sicet.it
<http://www.sicet.it/>

UNIAT – Unione Nazionale Inquilini Ambiente Territorio
Via Po, 162 – Roma
Tel. 06/97606677
Fax 06/97606868
uniatnazionale@gmail.com
<http://www.uniat.it/>

Unione Inquilini
Via Cavour, 101 – Roma
Tel. 06/4745711
Fax 06/4882374
segr.naz@unioneinquilini.it
<http://www.unioneinquilini.it/>

JAPAN

Tenant's Rights Brochure

Tsubasa Wakabayashi

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1. Introductory information

- Introduction: The national rental market
 - Current supply and demand situation

Generally speaking, the supply of rental housing is greater than the demand in the national rental market. In addition, the consumer tax rate will be raised in April, 2014, and therefore, construction rash of private rental housing is seen recently.

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

Although the general supply of rental housing is greater than the demand, there are difficult problems of national rental market for foreigners. Firstly, foreigners are often rejected just because they are not Japanese.¹⁶⁵ This is a serious discrimination issue, but currently there is no statute to combat this problem directly, since a rental contract is basically based on the principle of freedom of contract. Problems are stemming partly from cultural differences of foreign tenants. Those problems are, for example, about garbage collection (garbage should be put in the determined place, time and day in the week in a certain way according to the municipality) and noise, etc. Those actual differences and the image of troubles based on the differences as well as miscommunication refrain landlords from having foreign tenants. Secondly, a tenant has to have a guarantor or a joint surety who must be a financially reliable Japanese person. Thirdly, a tenant has to pay a huge amount of money to start renting an apartment, which is generally up to 6 months' rent. This initial cost includes Shikikin (security deposit), Reikin (thanks money), commission fee for the estate agent. In particular, frequently there is a contractual clause on 'Shikibiki,' partly non-refundable money of Shikikin. Fourthly, there is a custom of paying a renewal fee to the landlord, whenever the contract is renewed (frequently every 2 years). As to the third and the fourth problems of particular Japanese monetary custom in the private rental market, a tenant has to check the content of the contract in detail, otherwise it will become a dispute either at the termination or at the time of renewal of the contract. Fifthly, there are currently many disputes over the tenant's duty to restore the dwelling at the end of the contract. This kind of dispute involves the refund of Shikikin (deposit).

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

As mentioned above, there are several obstacles for foreigners to obtain private rental housing. Compared to those difficulties related to private rental housing, public housing has advantages for foreign tenants. First of all, there is little discrimination or prejudice in the selection procedure of public housing, although there are basic criteria which candidates have to meet, such as, residential status, age, income, family status, etc. There are several types of public housing, that is, (1)

¹⁶⁵ See a newspaper article, Jenny Uech, 'Prejudice among obstacles facing non-Japanese tenants,' *Japan Time*, Nov. 18, 2008, <<http://www.japantimes.co.jp/community/2008/11/18/issues/prejudice-among-obstacles-facing-non-japanese-tenants/#.UpYPluJcWAc>>.

public housing owned by prefectures and municipalities, (2) the one by the Housing Supply Corporation (HSC), and (3) the one by the Urban Renaissance Agency (UR).

(1) The rent of public housing owned by prefectures and municipalities is lower than that of other public housing and it is determined depending on the yearly income. Moreover, no Reikin (thanks money), no commission fee and no renewal fee are required. However, it requires normally 3 months' Shikikin (deposit) as well as one or two guarantors of preferably a Japanese, and if not, of a foreign resident with a permanent residence visa. The selection is done by a lottery. In addition, there is a mandatory residents' association for each public housing which requires a fee, and cooperative attitudes for managing their community, such as, cleaning up the common area, joining activities, etc. Each prefecture or municipality has different policies on requirements, you should ask the responsible public office about the object which you are interested in.

(2) Public housing owned by HSC is for middleclass households. That is why it requires minimum income or minimum amount of saving, though the amount of rent depends on the income. In addition, there are requirements, such as, a certain visa status, a guarantor /a joint surety (but in a HSC case, using a surety company is often possible), and other requirements which are similar to the case of (1). However, there is no requirements of commission fee for the estate agent, Reikin and renewal fee. Selection is done by the first come, first serve system.

(3) UR rental housing is offered to the middle class households and it has an income requirement with minimum income. Requirements of certain kinds of visa and others are similar to the HSC housing. However, there are no requirements of Reikin, commission fee for the estate agent, renewal fee, and no guarantor. Selection is done by the first come, first serve system.

In addition to the three types of public housing, company housing can be added to an option for a foreigner. Company housing is housing owned and administered by companies, governmental and municipal offices, organizations, etc. which is rented to meet the work needs or issued as a part of salary and wages. The rent of an average company housing is low, since companies provide housing for employees as a part of their company welfare systems. The initial cost of Shikikin and Reikin is often paid by the company, if the company rents the dwelling and subleases it to an employee. However, the most serious problem is that if you lose your job, you lose your home. Moreover, the company often has power to evict employees in certain circumstances, such as transfer order to employees, although the Act on Land and Building Leases (hereinafter ALBL) applies to company housing cases in general.

- General recommendations to foreigners on how to find a rental home

As already explained above, it is difficult for a foreigner to find a private rental dwelling, because a foreigner may not be able to speak Japanese well; there are not so many estate agents as well as landlords who can communicate with a foreigner in English; landlords have often prejudice against foreigners; there are peculiar customs in the private rental market which a foreigner does not know or cannot understand (Shikikin and Shikibiki, Reikin, a guarantor, etc.). The Japanese government recognizes such problems and tries to deal with this issue. The Ministry of Land, Infrastructure, Transport, and Tourism (hereinafter MLIT) published a guideline for landlords, estate agents, and real estate management companies to make it easy for foreigners to rent private rental housing, as well as a guidebook for the apartment search for foreigners in five different languages, English, Chinese, Korean, Spanish,

and Portuguese.¹⁶⁶ More useful information and support are given by several prefectures, of which project is called 'Reliable Lease Support.' Each prefecture has information on vacant dwellings in the prefecture, estate agents who support foreigners registered in the prefecture, a guide to rental housing and rules for living in Japan, as well as other important information, such as, medical institutions which give services in foreign languages, life in general, or issues related to disasters.¹⁶⁷ There are also estate agents and surety companies who support foreigners exclusively.

If you are a student, your institution (e.g. university) may help to find a dwelling. There is also an insurance for foreign students, 'Comprehensive Renters Insurance for Foreign Students Studying in Japan.'¹⁶⁸ A foreign student who goes to one of the universities affiliated with this insurance system pays a premium to be insured. This insurance covers the rent arrears or other damages arising from a rental contract, which were paid by either the institution or a person as a guarantor in that institution, as well as other general damages caused by a foreign student (liability insurance). The affiliated institution undertakes the application procedure and copes with accidents.¹⁶⁹

- Main problems and "traps" in tenancy law from the perspective of tenants

Main problems in tenancy law are overlapping with the problems of the national rental market. Firstly, the Japanese peculiar monetary customs, such as, Shikikin, Reikin, and renewal fee are a serious problem from a perspective of a foreign tenant as well as a national tenant. The amount of each fee depends on a region and an individual landlord. Shikikin and Shikibiki are the combination seen in the western area of Japan (Kansai and the west) and Shikikin and Reikin are the combination in Kanto area. The latter of the both combinations is not refundable at the termination of the contract. Renewal fee is not refundable. Those fees are not written in tenancy law, but those customs exist and the Supreme Court found them valid.

Secondly, a number of restoration disputes have been occurring. The MLIT made a Guideline for Troubles about Restoration.¹⁷⁰ Although this guideline is not legally binding, many judicial decisions regarding refund of Shikikin based on this guideline. In addition, the MLIT published the standard contract which stipulates the range of the tenant's restoration duty. A tenant has to check the content of the contract before concluding it, whether the tenant's restoration duty follows the guideline and the standard contract.

Thirdly, there is no effective measure against discrimination in tenancy law. This issue is treated as administratively, but not legally. The MLIT launched 'the Housing Safety Net by using Private Rental Housing Business' and local governments have support systems with foreigner-friendly affiliated estate agents and landlords. However, those measures can work only with those

¹⁶⁶ <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000017.html>.

¹⁶⁷ For example, see Saitama prefecture, <<http://www.pref.saitama.lg.jp/site/tabunkakyousei/sumaisupport.html>>; Osaka prefecture, <<http://www.pref.osaka.jp/jumachi/ansin/>>.

¹⁶⁸ <<http://www.jees.or.jp/crifs/index.htm>>.

¹⁶⁹ English explanation of the service, see <http://www.jees.or.jp/crifs/pdf/crifs_en.pdf>.

¹⁷⁰ <<http://www.mlit.go.jp/common/000991390.pdf>>.

affiliated/registered estate agents and landlords, and thus, most of them are outside of such supporting system.

Fourthly, tenancy law lacks in provisions on the minimum requirements for dwellings for a residential purpose, but the Building Standards Act stipulates them. Recently illegal renting rooms with inappropriate structure and equipment in light of safety and health, have become a serious issue. Tenants of such illegal rooms are often specific groups of people who have difficulties to find a normal rental dwelling, including foreigners, because of the high initial cost and a requirement of a guarantor. Those rooms are often registered at the public office as 'rental offices' which are less strictly regulated than the ones for a residential purpose by the Building Standards Act. Since they are actually used as housing, those illegal rental rooms violate the Building Standards Act and the Fire Service Act. Therefore, when such a room is found by the MLIT, that room may be demolished and tenants will be evacuated. In that sense, the tenants' right will not be protected. This problem is not only a problem of violation of the Building Standards Act, but also a problem of residential right of tenants in tenancy law. It may be necessary that tenancy law has standards for habitability of rental dwellings in order to deal with this issue consistently within the scope of tenancy law.

Fifthly, new types of private rental housing, such as, share house, dormitory, weekly/monthly apartment, cause problems. They often have furniture and electric appliances and do not require Shikikin, Reikin, the commission fee for the estate agent and a guarantor, though some weekly/monthly apartments may require a guarantor. That is why they attract people who are in the difficult positions in the rental market, such as young people without a stable job as well as foreigners. The contract is often fixed term rental contract without renewal protection and thus the stability of living is not guaranteed. Moreover, such a contract is not concluded through an estate agent, but through a real estate management company (often a sublease company), and therefore, an explanation on the important things as to the object and the condition of the contract does not have to be given by an estate transaction specialist (Art. 35 of the Building Lots and Buildings Transaction Business Act). This means, termination procedure, penalty for breach of contract, responsibility of the tenant in case of a trouble, etc. are not explained in detail. In addition, the contract of weekly/monthly apartments is either a fixed-term contract of tenancy law or a hotel contract of the Hotel and Ryokan Management Act.¹⁷¹ In the latter case, the protection of tenants is weaker than the former, for example, the owner can enter the room and evacuate the guest easily, if he/she does not pay the fee.

¹⁷¹ Ryokan means Japanese styled hotels.

Important legal terms related to tenancy law

Japanese word in Latin character	Japanese word in Kanji	Japanese word in Hiragana	Meaning
Chintaishaku-keiyaku	賃貸借契約	ちんたいしゃくけいやく	A rental contract
Yachin	家賃	やちん	Monthly house rent.
Oya	大家	おおや	Landlord
Chintainin	賃貸人	ちんたいにん	Landlord
Nyukyosha	入居者	にゅうきよしゃ	Tenant
Chinshakunin	借借人	ちんしゃくにん	Tenant
Fudosan	不動産	ふどうさん	Estate agent
Shikikin	敷金	しききん	Deposit to be paid to the landlord at the conclusion of contract
Reikin	礼金	れいきん	Thanks money/key money to be paid to the landlord at the conclusion of contract
Hoshonin/ Rentaihoshonin	保証人／連帯保証人	ほしょうにん／れんたいほしょうにん	A personal guarantor /a joint surety for the conclusion of a contract
Songaihokenryo	損害保険料	そんがいほけんりょう	Obligatory property insurance premiums to be paid at the conclusion of a contract, if required
Moshikomikin	申込金	もうしこみきん	Application fee to be paid to the estate agent when reserving a rental agreement
Chukaitesuryo	仲介手数料	ちゅうかいてすうりょう	Commission fee to be paid to the estate agent
Kyoeकिन/Kyoeकिhi	共益金／共益費	きょうえききん／きょうえきひ	Maintenance and management fees for common services (such as, lighting in corridors) separate from the rent
Shuzen	修繕	しゅうぜん	Repair as the landlord's duty (not a small one)
Koshinryo	更新料	こうしんりょう	Renewal fee
Kaiyaku-tsuchi	解約通知	かいはくつうち	Termination notice
Seitojiyu	正当事由	せいとうじゆう	Just cause which the landlord has to have in order to terminate a contract or to refuse a renewal
Keiyaku kaijo	契約解除	けいはくかいじょ	Cancellation of the contract (due to a

			breach of contract)
Akewatashi	明渡し	あけわたし	Handover of the dwelling
Genjokaifuku	原状回復	けんじょうかいふく	Restoration of the rental housing to its original condition at handing over the dwelling to the landlord
Tachinokiryō	立退料	たちのきりょう	Eviction fee paid by the landlord to the tenant
Shinraikankeihakai no Hori	信託関係破壊の法理	しんらいかんけいはかいのほうり	Doctrine to determine the validity of a cancellation due to a breach of contract, by judging whether the mutual trusting relationship between the landlord and the tenant has been destroyed
Sosho	訴訟	そしょう	Lawsuit
Wakai	和解	わかい	Conciliation
Bengoshi	弁護士	べんごし	Lawyer

Official English translations of the Act on Land and Building Leases and the Civil Code (Arts. 601-622) are available.

- Act on Land and Building Leases (tentative version):
<<http://www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=01&dn=1&yo=%E5%80%9F%E5%9C%B0%E5%80%9F%E5%AE%B6%E6%B3%95&x=0&y=0&ia=03&ky=&page=1>>
- The Civil Code:
<<http://www.japaneselawtranslation.go.jp/law/detail/?re=01&yo=%E6%B0%91%E6%B3%95&ft=2&ky=&page=3>>

2. Looking for a place to live

2.1. Rights of Prospective Tenants

- 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?

Generally speaking, the landlord's freedom to select tenants is widely permitted under the name of freedom of contract. Rejections because of old age, children, disability, foreign nationality are still normal practices in the rental housing market. Unconventional cohabitation, such as, an unmarried couple, or especially a same-sex couple may be avoided by landlords, particularly of the older generation. Single mothers or persons with a short-term work contract may also be avoided due

to their financial unstableness. However, if a person in one of such categories has a good guarantor, he/she may be selected as a tenant. In this sense, a student does not have serious problems, since he/she has normally his/her parent as a guarantor.

- 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?

There is no legally prohibited questions by landlords and estate agents. Therefore, the prospective tenant's right to lie is not recognized in the private rental market. Generally, however, a same-sex couple conceals their relationship by telling a lie, for example, as friends looking for a room sharing, since they may be rejected and avoided by estate agents at the beginning of an apartment search.

- 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)?

There is an application fee as a deposit which a prospective tenant pays in order to apply for a dwelling as well as to be treated favourably. It is often within one month's rent. If the tenant is rejected or if the tenant cancels it before concluding a rental contract, that fee should be returned. The conclusion of a rental contract means that the an estate transaction specialist explains the important things as to the object and the condition of the contract and in practice, both parties sign the contract. Therefore, it is forbidden that the estate agent refuses to return the application fee in case of cancellation before concluding a contract (Art. 47-2 (3) of the Building Lots and Buildings Transaction Business Act; Art. 16-12 of the Building Lots and Buildings Transaction Business Act Enforcement Regulation, Ordinance of Ministry of Construction). In order to avoid a dispute in case that the estate agent does not return the application fee, a tenant should ask the estate agent for a receipt of such an application fee as a deposit (Azukarisho, 預かり証).

- 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 necessary information and points to be checked are: annual income (it should be normally more than 3 times as much as the yearly rent), workplace and the length of service, a guarantor and the relation to the guarantor (within the second degree of the blood relation is preferable), and personality of the applicant. An independent credit report is not required by the landlord.

- 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?

The role of the estate agent is as follows. A prospective tenant in search for a dwelling comes to the office and the estate agent offers suitable objects according to the conditions and preferences of the prospective tenant. The estate agent shows rental housing to him/her. If he/her likes the object, he/she applies for that object with an application fee which is refundable in case of cancellation or not being selected. In case of the successful conclusion of the rental contract, this application fee will be a part of the fees which should be paid for a conclusion of the contract, such as,

Shikikin or Reikin. The estate agent sends this application to the landlord and obtains the result, and then tells the prospective tenant the result. If it is successful, the estate agent has an estate transaction specialist explain the important things as to the object and the condition of the contract, and the both parties concludes the contract. The estate agent receives the money of Shikikin, Reikin, insurance fee, and first one or two months' rent in order to give to the landlord. At the conclusion of a rental contract, the estate agent can receive the fee from the landlord and the tenant, but it must be up to 1 month rent in total. It is often paid by the tenant, although there are estate agents who take only half or no fee from the tenant in the age of excessive supply of rental housing. For foreign students there are private apartments which are rented by municipalities or managed by international organizations.¹⁷² In that case, the institution assists students and undertakes the procedure for renting an apartment.

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

As to blacklists of bad tenants, no comprehensive lists are available. Yet, in order to gather the information on potential tenants, the estate agent might use some company to collect credit information, but the blacklists made by financial/credit companies are not available for the estate agents. If the estate agent manages also rental buildings, they may have their own list of bad tenants, such as trouble-makers, claimers, and tenants with the past rent arrears. But each management agent may have its own list and those lists are normally not shared by other estate agents.

However, the systematic data collection has been realized by the association of surety companies, the Leasing Information Communicate Center since 2009. The surety companies share the information of the tenants with rent arrears and make blacklists. A member surety company of this association has a duty to obtain an agreement of an applicant on: (1) that the data on the name, the payment situation and so on will be registered in the association, (2) that the registered data will be used by member surety companies, and (3) the range of the information and the duration of the registration (for 5 years after the evacuation/the complete payment). The problem is, however, that an applicant has actually no choice but to agree with the data registration, since he/she needs a surety to apply for a rental dwelling. And once a tenant is on the black list, it is difficult for that person to rent an apartment.

On the contrary, there is no information available regarding blacklists of bad landlords. As additional information the MLIT publishes the information on estate agents, management companies and etc., to which the MLIT has given negative administrative measures in the past.¹⁷³

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)?

¹⁷² For example, Osaka International House Foundation, <http://www.ih-osaka.or.jp/international/post_5.html>. Osaka city, <<http://www.city.osaka.lg.jp/contents/wdu020/enjoy/jp/foreign/03.html>>.

¹⁷³ This is called 'MLIT negative information search site' <<http://www.mlit.go.jp/nega-inf/>>.

For a valid conclusion of a rental contract, theoretically neither a written form nor a registration is necessary, since rental contract is a consensual contract which can be concluded without transferring an object. However, in practice, a written agreement is exchanged between the landlord and the tenant at most of the cases. In addition, it is necessary that an estate transaction specialist explains the important things as to the object and the condition of the contract before signing the contract.

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

Although no mandatory content is required for a valid contract, the MLIT published a sample of the standard contract in the internet site.¹⁷⁴ For foreigners there are also samples of standard contract and fixed-term rental contract in English, Chinese, Korean, Spanish and Portuguese.¹⁷⁵ Information in a contract is normally, address, building type, size, facilities, contract period, rent, other fees, Shikikin (deposit), the name of the landlord, the management company, the tenant and co-occupants, purpose of use, repairs, guarantor, prohibited behaviors, renewal, cancellation, restoration, and others. Due to the increasing disputes over restoration and return of Shikikin, there is detailed information on restoration items in such contract examples.¹⁷⁶

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

There are three types of rental contract in Japan: (1) rental contract unlimited in time (Kikan no sadame no nai chintaishaku; 期間の定めのない賃貸借), (2) rental contract limited in time (Kikan no sadame no aru chintaishaku; 期間の定めのある賃貸借), and (3) fixed term rental contract (Teiki tatemono chintaishaku; 定期建物賃貸借). (1) In case of rental contract unlimited in time, either party may request to terminate it at any time, if the parties do not specify the term of a rental contract, although the landlord needs a just cause to terminate the contract. (2) Rental contract limited in time is the most common type of contract and it has a renewal protection in a sense that the landlord cannot refuse to renew the contract so easily, unless the landlord has a just cause. A just cause can be judged through a comparison of needs and necessities between the landlord and the tenant. The contractual period should be longer than 1 year. If the term is shorter than 1 year, it will become automatically “unlimited in time.” Neither of the parties can terminate the contract before the expiration date, but in practice there is a contractual clause on the tenant’s reservation of the right to terminate (see below 4. Ending the tenancy). (3) Fixed term rental contract is a relatively new type of contract which was introduced in 1999. This type of contract expires definitely at the end of the term of the contract, that is, it does not have renewal protection for the tenant. Its underlying principle is freedom of contract, and therefore, it is a freedom for the parties to determine the contractual period, that is, it can be less than 1 year. While both the contract types (1) and (2) do not need to fulfil requirements to become valid, (3) fixed term rental contract needs to

¹⁷⁴ <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000019.html>.

¹⁷⁵ For example, in English, <<http://www.mlit.go.jp/common/000990496.pdf>>.

¹⁷⁶ Guideline for landlords, estate agents and management companies who deal with foreign tenants in Japanese, <<http://www.mlit.go.jp/common/000990494.pdf>>.

meet the requirements for its valid conclusion: the written contract should be notarized and there should be an additional document to explain that there is no renewal of the contract at the end of the contractual period.

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

As mentioned above, there are no requirements regarding the clauses in a rental contract. However, according to the standard rental contract published by the MLIT, indications regarding the rent are: amount of rent and common service fee, and the term of those payments, the bank account of the landlord and who takes the transaction fee for transferring money, or the address to bring the rent to, Shikikin (deposit) and its special clause on Shikibiki (how much will not be refund at the end of the contractual period), other temporal fees, utility fees, and the payment arrangement (e.g. the landlord collect the utility fees and pays to the utility companies, etc.), and if applicable, fees for some other attached facilities.

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

Regarding repairs, small repairs are tenant's responsibilities based on contractual clauses and repairs with the medium and significant degree are the landlord's responsibilities. Examples of small repairs are Tatami facing, Fusuma sliding screen, exchange of paper of Shoji sliding screen, electric bulbs, fluorescent lamps. On the other hand, big repairs of the main part of the building, such as, roof, column, wall, and foundation, and repairs with a moderate degree, such as, sink, bathtub, washing basin, toilet, carpet, and change of Tatami mattress are the landlord's responsibility, regardless of a special agreement between the parties. In other words, such an agreement on the tenant's responsibility for big repairs is invalid.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?
- 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)?
- Any other usual contractual clauses of relevance to the tenant

Furniture and major electric appliances are usually not equipped in an apartment. Thus the tenant has to buy those things. Yet, a kitchen is mostly provided by the landlord. However, there are new types of dwellings, such as, weekly/monthly apartments, or 'share house' where furniture and appliances are equipped from the beginning. Those new types of dwellings are often based on fixed term rental contract. It is not a custom that the tenant has an inventory of furniture and appliances. It is important to check the tenant's responsibility for restoration at the conclusion of a contract in order to avoid future dispute at the end of the contract. Especially, those disputes occur in relation to Shikibiki special clause, that is, how much of the deposit will be spent for restoration. The tenant can generally check the contract clauses in accordance with the guideline made by The MLIT, 'Troubles and

Guideline for Restoration' in 1998, which was revised in 2004 and 2011.¹⁷⁷

- 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.)?

With regard to persons who are allowed to move into the dwelling together with the tenant, it is a common practice that the spouse, the children of the tenant and other family members who are registered in the family registration are allowed to live in the dwelling of the contract. If the dwelling is for one person, it is anyway not allowed, but if the dwelling is for two or more persons, some landlords require only notification of the additional cohabitants, and other landlords require that the two dwellers should be joint and several obligors, and each dweller has to have a guarantor. In practice, however, if the tenant writes the cohabitant as his/her fiancé, this fiancé is allowed to live as a cohabitant in the dwelling.

Some other relationships like friends, students, same sex couples can live in the dwelling which is leased for 'room share.' Traditionally the landlord rarely allowed this type of cohabitation (other than family members and fiancé), but it has recently become popular. It depends on the landlord whether the all dwellers should be joint and several obligors or one person can be the tenant and the others are cohabitants, and whether one guarantor is enough or a guarantor for each dweller is required.

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

There is no obligation of the tenant to live in the dwelling. However, a special clause, such as, 'The landlord may cancel the contract, if the tenant is absent for a long time without giving notice on it to the landlord' is valid, although its validity will be judged by the court, whether the mutual trusting relationship between the landlord and the tenant has been destroyed. That means, if the mutual trusting relationship has been destroyed, a cancellation by the landlord is valid.

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);
 - apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);
 - death of tenant;
 - bankruptcy of the landlord;

The consequence of a change of parties is different according to what kind of relationship the dwellers have had. To make a change of parties legal, there are following categories. (1) In case of a divorce, the dweller who will continue to stay in that dwelling should change the name of the party in the contract, if the rental contractual party has been the other dweller. This change of the name cannot be done with the existing contract, but the new contract with the new party should be concluded. That is, the new financial check regarding the staying dweller should be

¹⁷⁷ <<http://www.mlit.go.jp/common/000991390.pdf>>.

done, a new guarantor is required, the fee for changing the party/concluding a new contract (often one month rent, but is different from case to case) can be required by the managing estate agent, and a new Shiki-kin (deposit) or additionally, Reikin (thanks money) might have to be paid, according to the landlord. There are no legal rules stipulating the amount of fees and other cost in case of change of the party at a divorce. On the other hand, if the dweller who is not the tenant moves out, the tenant may omit the name of co-dweller, possibly with the fee for the managing company to change the name of the co-dweller, depending on how it is ruled in the contract.

There is another way to deal with this case, that is, to consider it as a sublease to the ex-wife. If this transfer of the tenancy right is not recognized as a breach of faith, the landlord cannot cancel the contract. In case of a divorce the consent of the landlord to sublease the dwelling is not necessary, since the ex-wife was supposed to be allowed to live before the tenant got a divorce.

As to the cases of non-married couples, the first mentioned procedures of making a new contract in case of the change of the tenant or change of co-dweller apply.

(2) Co-dwellers, such as students and same sex couples, often fall into the category of 'room-share,'¹⁷⁸ which is a recent development in the rental market. A change of parties depends on how the contract was concluded. One way is that the all the members are the parties to make a contract with the landlord. That is, to conclude a contract with a multiplicity of tenants is possible. Each of the members has a joint liability and each of them has an obligation to pay the whole rent. Guarantors can be also several to be joint guarantors, each of whom has an obligation for the whole rental contract. In this case, if one member moves out, a new contract should be concluded due to the change of the tenants.

The other way is that the tenant concludes a contract with the landlord, and the other members become co-dwellers or subtenants with a permission of the landlord. In this case, if one member who is a co-dweller moves out, there is no need to change the existing contract. And if the tenant moves out, a new contract with another person (=the new tenant) should be concluded. How to do with the rent, deposit money, at the time of moving out, etc. are determined by the internal room share rules. Replacement of the member should be reported to the landlord in both cases. Normally it is necessary to report the change of parties to the landlord.

(3) In case of death of the tenant, the left person, for example, the wife, can stay in the dwelling according to her succession, if they were married. However, the rental right is not inherited only by the heirs who lived together with the decedent, but also by the other heirs who lived somewhere else. The rental right is once succeeded to all the heirs first, and then it will be determined who will have the status of the tenant according to the agreement (if not with an agreement, the family court's ruling) for division of inherited property. Since the change of the party due to the succession occurs legally and automatically, there is no need for the heir to obtain a permission from the landlord nor to pay the fee for the change of the party in the contract.

If the left person is not a married partner, the succession will not occur. Namely, the left co-dweller does not succeed to the right of the decedent as the tenant. If the decedent does not have heirs, however, the left co-dweller without marriage or not legally adopted children have succeed to the rights and duties of the late tenant. Although the courts protected the status of the co-dweller by referring to the law of

¹⁷⁸ 'Room Share' is a different concept from 'Share House' or 'Gest House.' The latter is owned and managed by an estate management company and each person concludes a contract with that company.

succession in spite of the existence of heirs, the left co-dweller does not obtain the right to rent the dwelling, while the heirs succeed to that right. Therefore, the protection of the left co-dweller is not so strong and her/his status is not stable.

(4) If the landlord has gone bankrupt, neither the landlord nor the tenant can cancel the contract. Only the landlord's trustee can either cancel the contract or claim for the tenant's payment of rent. If the landlord's trustee in bankruptcy has canceled the contract, the tenant returns the object and can claim for damages as a bankruptcy creditor. However, if the tenant has registered that rental contract, the landlord's trustee cannot cancel the contract.

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

With regard to subletting, it is allowed, if the landlord approves it. If the tenant subleases the dwelling to the third party without an approval of the landlord, the landlord can cancel the contract. However, this provision has been mitigated by the legal precedent. Such a cancellation is only possible, if the mutual trusting relationship between the tenant and the landlord has been destroyed, in other words, if there is a breach of faith. There is no information on abuse of subletting.

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

If the owner of the building has changed through a sale, the judicial precedent rules that the contractual relationship between the original landlord and the tenant will be automatically transferred to the new owner and the tenant, in case (1) if the original landlord and the new owner agreed that the contractual relationship with the tenant would be transferred, irrespective of the tenant's countervailing power through the registration of the rental contract, and (2) if there is no agreement upon the transfer but the tenant has a countervailing power. According to the Supreme Court, the new owner obtained the right to lease at the time of acquisition of the property without giving a notice to the tenant that the new owner became the landlord. Regarding the issue of whether the new owner can claim for the performance of duties by the tenant (e.g. rent payment), the courts rule that the new owner should have finished the registration of the property right on the said building. However, the status of the tenant is protected by ALBL, even in the case of non-registration of the rental contract (Art. 31 of ALBL), if the handover of the dwelling to the tenant occurred before the new owner registers his/her property right on that building.

- Costs and Utility Charges

- What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?
- Which utilities may be charged from the tenant by the landlord? What is the standard practice?
- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

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

The usual kinds of utilities which are equipped in the dwelling are the supplies of water, gas and electricity, although starting those utilities is up to the parties. Municipalities give a service of garbage collection without any additional fee. There is no legal regulation for the arrangement, and therefore, how to conclude contracts with utility suppliers depends on the parties. It is rare that the landlord offers a dwelling for rent including all the utilities, while there are some cases that an additional fixed rate of water should be paid to the landlord. If utilities are not paid to the landlord, the tenant has to conclude an individual contract with each utility company. Gas is often provided by a town gas company of which price is a public utility charge, but some landlords have their independent contract with propane gas companies of which price is not determined by public bodies. In that case, the tenant cannot change the propane gas company even though he/she has a contract, since the contract is concluded for the whole building, namely, all the households in the building. The tenant needs a consent of the landlord to change the contract over the whole building. Recently, all inclusive rental dwellings emerged, such as, monthly apartments or share houses. The rent of those types of housing includes all the monthly utility costs. The tenant is not responsible for taxed levied by local municipalities for the provision of public services, such as waste collection or road repair. Condominium costs, which are called as Kyoeki kin/Kyoeki hi (共益金／共益費) in Japan, are normally charged to the tenant.

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

Deposits in the Japanese rental market are very particular, which the tenant has to understand before entering a contract in order to avoid future disputes. As security deposits there are several types of them according to the region, but there is no regulation on how much deposit is lawful.

Shikikin or a security deposit is a deposit money paid by the tenant which is based on the Shikikin contract accompanying with the main rental contract. The purpose of this money is a security money for possible damages arising from the tenant's destruction of the object or rent arrear. However, there is a custom, Shikibiki (a partial non-refund), a special contractual agreement by which the landlord keeps some amount of money of the deposit or some percentage of it. The purposes of Shikibiki are various, such as, for restoration after the termination of the contract, for compensation for the vacancy until the next tenant comes.

Kenrikin (money for right) / Reikin (thanks money, key money) is a payment paid by the tenant at the conclusion of a tenancy contract. This money will not be refund at the termination of the contract. The purposes of this money are said to be: a compensation for the use-value of the object; and a compensation for the added value of right to use.

Customs of Shikikin/security deposit and Kenrikin/Reikin are various from one region to another. In Kanto area (the east of Japan, around Tokyo), Shikikin and Reikin are the common combination, while in the west (the areas of Kansai and the western areas after Kansai) Shikikin/security deposit and Shikibiki (partial non-refund of Shikikin) are the normal combination. While in Kanto there is no Shikibiki (partial non-refund of the security deposit) but Reikin (thanks money) will not be refund, in

Kansai or in the western area of Japan there is no Reikin, but Shikibiki plays a role of Reikin, because part of Shikikin will not be returned. Although there are differences according to the area, Shikikin is often 3-4 months' rent and Reikin is 1-2 months' rent. There are examples of high Shikikin and Shikibiki, such as 6-8 months' Shikikin and the half or 60 % of it as Shikibiki, which will not be returned. The tendency is that the initial cost to rent a dwelling is higher in Kansai and the western areas of Japan, than in Kanto areas.

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

The landlord has to keep Shikikin or security deposit until the handover of the dwelling. The deposit can be used to cover the damages from destruction of the object caused by intention or negligence of the tenant or rent arrear. Although the tenant has an obligation to restore the dwelling at the handover of the dwelling, not all the repairs are the tenant's responsibilities. According to the governmental Guideline for Troubles about Restoration normal wear and tear is not included in the tenant's restoration duties and is not paid from the deposit.¹⁷⁹ A special contractual agreement on the tenant's responsibility to restore normal wear and tear is invalid according to the judicial precedent.

In practice, the landlord does not pay the interest arising from the deposit. It is understood that there is no duty for the landlord to pay the interest, since the deposit is a security to cover future claims of the landlord and there is no legal regulations on it. There is no information on whether the landlord has a special account for the deposit.

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

In addition to the peculiar customs of deposit, there is a personal guarantor system in the rental market in Japan. At the conclusion of a rental contract the seal of either a guarantor (Hoshonin; 保証人) or a joint surety (Rentai hoshonin; 連帯保証人) is required, but the requirement of a joint surety is the custom for a conclusion of a rental contract, since the landlord (=creditor) can collect the debt directly from the joint surety independently of the tenant.¹⁸⁰ It should be noted, however, that the word, 'guarantor' which is used in a contract or even in the governmental pamphlet of renting an apartment for foreigners, often means a joint surety whose liability is joint and primary with the tenant (=principal). On this ground, hereinafter a guarantor means a joint surety according to the custom in the rental market. Generally such a guarantor is a person with a relatively high income. In addition, it is common that a landlord requires a relative within the third degree of relationship for a guarantor, because the landlord believes that blood relationship makes the payment and performance of other obligations more certain.

This guarantor system makes it very difficult for certain groups of people to

¹⁷⁹ <<http://www.mlit.go.jp/common/000991390.pdf>>.

¹⁸⁰ On the contrary, a guarantor's liability is ancillary and the landlord (=creditor) should attempt to demand performance of the tenant (=principal) first before the landlord (=creditor) goes to the guarantor and the landlord must execute on the property of the principal, if the guarantor has proved that the tenant (=principal) has the financial resource to pay his/her obligation and that the execution would be easily performed.

rent an apartment, because of age, alien status, specific circumstances arising from the family relationships, and so forth. However, as a recent development in rental praxis, a new system of using a surety company has appeared instead of the requirement of a guarantor who is a relative. But this system does not help those people completely, because they have to pay for such a service as long as they dwell in that apartment and often they cannot afford that cost.

If the tenant is a school or college student, the institution helps him/her with providing a guarantor (see in the introduction of this brochure). There are also number of support systems undertaken by local governments and other organizations. For instance, the Foundation for Senior Citizen's Housing becomes a guarantor to guarantee unpaid rent maximum 12 months and the recovery fee, in total for 2 years (renewal is possible) in a rental contract between a tenant and a landlord who agreed not to avoid the elderly, the handicapped, households with small children, foreigners, households who were evacuated because of dismissal from the work.¹⁸¹ Some local governments have also support systems to let a surety company to become a guarantor in a rental contract between a local citizen and a landlord, based on an agreement between that local government and the surety company. In some cases the local government supports a part of the surety fee, or the local government itself becomes a guarantor for an elderly household¹⁸².

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

The range of the obligations of a guarantor is very wide, since a guarantor guarantees all the tenant's obligations arising from the rental contract. Such obligations include unpaid rent, renewal fee, obligation to hand over the dwelling, obligation of restoration, damages due to the tenant's misuse of the dwelling, damages due to the delay of the handover of the dwelling after the valid cancellation of the contract, damages due to the tenant's or sublessee's suicide, etc. However, the range of the obligations of the guarantor will be limited in a certain situation in which a claim to the guarantor is against the principle of good faith, for example, in case of the accumulation of the debt caused by the landlord's late notice on the rent arrear.

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)?
 - 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

¹⁸¹ <http://www.koujuuzai.or.jp/html/page02_02.html>.

¹⁸² For the former case, see Chofu city in Tokyo, <http://www.city.chofu.tokyo.jp/www/contents/1176118905485/index_p.html>; for the latter, see Kokubunji city in Tokyo, <<http://www.city.kokubunji.tokyo.jp/kourei/5921/005604.html>>.

costs from the landlord)

There are four categories of defects and disturbances which are legally relevant: (1) material defects, (2) legal defects, (3) psychological defects, and (4) environmental defects. (1) Material defects are, for example, a leak in the roof, termites, a slant floor, defect of plumbing system, flooded building, etc. (2) Legal defects are the defects which prevents free trade, such as servitude, superficies, and tenancy right, which are attached to the building, etc. (3) Psychological defects are, for example, if a suicide happened in the dwelling, which therefore lacks in normal characteristics supposed to be attached to the object. Examples are suicide and murder which occurred in the dwelling, as well as an office of Boryokudan (gangsters) which is located in the same building. (4) At last, environmental defects are such as noise, bad smell, vibrations, and troubles caused by neighbors can be recognized as defects. The standard is whether it disturbs a normal life.

(1) As for material defects, if defects existed at the time of contract conclusion, the landlord has a duty to repair, since the landlord's duty to repair (Art. 606 of CC) applies to the whole contractual period. If the defect is not known at the time of conclusion of the contract, the landlord has warranty (Arts. 566, 570, 559 of CC) and a duty of repair (Art. 606 (1) of CC) simultaneously.

When such a case is treated as a case of warranty, the term to claim for repair, for cancellation, or for damages should be within 1 year after the tenant knew the defect (Art. 566 (3) of CC). If it passes 10 years or longer since the handover of the dwelling without tenant's knowing a defect, the tenant does not have a claim for damages according to the general provision of extinctive prescription of claim (Art. 167 (1) of CC). On the other hand, if it is considered as a case of the landlord's duty to repair, the prescription period for a claim for damages is 10 years (Art. 167 of CC).

In spite of the contradiction and uncertainty between Art. 606 and Art. 570, the tenant's claim in such cases is mostly based on non-performance of duty of repair, since Art. 606 stipulates a clear duty of the landlord; prescription period is longer than the case of warranty; and the range of damages is assumed to be greater than that of warranty, since it includes the defects both existing from the beginning and coming afterwards. However, provided that the repair is possible, the duty of repair based on either of the duties should be performed first by the landlord. And if the landlord does not perform that duty, then the tenant can claim for the reduction of rent or cancel the contract (a claim for damages is also possible). And if a repair is not possible, the tenant can have only a claim based on warranty.

(2) If the landlord has no right to lease the object (typically no property right), this may be classified as a legal defect. The rental contract is valid in this case. However, if the true owner of the object claim for return, the tenant cannot refuse this claim. The landlord has a duty to obtain property right or some other possible rights in order to let the tenant to use and take profits of the object completely (Art. 560 of CC). If the landlord does not perform this duty, the tenant can cancel the contract and claim for damages (Art. 561 of CC), and claim for the reduction of the rent (Art. 563 of CC). In addition, if the landlord has no right to lease the object and the tenant has a risk to lose a part of or the whole right to use and take profits of the object, the tenant can refuse to pay part of or whole rent according to the degree of that risk (Art. 576 of CC).

(3) In case of psychological defects, the landlord has a duty to disclose that information arising from the landlord's warranty (Art. 570 and Art. 559 of CC). If the landlord does not fulfill this duty, he/she cannot be exempted from the warranty and therefore, the tenant can cancel the contract and claim for damages. Since this is a

culturally-molded particular defect (e.g. suicide which happened in the past) recognized by Japanese, you may be able to obtain such an apartment with the lower rent, if it does not matter for you as a foreigner.

(4) Environmental defects include noise or other kinds of nuisance of the neighbors. The landlord has a duty to let the tenant peacefully use and make profits of the dwelling. Thus if the landlord does not fulfill that duty, the tenant can claim for damages.

The occupation of the house by the third parties is usually recognized not as a defect but as a breach of contract by the landlord. Therefore the tenant can claim for a damage (Art. 415 of CC) and cancel the contract (Art. 541 of CC). Who has the right to stay in the dwelling depends on when the tenant can claim for exclusion of interference, which originally stems from property right. According to the judicial precedent, the tenant has a claim for exclusion of interference, when he has a countervailing power through registration of his/her rental contract (Art. 605 of CC).

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

The landlord has an obligation to effect repairs necessary for using and taking the profits of the leased thing (Art. 606 (1) of CC). Therefore, the landlord should pay for such repairs, and such expenses are called 'necessary expenses' (Hitsuyohi; 必要費) (Art. 608 (1) of CC). The landlord is supposed to be responsible for big repairs of the main part of the building, such as, roof, column, wall, and foundation, as well as intermediate repairs, such as, sink, bathtub, washing basin, toilet, carpet, and change of Tatami mattress. On the other hand, small repairs like, Tatami facing, Fusuma sliding screen, exchange of paper of Shoji sliding screen, electric bulbs, fluorescent lamps are the tenant's responsibilities. Other than the above mentioned small repairs which the tenant is responsible for, the tenant may immediately demand the reimbursement of the money for a necessary expense which the tenant paid (Art. 608 (1) of CC).

The tenant can exercise set off and retention rights over the rent payment. If the tenant paid for the repair, he/she can refuse the rent payment according to the rule of defense for simultaneous performance (Art. 533 of CC). The major academic and judicial opinion sees that the tenant's right to reimbursement of the repair cost and the landlord's right to the rent payment can be offset (Art. 505~ of CC). However, if the tenant wants to avoid the cancellation due to the tenant's non-payment, the tenant should make a manifestation of his/her intention of a setoff (Art. 506 (1) of CC) before the landlord indicates his/her intention of the cancellation.

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

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

The changes made by the tenant can be treated in two ways. One is that the tenant is allowed to make improvements on the dwelling without a permission of the landlord and the tenant will be compensated at the end of the contract (Art. 608 (2) and Art. 196 (2) of CC). The expense for such improvements is called 'useful expenses' (Yuekihi; 有益費). In order for the tenant to be compensated, the improvement has to have an additional value at the time of termination of the contract. If the value has disappeared at the end of the contract and the landlord does not obtain any profit from it, the tenant has no claim for reimbursement of the costs.

Whether the tenant can claim for reimbursement based on Art. 608 (2) depends on whether the improvement/the added thing become part of the landlord's property. If an improvement or an added thing has become a part of the leased thing and therefore a property of the landlord (Art. 242 of CC) (that is, the tenant has no right and no duty to remove it), or its removal causes a damage to the leased thing, he/she has a claim for the expenses under the Art. 608 (2). However, if an improvement/attached part is physically and economically removable and independent from the leased thing, and therefore, it is a property of the tenant, the tenant should remove the things on his/her own expense and has no claim for such expenses (Arts. 616 and 598 of CC), because the tenant has a duty to return the object (Art. 597 (1) of CC) and he/she has to restore it.

The other way is that if the tenant added interior decorations and fixtures with the agreement of the landlord, the tenant may request of that the landlord purchase said interior decorations and fixtures at the prevailing market price. It applies also to the things purchased from the landlord (Art. 33 (1) of ALBL). The landlord's agreement is valid for the present tenant who bought such a decoration from the former tenant, if the former tenant obtained the permission of the landlord. This is a formative right. That is, if the claim is made, there are the same effects as those of a sales contract. However, if the landlord and the tenant make a special agreement to exclude the application of Art. 33 of ALBL, the tenant cannot make such a claim.

Such interior decorations are, for example, shower equipment, gas equipment in the kitchen, flush toilet, lightening equipment, etc., which are property of the tenant (which is not a part of the landlord's property) and which give objective profits for the use of the building. On the contrary, the things which are independent and easily removed, and of which removal does not affect the value of the dwelling (such as furniture) are not included. In this sense, added interior decorations are interpreted as the things which can function completely by being attached to the building and decrease their value if detached, although they can be removed by the tenant. The amount the landlord should pay is the current price for the value of the decoration which functions completely by being attached to the building at the termination of the contract.

Renovation of a dwelling to accommodate the handicapped can be understood either as an improvement under Art. 608 (2) of CC or interior decoration under Art. 33 of ALBL, depending on whether the added thing has become part of the dwelling or not, that is, a part of the landlord's property or not. A toilet with washlet (a warm toilet seat with washing equipment which is common in Japan), rails, a fixed kitchen shelf are classified as the latter. The basic rule is that the tenant should return the dwelling as it was at the beginning. And in practice, the tenant should ask the landlord beforehand, whether he/she is allowed to make such a renovation of the dwelling. The both parties, however, can have a special agreement stating that the tenant will not claim for the cost of interior decoration at the termination of the contract.

Setting an elevator costs money and there is no information on it. There is also not so much legal debate on the tenant's barrier-free renovations. The ground for that might be because the handicapped are avoided by the landlord, the handicapped live in the owner occupied houses with their caretakers, or many of the economical private rental dwellings are anyway not suitable for the handicapped (without elevator, too small, etc.). On the other hand, a large scale of public housing is suitable for the handicapped, and therefore, those people may try to find dwellings in the public housing. Additionally, there is a governmental subsidy program to enhance the use of vacant private housing for the people in need.¹⁸³ The government subsidizes renovations to accommodate the handicapped and the elderly, in return for the landlord's willingness to accept people with difficulties as tenants (the handicapped, the elderly, households with small children, etc.).

An antenna or a dish which the tenant fixed is a matter of Art. 33 of ALBL. The tenant can do it if he/she obtained the landlord's permission. The tenant can claim that the landlord should purchase that antenna at the termination of the contract, if all the conditions are met: that is, the tenant obtained the permission of the landlord before setting it, and there is no special agreement of the tenant's not claiming for the landlord's purchase at the termination of the contract.

Repainting and holes in the walls which penetrates the interior foundation board underneath of the surface are to be the tenant's responsibilities for restoration at returning the dwelling. In any case it is better to ask the landlord before repainting, drilling the walls, and the like, in order to avoid disputes at the end of the contract.

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

Whether the tenant can keep animal(s) depends on the contractual agreement. There are special rental dwelling in which the tenant can keep animals, but the tenant has to talk with the landlord beforehand about what kind of animals and how many of them the tenant can keep in the dwelling. As to producing smells, it may be difficult to prohibit the tenant from producing a smell, for example, of tobacco in the balcony, which does not destroy (disturb) either the dwelling or the common area. If it is about a bad smell as a neighbor's nuisance, the landlord or the managing company has to stop it for other tenants whose use and take profits of the dwelling is disturbed. There is often a contract clause on the forbidden acts of noise, bad smells, dangerous and harmful acts in light of sanitary, and thus the landlord may claim for the performance of such a duty to the disturbing tenant. Whether it is possible to receive guests or to let them stay over night depends on each agreement. There are cases that the tenant is not allowed to receive guests or let the guests stay over night, but they are mainly about the dwellings for singles, students, or the buildings of women's only.

¹⁸³ <<http://www.minkan-safety-net.jp/outline.html>>.

If the purpose of use is a dwelling (not business) and the tenant wants to fix a pamphlet, which has nothing to do with the purpose of use (e.g. a pamphlet of a concert), the tenant has to obtain a permission of the landlord, since the rented area is limited to the inside of the dwelling and the outside wall is a common area which is the object of the landlord's management. On the other hand, fixing pamphlets is allowed, if the purpose of use is for a business and if the pamphlets are within the range of the business purpose.

Whether a commercial activity is allowed, depends on whether the rental object is for a business use and the landlord agreed upon it. If the purpose of use is a dwelling but the actual use is a commercial use or vice versa, or if the actual kind of business is different from the one in the original contract, it is non-performance of duty of the tenant. It can be a ground for a cancellation from the landlord without notice (Art. 541 of CC), since it has destroyed the mutual trusting relationship by itself.

3.2. Landlord's Rights

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

There is no rent control in the private rental market, although it existed in the past. The principle of freedom of contract is the basis of the private rental market now.

The landlord may raise the rent, if the building rent becomes unreasonable, as a result of increase in tax and other burden relating to the land or the building, rise of land or building prices, or fluctuations in other economic circumstances, or in comparison with the rent of similar buildings in the neighborhood in spite of special contract clauses regarding rent revisions according to Art. 32 (1) of ALBL which is a mandatory legal provision. In addition, this is a formative right, that is, revision of rent become effective without the consent of the other party, when the manifestation of intention of one party arrives at the tenant. It applies to the normal rental contracts, that is, rental contract unlimited in time and rental contract limited in time with renewal protection.

On the other hand, if it is about a fixed term rental contract (without renewal protection), the above said Art. 32 ALBL does not apply (Art. 38 (7) of ALBL), therefore special contractual clauses regarding rent revision are valid, if such clauses are written in the contract. Such a contract clause on rent revision should be the one to determine rent objectively enough to exclude the application of Art. 32 of ALBL. For example, special clauses of 'no rent revision during the contractual period', 'automatic increase with a fixed rate after certain period', 'index-oriented increase

after certain period (e.g. consumer price index)' are valid special clauses. On the other hand, a clause stating that 'the parties can revise the rent after consultation' is just determining the way to change the rent and is not clear enough to exclude the application of Art. 32.

There are neither restrictions on how many times the rent may be increased nor ceiling of the maximum rent.

If the tenant refuses to accept rent increase, the landlord can file a conciliation for rent increase in the summary court (Art. 24-2, 3 of the Act for Conciliation of Civil Affairs). If they cannot reach an agreement, the case will go either to the summary court or the district court according to the amount of the claim (up to JPY 1,400,000 in the summary court, and more than that in the district court), and then the court will rule the adequate rent. The tenant can deposit the amount of rent which the tenant thinks adequate in the official depository (Art. 494 of CC~) until the valid amount of rent is given by the court, or by the conciliation, since non-payment of rent can be a justifiable cause for a cancellation by the landlord. If the amount which the tenant has paid during the dispute period is lower than the determined amount, the tenant should pay the difference with interest of 10 percent per year.

- 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?
 - Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?
 - Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

In practice, the landlord and/or the managing company normally have/has a set of keys for each dwelling or master keys for all the dwellings in the building. However, they are not allowed to enter the premise without the consent of the tenant or without a justified reason. Such an act is a violation of Art. 130 of the Penal Code, breaking into a residence, and a tortious act from which a claim for damage arises (Art. 709 of CC).

The landlord has the duty to repair as well as the right to repair in order to preserve the leased object. Therefore, the landlord may enter the premises for the purpose of repairs. The tenant may not refuse if the landlord intends to engage in any act that is necessary for the preservation of the leased thing (Art. 606 (2) of CC). Thus, if the tenant refuses to let the landlord repair the defect in the dwelling, it is a breach of duty to accept repairs. The landlord can, therefore, cancel the contract based on the tenant's non-performance of the duty to accept repairs, provided that (1) the repair is necessary to preserve the building, that is, necessary for the purpose of use and making profits of the dwelling, and (2) the repair is minimum essential so that the tenant can use the dwelling according to its purpose. As a note, however, the landlord is not allowed to enter the dwelling by force without permission of the tenant, since self-enforcement is legally forbidden as a violation of the tenant's right to privacy, right to live peacefully or right to possess the dwelling.

The landlord's act to change the lock is illegal and considered as a self-enforcement which infringes the tenant's right to possession, if the purpose of such an act is to force the tenant to pay the unpaid rent or to hand over the dwelling. However, if the purpose is a disaster measure or crime prevention which the normal

legal procedures for housing rental contract cannot realize, change of the lock has been allowed by the courts.

The landlord can seize the tenant's property in the rented dwelling through the proper legal procedure in case of rent arrears and other obligations arising from the lease relationship, such as, the landlord's claim for a damage of the leased thing (Art. 311 and Art. 312 of CC). Art. 313 (2) of CC rules that scope, stating that 'the statutory lien of a lessor of a building shall exist with respect to movables furnished to that building by the lessee.' In addition to the movables which were set in connection with the use of the leased dwelling (such as, Tatami mat, wooden fittings, furniture, office fixtures, etc.), the judicial precedent includes movables which the tenant brought to the dwelling for a certain period to rent that dwelling, such as, money, valuable papers or jewelry. However, if the landlord has received a security deposit (Shiki-kin), he/she can seize the tenant's property over the amount which exceeds that security deposit (Art. 316 of CC).

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

If the contract type is contract unlimited in time, either party may request to terminate it at any time, if the parties do not specify the period of a rental contract. The notice period is 3 months for the tenant (Art. 617 (1) of CC). The tenant can inform the landlord of the termination orally, but it is common to use a content-certified mail with the certifying delivery system.

If the contract type is contract limited in time with renewal protection, there is often a contract clause on termination from the tenant, (1) the tenant can request for the termination of the contract 30 days before, (2) in spite of the former clause the tenant can terminate the contract at any time, if the tenant pays rent of 30 days after the date of such a request. The tenant can terminate the contract, if such a clause on reservation of the right to terminate is written in the contract (Art. 618 of CC). On the contrary, a contract clause which prohibits the tenant from terminating the contract is invalid (Art. 10 of the Consumer Contract Act or Art. 30 of ALBL). In addition, even if a contract clause states that the notice period is long and has to pay the rent of that period (e.g. 6 months and the tenant has to pay 6 months' rent to terminate the contract), too much burden on the tenant is not permitted by the court.

If the contract is a fixed term rental contract, the tenant has the right to terminate the contract before the agreed date of termination, only if the circumstances meet the conditions stipulated in Art. 38 (5) of ALBL. According to this provision, the object should be for a residence of less than 200 square meters (which includes a dwelling with a shop) and the tenant has an avoidable circumstances, such as a work-related transfer, the receiving of medical care, or the necessity of providing care to a relative. In this case, the building lease will be terminated when one month has passed since the day of the request to terminate.

There is no custom in Japan that the tenant looks for the next tenant, in case that the tenant has to terminate the contract before the agreed date of termination.

4.2. Termination by the Landlord

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

Ordinary notice of termination is different according to the type of the contract.

In case of rental contract unlimited in time, as explained above, both parties can request to terminate the contract at any time, although the notice period for the landlord is 6 months according to a mandatory provision, Art. 27 (1) of ALBL, compared to 3 months for the tenant based on Art. 617 (1) of CC. However, the landlord has to have a 'just cause' to terminate the contract under Art. 28 of ALBL. And if the tenant continues to use the said property after the expiration date and if the landlord fails to make an objection without delay, the termination is not valid (Art. 27(2) and Art. 26 (2) of ALBL).

A just cause can be recognized by the court mainly through a comparison of the needs and necessities of both of the landlord and of the tenant according Art. 28 of ALBL. The considered elements are the landlord's need of the dwelling, the prior history in relation to the building lease, the conditions of the building's use, the current state of the building (e.g. deterioration of the building which needs a reconstruction, effective usage of the land); and an eviction fee. The landlord does not have to resort to the court, but if the tenant refuses to accept the termination, they may have to go to the court, although there are alternative dispute resolutions available and a conciliation by the court before starting trial is also a common practice. This just cause doctrine is strongly tenant-protective, and therefore, it plays a role of a sort of defense against an eviction. However, if the court has found the termination from the landlord valid, there is no defense available for the tenant against an eviction.

Secondly, if the contract type is contract limited in time with renewal protection, the protection of the tenant is very strong and it is almost impossible for the landlord to terminate the contract. If there is no contract clause to reserve the right to terminate, the landlord (or either of them, depending on such a clause) cannot terminate the contract. If one party or the both parties reserve the right to terminate the contract during that period, the contract can be terminated 3 months after a request of termination as the case of a contract unlimited in time (Art. 618 and Art. 617 of CC).

In addition, the landlord can hardly terminate the contract by refusing a renewal. In order not to renew the contract, the landlord should give a notice of not renewing the contract (this apply to the tenant too) between one year and six months before the expiration date (Art. 26 (1) of ALBL). Otherwise, the contract will be automatically renewed with the conditions identical to those of the existing contract, but the period will be unlimited in time. Even though the landlord gives a notice of refusal of renewal, however, the contract is deemed to be renewed, if the tenant uses

the said property after the expiration date and if the landlord fails to make an objection without delay (Art. 26 (2) of ALBL). Moreover, a refusal of renewal is not valid, if the landlord does not have a "just cause." A just cause can be recognized by the court mainly through a comparison of the needs and necessities of the landlord and those of the tenant. Already mentioned above, main elements to find a just cause are: necessity of the both parties, previous history of the said contract (e.g. existence of renewal fee, arrears of rent, etc.); conditions of the building; and a landlord's offer of monetary compensation or/and that of an alternative dwelling.

Thirdly, in case of fixed term rental contract, it expires at the end of the term of the contract. Under this contractual scheme the period of the contract can be less than 1 year which is different from the general rental contract. If the period is shorter than 1 year, the contract will be automatically terminated at the date of expiration. If it is 1 year or longer than 1 year, the landlord should notify the tenant between 1 year and 6 months before the expiration (notice period) that the said rental contract will be terminated by reason of the expiration of the period; otherwise, the landlord may not assert that termination against the tenant. However, if the landlord gives a notice after the notice period and it has passed 6 months after that notice, the landlord can assert that termination against the tenant. Regarding the question, whether the landlord can reserve the midterm termination right in the contract, the academic opinions are divided.

In the second and the third types of the contract, there are no defences available for the tenant after the court found the termination valid, other than the strong tenant protection through the strict judgment of the validity of the termination.

There is another way to terminate the contract for the landlord, that is, cancellation. Cancellation is allowed in certain special cases, since a contract has a binding power. There are two grounds that the landlord can cancel the contract directly. (1) the tenant's assignment or subleasing of the object without the approval of the landlord (Art. 612 of CC), and (2) non-performance of the obligation (Art. 542 of CC), such as rent arrears and a breach of the usage obligation. The cancellation is effective only toward the future (Art. 620 of CC). However, the harsh impact of cancellation on the tenant is mitigated through the doctrine of destruction of the mutual trusting relationship. This doctrine is understood as follows: A rental contract is a continuous contract based on the mutual trusting relationship between the parties. Therefore, if a party betrays such a trusting relationship and acts in bad faith to prevent the parties to stay in a continuous rental contract relationship, the other party can cancel the contract from that point on. Against the landlord's cancellation, the tenant can claim that the contract cannot be cancelled because of non-existence of destruction of the mutual trusting relationship.

- 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?

As already mentioned, in case the tenant does not move out after the regular end of the tenancy, the landlord may not exercise the self-enforcement. The landlord should take a legal step, either a conciliation or a lawsuit. Regarding a conciliation, the landlord can file a petition for settlement with the summary court, or file for a conciliation before taking legal action. Both procedures need the consent of the other party, the tenant.

As to a lawsuit, the landlord can submit a letter of complaint regarding handover of the dwelling and (often) payment of the rent to the district court which

has jurisdiction either the domicile of the tenant (where the tenant's address is) or the location of the building. Even after the lawsuit began, the court may give a settlement recommendation. If the both parties accept this settlement recommendation, the tenant hands over the dwelling voluntarily. If this settlement recommendation was accepted by both parties, but the handover has not been done, the record of settlement is effective as a final and binding judgment. If the settlement recommendation is not accepted by the parties, the court renders the final and binding judgment, that is, enforceable title of obligation. Then the landlord demands compulsory execution of an obligation on the basis of an authenticated copy of the title of obligation attaching a certificate of execution. A court execution officer gives a notice of handover with a certain period (1 month) and if the handover does not occur by that determined date, a court execution officer evacuates the tenant by force. Even though a third party has the possession of the dwelling in the meanwhile, the court execution officer can perform compulsory execution to that third person.

If the tenant does not hand in (all) the keys of the dwelling, the landlord demands the tenant's returning all the keys and the rent for the period during the tenant has kept the keys since the tenant could have used the dwelling with the keys. The amount of rent can be at a daily rate or monthly, depending on a case. If the tenant does not give back the keys, the landlord can claim for a damage of the amount of rent arising from the tenant's non-returning keys. However, the landlord has also a duty to let a tenant use the dwelling and profit from it and therefore safety of the dwelling is included in that duty. Thus in practice the landlord change the key after the previous tenant moves out.

4.3. Return of the Deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?
- What deductions can the landlord make from the security deposit?
 - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

There is no rule for when the deposit (Shikikin) should be returned to the tenant and it depends on each contract. It is often written in the contract regarding conditions of Shikikin, including by when it should be returned. However, Shikikin will be returned after the restoration has been done, since how much Shikikin is left will be known after the restoration is completed. It is normally around 1 month. As a special custom in the Japanese rental market, there may be a contract clause on 'Shikibiki,' the partial non-refund of Shikikin, especially in Kansai and the western area of Japan. This Shikibiki is used for the restoration, but even though the amount of restoration is less than the amount of Shikibiki, the whole amount of Shikibiki will not be returned due to the 'Shikibiki' contractual clause (Shikibiki Tokuyaku; 敷引特約). If the amount of Shikibiki is too high, it will be invalid, although 3.5 times of the monthly rent Shikibiki was found valid by the Supreme Court. Recently many lawsuits due to the disputes over Shikibiki have occurred, and therefore, the government published a guideline on restoration, 'Troubles and Guideline for Restoration.'¹⁸⁴ According to this guideline, normal wear and tear is not included in the tenant's restoration duties and should not be paid from Shikikin, and there are items which the

¹⁸⁴ <<http://www.mlit.go.jp/common/000991390.pdf>>.

tenant is not responsible for, such as, 'house cleaning' or 'change the key' etc. You have to check the guideline to get the unjustified amount of Shikikin back.

Shikikin or the deposit can be used to cover rent arrears, the restoration cost which exceeds Shikibiki, and the damages from destruction of the object caused by intention or negligence of the tenant. Damages due to the ordinary use of furniture may not be a responsibility of the tenant according to the above mentioned guideline, since the rent includes furniture and other equipment too. However, furnished dwellings are not so common in Japan and therefore there is not so much information on it.

4.4. Adjudication of Disputes

- 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?

There are no specialised courts for adjudication of tenancy disputes in Japan. The summary court and the district court take cases of disputes arising from rental contracts as the first instance. The summary court undertakes conciliations and cases regarding tenant's handover of the dwelling, non-payment of rent, return of Shikikin/security deposit, rent increase and decrease. There is a system of small claim action (the amount of claim is JPY 600,000 or less) as an accelerated form of procedure, which has only one trial and renders the decision on the same day. The district court undertakes the cases with the amount of more than JPY 1,400,000.

Alternative dispute resolutions (ADRs) are very common for rental disputes in Japan. Those procedures are less expensive, convenient (no need to choose the proper jurisdiction) and faster, but it is necessary to have the both parties' consent, to commence such a procedure. It is closed, opposite to the judicial procedure.

If a dispute is about increase or decrease of rent, the conciliation first principle applies. That is, the conciliation committee can settle the case in the summary court, if both parties have agreed to follow the committee's decision in writing (=civil conciliation). If they cannot reach an agreement, the case will go either to the summary court or the district court according to the amount of the claim and the court will determine the adequate rent.

Regarding the cases other than the rent increase/decrease cases, the parties have a freedom to choose, either bring a case to the court or try to solve the dispute outside of the court. There are two kinds of classifications of ADRs. (A) One is the classification according to the settlement bodies: judicial, administrative, and private. (B) The other classification is according to its way and effect: mediation, conciliation, and arbitration.

(A)

(1) The court, especially summary court is involved in settlements. One is civil conciliation (民事調停) under Civil Conciliation Act. If the both parties reach an agreement and sign the record, the conciliation is deemed to be achieved and it has an effect as a final and binding judgment.

By the way, it is important to note that a judicial settlements (裁判上の和解) are different from a civil conciliation. The judicial settlement is based on the Code of

Civil Procedure and has two kinds: one is the judicial settlement during a lawsuit given by the court and the other is the summary settlement which is brought to the summary court from the beginning (before starting a lawsuit) with regard to property concerned disputes. If the both parties agree, the settlement will also become effect as a final and binding judgment.

(2) Administrative ADR is done by an administrative body, such as, the National Consumer Affairs Center (NCAC).¹⁸⁵ The NCAC carries out conciliations or arbitrations without any initial fees (except fees for communication, transportation, etc.), but it takes only the disputes which NCAC finds important from a perspective of consumer protection.

(3) Private settlement bodies are the business bodies certified by the Minister of Justice, such as, Dispute Resolution Centers by Bar associations (under different names, such as, mediation center, ADR center, etc.),¹⁸⁶ consumer groups, or industry groups.

(B)

(1) The goal of mediation is to solve the problem with the settlement between the parties and mediation is suitable for dispute cases with less complicated legal and technical matters. In the mediation, no 'mediation offer' is given, compared to conciliation in which the conciliators give a 'settlement offer.' It is normally done by a single mediator and the mediation meeting is held one or two times. If the parties reach an agreement, they sign the settlement record. It has an effect of settlement under the Civil Code (Art. 695 of CC). However, this record does not have an enforcement power.¹⁸⁷

If one party does not perform the obligation written in the settlement document, the other party files a case at the court and receives the decision according to the settlement record, and then he/she obtains a title of obligation which allows compulsory execution. The other way is to let the record notarized at the Notary Public Office and obtain a title of obligation. Moreover, if the mediation procedure is closed because of no expected resolution, and the party who demanded the mediation files a complaint at the court within one month after he/she received the notice, it is legally deemed that such a complaint was filed at the time of demand for a mediation (=nullification of prescription).

(2) When the case is more complicated and technical which does not fit a mediation, a conciliation is undertaken. Conciliators are normally 3 persons or less and the conciliation meeting is undertaken about 3 times.¹⁸⁸ Conciliators not only encourage consultation but also can recommend the parties to accept the draft of the record of settlement. The effect of the settlement is, as the case of mediation above, the settlement under the Civil Code and nullification of prescription is also applied.

(3) Arbitration is a type of ADR, of which the both parties have to follow the arbitration judgment by the arbitrators. Both parties have to agree to follow the

¹⁸⁵ <<http://www.kokusen.go.jp/adr/index.html>>, for English, <http://www.kokusen.go.jp/ncac_index_e.html>.

¹⁸⁶ Japan Federation of Bar Associations, <http://www.nichibenren.or.jp/contact/consultation/bengoshikai_consultation/conflict.html>. According to JFBA, there are 35 Dispute Resolution Centers (of 32 Bar Associations) (April, 2013).

¹⁸⁷ On the other hand, a judicial settlement is a settlement which is made and authorized by the court. And it has an enforcement power according to Art. 267 of Code of Civil Procedure (Art. 267: When a settlement or a waiver or acknowledgement of a claim is stated in a record, such statement shall have the same effect as a final and binding judgment.) and Art. 22 (7) of Civil Execution Act.

¹⁸⁸ <http://www.yokoben.or.jp/consult/by_content/consult14/>.

arbitration judgment before its commencement. The arbitration judgment has an enforcement power. Therefore, the advantage of the arbitration is that the party can force the other party to perform the obligation written in the arbitration judgment. However, once the parties agreed to follow the arbitration judgment, neither party can bring a lawsuit on that dispute to the court. In addition, there is no system of appealing, neither party can file a complaint to the arbitration judgment.

5. Additional Information

- How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?

There are three types of public housing, **(1) rental housing owned by local government, (2) rental housing owned by the HSC, and (3) rental housing owned by the UR.**

(1) Public housing in the first category is constructed by local governments with subsidies from national government as well as bought and leased by local governments.

■ Standard criteria

- An applicant should be 20 years and older
- A foreigner with a visa status with a period of more than 3 month or more than 1 year according to the local government
- Registration in the said municipal as a foreign resident
- An applicant has low household income and has difficulty with the present dwelling
- An applicant should already live in the place (e.g. in the prefecture where the public housing is located) for a certain period of time
- Prospective dwellers should be no members of the gangsters (Boryokudan, Yakuza)
- An applicant has to have a guarantor preferably of a relative
- An applicant has to pay a deposit of 3 months' rent at the beginning

■ Cohabitation requirements

- An applicant will live with relatives within the 3rd degree of relationship
- Engaged couples and couples without being married are allowed; however, engaged couples should officially get married by the designated moving day, and cohabitant couples should submit the residential registration stating their cohabitation status
- But 'intentionally unnaturally separated family, such as separate living of a couple or parents' is not allowed to apply to the public housing.

■ Allocation system: By lottery

■ Categorical priorities:

- The elderly
- The handicapped
- Single parents
- The ill with specific diseases
- Victims of domestic violence and other criminal offenses
- Family with the elderly and children
- Family with public aid

- Sufferers from natural disasters
- etc.

■ Procedure

Each local government which has public housing posts the information in the website and advertises vacant dwellings. An example of the procedure of the Osaka city public housing for general households is: fill out the application→submit the application to the office→first screening with the application→receive the allocated number for the lottery, if qualified to apply (a household with more than 3 children can get two numbers, so that the probability rate becomes higher)→lottery→second screening with other official documents→conclusion of a contract; deposit and an official certificate of the seal of the guarantor should be submitted→move in.¹⁸⁹

Recently public housing dwellings are open for single persons, but the requirement is often a certain categorical attribution, such as, the elderly, the handicapped, victims of domestic violence, etc. in other words, young single persons are not allowed to live there.

Subsidization for a tenant is possible in the form of rent assistance as part of the livelihood protection measures provided under the public aid system, if the said tenant meets requirements to receive the welfare benefit.

(2) Rental housing owned or managed by the HSC is for middle class households and has two basic subcategories. One is **(a) general rental housing** and the other is **(b) specified excellent housing**. Both types of housing are also not available for the 'unnaturally separated household.' There is also **(c) housing for the elderly**.

(a) General rental housing does not have rental assistance, but the amount of rent is determined depending on the income of the tenant.

■ Standard criteria

- An applicant should be 20 years old or older
- A Japanese national or a foreign national with the visa status of permanent resident, special permanent resident or intermediate-long term residential permission of more than 3 months
- An applicant has minimum income or minimum amount of saving
- An applicant should have had no rent arrears in the public housing or the HSC housing in the past
- An applicant should behave as a good neighbor
- The purpose of renting a dwelling is for his/her own use.
- An applicant has to have a guarantor or otherwise an agreement with the designated surety company.
- An applicant and cohabitants should not be gangsters and have nothing to do with them.
- 3 months' deposit is necessary though estate agency fee, Reikin, and renewal fee are not required

■ Cohabitation requirements

- A single tenant is Okay
- House-sharing with non-family members is Okay
- Employees' housing is Okay

¹⁸⁹ <<http://www.city.osaka.lg.jp/toshiseibi/cmsfiles/contents/0000161/161799/flow.pdf>>.

- Allocation system:
 - 'First-come, first-serve' system
 - In case of newly built housing, by lottery
 - Priorities for the elderly, family with small children, the handicapped may be considered, for example, through 7 days earlier application (e.g. Tokyo).

(b) Specified excellent housing is housing with rent subsidy. This type of housing may be owned either by the local government or a private landlord. The private rental housing may be rented and subleased by the local government, or only managed by the local government for the purpose of the HSC. The contract is concluded, therefore, between the tenant and the local government in the former case, and between the tenant and the landlord in the latter case. The amount of rent is called 'contracted rent' which is as equivalent to the rent of neighborhood market rental price. The actual rent which the tenant has to pay is determined according to the income classification which he/she belongs to, and it increases by 3.5% each year.

- Standard criteria: Same as the HSC general rental housing above
 - However, income should fall in between the minimum and maximum levels
- Allocation system: 'First-come, first-serve' system.

(c) Housing for the elderly does not have a requirement of the minimum income and it has a rent subsidy according to the income classification.

- Standard criteria
 - General requirements for the HSC housing
 - 60 years old or older
 - An applicant should have an contact person
 - An applicant can receive care if necessary
- Procedure

The procedure may be: application→screening with the required documents and explanation on the contract→submission of the contract and other related documents, pay the deposit, rent, fee for the common area, etc.→conclusion of a contract (the issue date) and passing over the key→submission of new residential registration of all the dwellers within 20 days after the issue date.

(3) The UR rental housing is offered to the middle class households.

- Standard criteria
 - Income requirement with minimum income. The monthly income should be more than the standard monthly income, that is, at least 4 times as much as the rent or more than JPY 330,000 (if the rent is more than JPY 200,000, the income should be more than JPY 400,000), or the saving should be more than 100 times as much as the rent.
 - The elderly, the handicapped, single parent family, and students older than 18 years old can apply, even though the income is less than the standard. However, such an applicant should have an support obligator of lineal relative by blood or relative within the 3rd degree whose monthly income is more than the standard income or the saving said above. This support obligator should sign the contract to become a joint surety for the said tenant's obligation with the registered seal of the obligator and an official

certificate of the seal impression and should submit an official document to prove the blood relationship, such as 'family register.'

- An applicant should be a Japanese or a foreign national with the visa status of permanent residence, special permanent residence, and intermediate-long term residential permission (more than 3 months)
 - The purpose of renting a dwelling is for his/her own use.
 - Family should not be unnaturally separated.
 - Prospective dwellers should not be gangsters and should have nothing to do with them.
 - A person who has no debt due to arrear with rent to the UR in the past
 - Being a good neighbor requirement
 - No requirements of Reikin, estate agent's fee, renewal fee, and especially no requirement of a guarantor.
 - Deposit fee of 3 months' rent is required.
- Allocation system: 'First-come, first-served' system, except newly built dwellings.

■ Procedure

Check vacant dwellings in the UR's website→apply either in the internet or in the UR service offices→preliminary check of the dwelling→submission of the required documents, such as, the application, residential registration certificate (or alien registration in case of a foreigner) and income certificate of all the prospective dwellers→conclusion of a contract with the registered seal of the tenant, an official certificate of the seal impression is also required→move in.

There is no separate housing allowance in general, but there is a housing allowance for the people who lost a job or who are in danger of losing a job.¹⁹⁰ Other than that, rent assistance is included in the the livelihood protection measures. The requirement for a foreigner to receive the livelihood protection is to have certain kinds of visa which allow to stay in Japan longer, such as, permanent resident, spouse of a permanent resident, long-term resident, spouse of a Japanese, or refugees. However, there were cases in which the courts denied foreigners the livelihood protection and there is no official information on the requirements for foreigners.

- Is any kind of insurance recommendable to a tenant?

There are several kinds of insurances with regard to renting a dwelling. It is mostly required to buy a 'dwelling fire insurance,' which covers the damage of household goods in case of fire. However, it does not cover the room or the building. A tenant has an obligation to restore the dwelling to its original condition and if the tenant cannot perform that obligation, the landlord can claim for the damage. Therefore, an optional contract of tenant's compensation (tenant's liability insurance) attached to the said fire insurance is preferably required by the landlord. This insurance will cover the damage of the apartment or the building, when a fire or other kinds of damages occurs because of the tenant's negligence.

A third party liability insurance (individual liability insurance), which is also an optional contract attached to the main dwelling fire insurance, applies to the case in which, for example, the neighbor's house was burned down because of the fire arising from the tenant's intentional act or gross negligence. Such a case is the case,

¹⁹⁰ <http://www.mhlw.go.jp/bunya/koyou/safety_net/63.html>.

which the Act on the Liability of Accidental Fire¹⁹¹ does not apply to, and which the tenant is responsible for.

The earthquake insurance exists in Japan. After the Great East Japan Earthquake in 2011, there was a great increase of attachment of the earthquake insurance especially in the disaster areas. However, it covers only the goods in the dwelling in case of tenancy and the premium is relatively expensive in contrast to the coverage. That is why it is not so common for a tenant to buy this insurance.

If you are a student, as already mentioned, an insurance for foreign students, 'Comprehensive Renters Insurance for Foreign Students Studying in Japan' is recommendable to solve the problem of finding a guarantor.¹⁹² A foreign student who goes to one of the university affiliated with this insurance system can join this insurance. It covers the rent arrears or other damages arising from a rental contract which were paid by either the institution or a person in that institution as his/her guarantor, as well as other general damages caused by a foreign student (liability insurance).¹⁹³

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

Japan has an official system of legal aid for civil cases. The Japan Legal Support Center (JLSC)¹⁹⁴ supports the people who need legal support comprehensively by using measures, such as, giving information and advice on legal issues on the phone, supporting victims of crimes, supporting lawyers under-populated areas, coordinating court-appointed contract attorneys at law, and other works.

One of the most important businesses of JLSC is legal aid. This is the system that a person who cannot afford to pay for legal services receives such services with various supports. In order to receive legal aid, (1) his/her income and assets are less than a certain level, (2) there must be a chance to resolve the dispute, such as, win the case or reach a settlement, and (3) his/her purpose should be suitable for the one of legal aid, e.g. it should not be only to fulfil the retaliatory emotions or a commercial purpose, or should not be an abuse of right. If a person meets above three requirements, he/she can receive following legal services, that is, JLSC gives a legal consultation for free, pays temporarily the fees for a lawyer or a judicial scrivener, or the judicial procedure, or fees for making legal documents. If a person receives livelihood protection, he/she receives a waiting period to return it until the dispute is resolved, and will be exempted from returning the fees which JLSC paid for him/her. There is also a simple legal aid by which a lawyer or a judicial scrivener helps a person with only writing legal documents on behalf of that person, if such assistance is enough to solve the problem. JLSC has its main office in Tokyo and 50 local offices in the cities where main district courts are located. Even though there is no office nearby, more than 10,000 lawyers and 5,000 judicial scriveners have contracts with JLSC and they give legal consultations in their law offices

¹⁹¹ This Act exempts the tortfeasor's liability for the damages of the neighborhood, except it occurred because of the tortfeasor's intention or gross negligence.

¹⁹² <<http://www.jees.or.jp/crifs/index.htm>>.

¹⁹³ English explanation of the service, see <http://www.jees.or.jp/crifs/pdf/crifs_en.pdf>.

¹⁹⁴ Its legal form is an independent administrative agency under Ministry of Justice.

<<http://www.houterasu.or.jp/index.html>>. The English version is

<<http://www.houterasu.or.jp/en/index.html>>. Before 2006 the Association of Legal Aid (established in 1952) had given the service of legal aid and in 2006 it was handed over to JLSC.

<http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html>.

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

1. The national federation of associations of tenants of land and dwellings

(established in 1967) consisting of 120 associations

Address: 1-5-5, Shinjuku, Shinjuku-ku, Tokyo, 160-0022

Tel:03-3352-0448

Fax:03-3356-4928

<http://www.zensyakuren.jp/shoukai/shoukai.html>.

Information of each association:

Tokyo	Tel: 03-3982-7277, http://www.zensyakuren.jp/tosyakuren/
Chiba	Tel: 047-342-3938
Kanagawa	Tel: 045-322-2622
Hamamatsu-city, Shizuoka	Tel: 053-473-0009
Shizuoka-city, Shizuoka	Tel: 054-271-5269
Nagano	Tel: 0263-32-8849
Fukui	Tel: 0778-23-8734
Kyoto	Tel: 075-811-9364
Osaka	Tel: 06-4802-8870
Amagasaki-city, Hyogo	Tel: 06-6429-1500, http://www.h4.dion.ne.jp/~syakuya/

2. Japan Legal Support Center (Houterasu)

Tel: 0570-078374

Weekdays 9:00 – 21:00

Saturday 9:00 – 17:00

Internet site in English: <http://www.houterasu.or.jp/en/index.html>

Email: from the website,

https://www.houterasu.or.jp/cgi-bin/toiawase/show_entry.cgi

3. National Consumer Affairs Center of Japan

Tel: 0570-064-370

Internet site: <http://www.kokusen.go.jp/map/>

Internet site in English: http://www.kokusen.go.jp/ncac_index_e.html

Counseling per email is not available

There are regional consumer affairs centers.

Check the branch close to your place: <http://www.kokusen.go.jp/map/>

4. Local government offices

Each prefecture, city, or town has an internet site regarding housing and housing problems.

5. Japan Federation of Bar Associations

Internet site in English: <http://www.nichibenren.or.jp/en/>

Legal counseling for foreigners (charged consultation, but free counseling may be possible for those who have no or low income; an appointment in advance is required)

<http://www.nichibenren.or.jp/en/legalinfo/counseling.html>

<Locations>

[Tokyo]

Tokyo Bar Association Legal Counseling Center

Address: Yotsuya Ekimae Bldg. 2F, 1-4 Yotsuya, Shinjuku-ku, Tokyo

Tel: 03-5367-5280

- To make an appointment (in Japanese):
9:30 am - 4:30 pm, every Monday to Saturday (Except Holidays)

- Legal Counseling (in Japanese, English, Chinese):
1:00 pm - 4:00 pm, every Monday, Tuesday, Wednesday and Friday (Except Holidays)
5,250 yen for a 30 min (consumption tax included)

Mita Office, Bar Association Legal Counseling Center

Address: Honshiba Bldg. 2F, 4-3-11 Shiba, Minato-ku, Tokyo

Tel: 03-6435-3040

- To make an appointment (in Japanese, English, Chinese, Spanish)
10:00 am - 5:00 pm, every Monday to Friday (Except Holidays)

- Legal Counseling (ask about possible languages)
5:30 pm - 7:30 pm, every Monday, Wednesday and Friday
5,250 yen for a 30 min (consumption tax included)

[Kanagawa]

Yokohama Bar Association

Address: 9 Nihon-Odori, Naka-ku, Yokohama

Tel: 045-211-7700

- To make an appointment (in Japanese)
9:30 am - 5:00 pm, every Monday to Friday (Except Holidays)

- Legal Counseling (in Japanese, English, Chinese, Spanish, Korean)
1:15 pm - 4:15 pm, every Wednesday
7,500 yen for 60 min

[Saitama]

Saitama Bar Association

Address: 4-2-1 Takasago, Urawa-ku, Saitama

Tel: 048-710-5666

- To make an appointment (in Japanese)
9:00 am - 5:00 pm, every Monday to Friday (Except Holidays)

- Legal Counseling (ask about possible languages)

1:00 pm - 4:00 pm, every Friday

*For free

[Aichi]

Aichi Bar Association

Address: Dai-Tohkai Bldg. 9F, 3-22-8 Meieki, Chuo-ku, Nagoya

Tel: 052-565-6110

- To make an appointment (in Japanese)

9:30 am - 8:00 pm, every Monday to Friday (Except Holidays) / 9:30 am to 5:30 pm,
every Saturday, Sunday and Holidays

- Legal Counseling (ask about possible languages)

Time and Date (ask)

5,250 yen for a 30 min (consumption tax included)

[Osaka]

Osaka Bar Association

Address: 1-12-5 Nishi-temma, Kita-ku, Osaka

Tel: 06-6364-1248

- To make an appointment (in Japanese)

9:15 am - 4:45 pm, every Monday to Friday (Except Holidays)

- Legal Counseling (ask about possible languages)

1:00 pm - 3:00 pm, every Monday to Friday (Except Holidays)

5,250 yen for a 30 min (consumption tax included)

Foreigners' Rights Advisory Center (Telephone Legal Counseling)

Tel: 06-6364-6251

- Legal Counseling (in Japanese, English, Korean, and Chinese)

0:00 pm - 5:00 pm, 2nd and 4th Fridays

*For free

[Fukuoka]

Fukuoka Bar Association

Address: Minami-tenjin Bldg. 2F, 5-14-12 Watanabe-dori, Chuo-ku, Fukuoka

Tel: 092-737-7555

- To make an appointment (in Japanese)

10:00 am - 4:00 pm, every Monday to Friday (Except Holidays)

- Legal Counseling (in Japanese, English, Chinese)

1:00 pm - 4:00 pm, 2nd and 4th Fridays

*For free

LATVIA

Tenant's Rights Brochure

Julija Kolomijceva

Team Leader: prof. Irene Kull

National Supervisor: prof. Janis Rozenfelds

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1. Introductory information

- Introduction: The national rental market

The Latvian housing market is characterized by a high share of dwellings in the ownership of private persons; moreover, inhabitants own mostly apartments rather than other types of immovable property (approx. 65.4 %).

The Latvian housing situation and housing policy were influenced by the Soviet regime established in Latvia from 1940 until 1990, as well as the following property reforms (denationalization, restitution and privatization) later undertaken by the Parliament and Government of the independent Latvian state. This all resulted in a splitting of property rights on a building and land plot (Latvian: *dalītais īpašums*) in some cases. The split of property rights means that there are at least two different owners of an immovable consisting of a residential building and a land plot: one of them owns the building, another the land plot. In practice, it means that tenants must compensate the immovable tax which shall be paid for the land plot, on which the residential house is situated in which they rent the residential space: additionally, they shall also pay compulsory lease payments for using the land plot in addition to rent and payment for utilities. In other words, this is true only if the owner of the land plot is not one and the same natural or legal person. The owner of the land plot and the building may agree on different conditions of the lease of the land plot, but, if no agreement could be reached, the owner of the building is obliged to lease the land plot with no right to opt out.

- Current supply and demand situation

The current supply and demand situation seems to be sufficient, no problems have been reported.

- Main current problems of the national rental market from the perspective of tenants
 - Rental payments in cash: It is recommended to agree on fulfilment of rental payments via a bank account in order to preserve proof if the landlord incorrectly claims that the tenant owes rental payments which the tenant has actually made.
 - Swindlers: To secure oneself against possible swindlers, it is advisable not to make advance payments or other payments (especially in cash) without a rental contract concluded by all parties concerned in writing or at least a note which specifies the aim of a payment and is signed by a recipient of the money

- Significance of different forms of rental tenure
 - Private renting

The share of the residential spaces rented constitute approx. 15.1 %: 14.7% of them are owned by private persons and 0.4% are living dwellings rented by public bodies. Tenancy law in the field of private renting is liberal and orients itself on the free market economy, where the protection of the property right and party autonomy is brought to the forefront.

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

The share of dwellings with a public task is rather small and amounts to 0.4% of 15.1 %. In cases of housing with a public task, a respective local municipality provides assistance in apartment matters renting out the dwellings to the eligible persons: persons reached retirement age (62 years old); persons incapable of work due to disability; persons with at least one underage child; persons under the guardianship; low-income pensioner; low-income person who is incapable of work due to disability etc. The municipality may provide assistance in other ways, for example, subsidizing repairs, helping to exchange rented dwellings etc.

To point out, the State or other public body (the ministry, a public municipality) and private actors owned by public bodies may rent dwellings for gaining profit; therefore this kind of renting is not social, i.e., not renting with public task.

- General recommendations to foreigners on how to find a rental home

There are no specific legal rules for foreigners with respect to their position on the Latvian national rental market. In general, it is advisable for a foreigner who does not speak Latvian to ask a native speaker to assist.

Furthermore, it is also recommendable to draft a contract in English or other foreign language, if possible, so that the foreigner could read and understand the rental contract when the document is prepared by a landlord or another private person.

Moreover, considering the fact that many issues of the Latvian tenancy law are determined in accordance with a mutual agreement, it would be reasonable to address a lawyer to help with the draft rental contract. In some cases the foreigner can even turn to the notary public, who may prepare the contract in full. Documents entirely prepared by the public notary are notarial deeds (Latvian: *notariālais akts*). The main advantage of the notarial deed is that public notary finds out the intent of the parties of the notarial deed and clarifies the terms of the transaction, counsels the parties, and tells about possible legal outcomes of the transaction so that ignorance of laws and lack of experience is not used against their best interests.

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

- Oral rental contracts: Under the Latvian law the rental contract must be concluded in writing; if no contract in writing has been concluded, the tenant may face any arbitrariness, including, but not limited to, unlawful eviction
 - Deposit issues: In some cases, the tenant may pay a deposit to the landlord to secure future claims of the latter; it is recommended to agree in detail on the allowed use and repaying of the deposit
 - Compulsory lease payments and compensation of the immovable tax for the land plot: these payments are considered to be an additional financial burden, and many suppose it to be unfair in general
 - Use of standard contracts by the landlord: If the tenant signs a rental contract prepared by the landlord it is usually considered with some exceptions that the tenant agreed to all contractual terms. It is recommended to read carefully and discuss contractual terms before signing of the rental contract. In some cases the tenant may need help of a lawyer or public notary. The most common problematical issues, when the tenants signed the contract without reading, are contractual penalties for non-performance or improper performance of different duties of the tenant; loss of rights (for example, loss of compensation) on improvements made by the tenant which cannot be detached; inaccurate measurements of a residential space; the lack of the ownership right or legal powers of "the landlord" to enter the rental contract (for example, a person did not have a valid power of attorney or immovable property is seized within criminal proceedings or is being sold in action).
- *Important legal terms related to tenancy law*

Latvian	Translation into English
<i>apakšīres līgums</i>	sublease contract
<i>drošības nauda</i>	Deposit
<i>ģimenes locekļi</i>	family members
<i>īres līguma grozīšana</i>	amending the rental contract
<i>īres maksa</i>	rental payments
<i>īres līguma izbeigšana</i>	termination of the rental agreement
<i>īres līguma uzteikums</i>	unilateral termination of the rental agreement
<i>īres valde</i>	rental council
<i>īrnieks</i>	tenant
<i>izīrētājs</i>	landlord
<i>izlikšana</i>	eviction
<i>kārtējais remonts</i>	routine repairs of the residential space
<i>kapitālais remonts</i>	capital repairs

<i>maksa par pakalpojumiem</i>	payment for utilities
<i>pieņemšanas-nodošanas akts</i>	transfer and acceptance deed (or inventory deed)
<i>rokas nauda</i>	Earnest money
<i>zemes piespiedu noma</i>	compulsory rent of a land plot

(An unofficial English translation of the Latvian Civil Law (*Civillikums*) (tenancy law: Sections 2113-2177) and the Law on Residential Tenancy (*likums "Par dzīvojamo telpu īri"*) is available under www.vvc.gov.lv. Please also note that these translations do not always contain all latest amendments!)

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?

Latvian private law does not contain the general prohibition of discrimination in private renting, except in consumer rental contracts. A contract is a consumer rental contract if one of the parties is an entrepreneur who rents out living dwellings within the scope of professional or commercial activities, and the other party is a natural person who rents a residential dwelling for living purposes. In consumer contracts, discrimination on the basis of gender, disability, race or ethnic grounds is prohibited, as well as it is prohibited to discriminate against a woman because of pregnancy or during the period following childbirth up to one year. Nevertheless, if the consumer has been discriminated against on the basis of the prohibited criteria before the conclusion of a rental contract, the consumer-tenant may ask only for loss recovery and moral compensation in proceedings before a court; in other words, a potential landlord may not be forced to conclude a contract by legal means.

To point out, if the tenant entered a rental contract due to the unfair commercial practice of the landlord (entrepreneur) misusing the mental or physical state, age, unreasonable trust, lack of knowledge or experience, the tenant may ask the responsible state institutions to examine questionable activities of the landlord.

If the tenant is entitled to receive assistance from public authorities, in accordance with law, discrimination on the basis of gender, age, race, skin color, language, religious beliefs, political or other views, social origin, nationality, education, social and financial status, type of occupation or other circumstances is prohibited.

- 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?

Considering the legitimate interest of the landlord and valid law provisions, the

landlord is entitled to ask about persons who will move in together with a potential tenant and their relation to the tenant, solvency of the tenant and his family members (for instance, a spouse, parents, children etc.) who will also occupy a residential space, the residence permit, if the tenant is a foreigner. The question about pets of the tenant, as well as the question of whether the tenant smokes, can be also of interest of the landlord since it is connected with the frequency of routine repairs of residential space by the tenant.

It is not allowed to question, i.e., to gather information about the tenant's race, ethnic origin, health, sexual life, previous administrative or criminal convictions, as well as his religious, philosophical or political beliefs, unless the potential tenant voluntarily discovers these sensitive data. If the tenant does not wish to answer questions which are not allowed, he may refuse to answer or keep silence. Although there is no explicit permission to lie, but practically the tenant may lie because no rights of the landlord may arise out of asking the prohibited questions.

If the tenant is a consumer who discovered sensitive information to the landlord and a dispute about possible discrimination arises, the landlord must prove that no discrimination took place. The landlord may not also ask other persons, for example, his employees, to discriminate the tenant in the case of the entrepreneur-consumer relations.

- 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)?

Some potential landlords or intermediaries may ask to pay a “reservation fee”. the law does not provide any restrictions in this connection. If it is the case, its prerequisites and the payment procedure depends on mutual agreement of the parties, i.e., the law does not regulate the issue, therefore the tenant is entitled to negotiate and discuss all questions of the reservation fee before entering the respective agreement.

- 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)?

Checks on the personal and financial status of the tenant are different and are connected with a specific case. Usually the landlord or his intermediary interviews a potential tenant about solvency, bad habits, matrimonial status, having kids, and having pets.

The checks on financial status depend on a particular landlord. Some landlords will simply ask about income sources, for example, whether and where the tenant works, while others will ask for a credit history from the Credit Register or a salary statement of the tenant in order to determine solvency. Nevertheless, the tenant is entitled to refuse this request for information. In addition, the landlord may also check the following public registers: the public register about tax debtors of the State Revenue Service, the public insolvency register of natural persons, the Commercial Register, if relevant. There are also private credit reference agencies which compile blacklists of

“bad debtors” and whose services the landlord can use to find out whether the tenant has debts in relation to third persons. The landlord has the right to collect personal data of the tenant lawfully, if the tenant has given his consent.

Since the landlord may not refuse that the tenant lodges in his spouse, parents, siblings incapable of work, underage children and adult children without their own family, the landlord may ask about the matrimonial status or kinship.

- 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?

One can find an accommodation by assigning an estate agent, checking newspapers or bulletin boards, or the Internet portals (www.liveriga.com; www.city24.lv; www.latio.lv; www.reklama.lv (only in Latvian and in Russian); www.ss.lv (only Latvian and Russian); www.zip.lv (only Latvian and Russian) etc.). Different social networks, especially local ones (for example, www.draugiem.lv) or addressing local acquaintances can be also helpful.

The tenant can assign an estate agent who acts as an intermediary and assists with the conclusion of a rental contract. The role and scope of activities of the estate agent depend on an agreement concluded by him and the tenant. It means that the tenant has to define precisely the task of the agent in the agreement. Estate agents provide different services, for example, provide the assistance in finding a landlord, preparation and evaluation of documents required for the conclusion of the rental contract, coordination with a notary public and administrative institutions, etc. Usually the agent demands from 50% up to 100% of one monthly rental payment plus VAT as a salary for his activities; however, other agreements are possible.

If you come to work or to study in Latvia, sometimes your employer or educational institution (a university, high school, etc.) may provide accommodation concluding a specific rental contract because of employment or studies when the term of the rental contract will be closely linked to the existence of respective educational or employment relations in this particular situation.

An employer or educational institution can also provide assistance in finding a private landlord (third person) who will rent a residential space. In order to be able to enjoy the protection granted by the Law on Residential Tenancy, it is advisable that the tenant concludes the rental contract with the third person – private landlord – instead of with his employer or educational institution.

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

In Latvia there are no official “blacklists” or a system for rating and labelling preferred landlords/tenants. However, in some cases, if the debtor (landlord or tenant) owing payments or other kind of performance on basis of the rental contract and has given

prior consent, such debtor can be included in “blacklists of debtors” compiled by private companies.

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)?

A rental contract has to be signed in writing, but no registration is necessary at the moment. To observe the rule about the written form, parties can prepare and draw up the contract themselves or they can turn to a notary public who will prepare the whole contract. Parties can also address a lawyer who will assist in drafting of the rental contract which is an optional choice; in addition, parties may ask the notary public to certify the signatures on the contract which means that the notary will establish the identities of the parties to the contract. If there is no written contract, the court may recognize factual rental relations, but the tenant has to prove that he was using the living space in question for a longer period of time and paid rental payments to the landlord.

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

While drafting the rental contract, particularly if it is prepared by private persons without involving a professional lawyer, the following information shall be included: 1) data about parties: name, surname, the personal identity number (also personal code) or date of birth and ID/Pass data, if no personal identity number exists (for natural persons); name, the registration code (for legal persons); 2) the signing date; 3) the signing place; 4) the signatures of parties; 5) the subject-matter of the contract indicating a cadastre number, an address and area of a immovable property, including furnishing, if relevant; 6) the rental payment amount, as well as its payment procedure and terms; 7) utilities provided to the tenant, the payment procedure and terms; 8) the person entitled to receive the rental payment and payments for utilities; 9) the duration of the rental contract; 10) the day of entering into force.

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

It is possible to conclude a rental contract for a definite period of time (time limited contracts) or for an indefinite period of time (open-ended contracts). In some cases a potential landlord can indicate if he wishes to conclude a rental contract for a definite or an indefinite period of time in the advertisement. However, the choice of the option depends on the both parties involved, in other words, on their agreement.

Apart from rental contracts concluded for the duration of employment or studies, social rental contracts, i.e., contracts with public tasks are also concluded for a specific period of time.

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

To clarify, the Latvian law distinguishes between the rental payment and other additional payments connected with the use of the residential space (the payment of the immovable tax; the payment of the compulsory rent when a residential house is situated on a land plot owned not by the same person who owns the residential house; the payment for utilities). The tenant and the landlord may agree on different terms and the payment procedure. It has to be taken into account that freedom to agree on different contractual provisions may be limited by law (for example, the immovable tax) or a contract which the landlord has already concluded with a service provider in relation to the immovable property (for instance, contract about the centralized heating).

The basic models of the payment procedure for utilities on which the tenant and the landlord may agree are as follows: 1) the tenant pays directly to service providers; 2) the tenant transfers payments for utilities to the landlord and the latter pays to service providers. The landlord and tenant are also entitled to choose another model. In addition, the tenant living in an apartment of a multi-apartment house may be required to cover expenditures for interior lighting of spaces for the common use (a corridor, stairs, etc.), maintenance of engineering systems of the residential house and the difference of readings of the common water meter of the residential house and the actual water consumption of all residential units of the residential house calculated proportionally to the area of the apartment rented.

The person to whom the rental payment and payments for utilities must be paid, as well as the address of the place of residence (for natural persons) or the legal address (for legal persons), must be included in the rental contract. If the rental payment and payments for utilities are to be paid via a bank account, then all information which is necessary for such payment has to be specified in the rental contract.

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

In accordance with the law the tenant has to perform routine repairs of the subject-matter transferred to him while the landlord is liable for capital repairs of a residential house or an apartment. Routine repairs are, for example, hanging wallpaper, painting ceilings, etc. However, the law is not very clear about reimbursement of expenses of the tenant in these cases; for this reason, it is recommended to specify this and related issues in the rental contract. If the parties have not reached an agreement on this point, the tenant has to inform the landlord on routine repairs and acquire his consent in order to avoid misunderstandings and disputes, especially, but not limited to reimbursement and property rights on improvements of the residential space. It is important to mention that the tenant may change a layout of the residential space and rebuild it only with the consent of the landlord.

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

Furnishing and/or major appliances are optional, except in rental contracts concluded for the duration of employment or studies.

- 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)?

If furnishings and major appliances are provided by the landlord, it is advisable to establish the condition of these objects by signing the transfer and acceptance deed or inventory deed, since the tenant is not liable for the natural wear and tear of the objects.

- Any other usual contractual clauses of relevance to the tenant

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

- clause on the deposit amount, its allowed use and repayment
- clause on the condition of the residential space, furnishing, home appliances, etc. which usually is fixed in the transfer and acceptance deed signed by the tenant and the landlord
- clause on routine repairs and its frequency which has to be performed by the tenant
- clause on the procedure of informing the tenant about a routine examination of the residential space by the landlord, as well as its frequency
- clause on the liability of the both parties for non-performance or improper performance of the contractual obligations
- clause on the procedure of amending of the contract
- clause on the prolongation of the contract
- clause on the pre-term termination of the contract
- clauses on the prohibition to keep domestic animals or to smoke inside the dwelling.

- Parties to the contract
 - Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?

The tenant must inform the landlord about lodging in of its family members in the sense the Law on Residential Tenancy in writing, their name, surname and personal code must be included in a written rental contract. To put it differently, all persons residing with the tenant has to be mentioned in the contract, though they are not a party to the rental contract.

A registered spouse, parents (also adoptive parents), brothers and sisters incapable of working, adult children without their own family, underage children are family members of the tenant are entitled to move in without additional conditions. Adult members of the tenant's family have the same rights and duties as the tenant does, even though only the tenant has formally entered the rental contract.

Guardians of the tenant's family members may move in and the consent of the landlord is not necessary.

All other persons, for example, partners, fiancés, grandparents, grandchildren, brothers and sisters capable of working, cousins, friends, etc. are allowed to move into the apartment together with the tenant, if the landlord has given its consent, failing which the person will unlawfully reside in the dwellings rented by the tenant.

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

The tenant, his family members or other natural persons who occupy lawfully the residential dwelling are not obliged to use the dwelling as a primary home (residence); their right to use the dwelling is not terminated if the tenant is absent.

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

In case of divorce a former wife or husband remains a family member of the tenant in the meaning of the Law on Residential Tenancy. Non-married couples or same sex couples are not legally recognized in Latvia, though these persons may lawfully reside together with the tenant if the landlord has consented to it. It is also thinkable that such couples enter the rental contract together as the tenants, and then there will be two persons on the side of the tenant. When personal relations are terminated, former family members or other persons who moved in together with the tenant are entitled to continue to use the dwelling, if the legal grounds for their eviction established by law do not exist.

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

The issue whether a student moving out may be replaced by motion of the other students can be regulated by an agreement of parties, because the law does not contain mandatory rules about this question. On the other hand, such clause is not mandatory.

- death of tenant;

In case of death of the tenant, a tenant's adult family member in the meaning of the Tenancy Law is entitled to become a party of the rental contract instead of the tenant without changing the provisions of the previous rental contract, if all other adult family members residing in the same residential space agree thereto.

- bankruptcy of the landlord;

If the landlord is insolvent, but has concluded a rental contract before insolvency which does not cause losses to the landlord or his creditors, the rental contract will be usually continued by the insolvency administrator. At the same time the landlord, although he formally owns a residential space, may not enter new rental contracts after initiation of insolvency proceedings, because this right is granted to the insolvency administrator who may conclude such agreement.

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

Subletting is a contract granting use of a residential property for non-commercial purposes, in Latvia there are two types of subletting:

- 1) The landlord lives in the same premises together with the tenant (hereinafter referred to as subletting of the first type)
- 2) The tenant enters the sub-rental contract (hereinafter referred to as subletting of the second type).

In case of subletting of the first type, the landlord enters the sub-rental contract, but in the second case the (first) tenant - a sub-rental contract under the consent of the landlord and the tenant's adult family members occupying the same residential space together with the tenant. Normally the consent is given before conclusion of the contract. The sub-tenant has already no right to rent the subject-matter of its contract to a third person in either case. The sub-rental contract is to be concluded in writing. Information (name, surname and personal identity (also personal code) number) of all persons lawfully residing together with the sub-tenant shall be included in the sub-rental contract within three days after their moving in.

Subletting is not possible in rental contracts with the subject-matter owned by the state or a local municipality concluded because of employment or studies, as well as in cases of social rent.

If the landlord offers not an ordinary rental contract, but a sub-rental contract, the subject-matter of the contract has to be examined, in particular, whether the matter concerns subletting of the first type because in this particular case law mandatory provides to sub-rent the living premises. If the case relates to subletting of the second type, in addition, it has to be examined whether the rental contract is fictive or its aim is to evade law. If the answer is positive, the only possibility to protect oneself is to bring a court action, asking the court to declare the rental contract void because of its fictive nature or circumvention of the law.

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

The contract binds the new owner in the case of sale of the premises, if alienation is voluntary. There are specific provisions regarding auctions if the court bailiff sells the property because of debts and alienation takes place against the will of the owner (landlord). If the rental contract in question had been concluded

- Before the court bailiff has started debt recovery, the contract is valid, unless it is fictive or its aim is to evade law
- After the debtor (landlord) has received the notification of the court bailiff about the auction, but before the respective mark (Latvian: *piedzīņas atzīme*) has been entered in the Land Book, the contract is valid, if the tenant had not known about the debt recovery and auction, otherwise the contract is void
- After the mark mentioned above has been entered, the contract is not binding for the creditor selling the property in the auction and the acquirer of such property, what means that the new owner may freely terminate the rental contract.

- Costs and Utility Charges

- What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?

The utilities provided under the rental contract may be divided in the following groups:

- The *basic utilities* are inseparably related to use of the residential space (heating, cold water, sewerage and removal of waste);

- The *auxiliary utilities* are all other services (hot water, gas, electricity, garage, parking place, etc.)

The idea is that in case of cutting off of the auxiliary services the tenant can continue to live in the dwelling; in addition, the law states that the tenant may decline future use of the auxiliary services (utilities) by notifying the landlord in writing two weeks in advance, however, the tenant may not refuse to receive the basic services. Other additional circumstances shall be observed as well; for instance, it could be practically impossible to decline provision of electricity in the multi-apartment house. If the tenant rents an apartment in a residential house, a manager of the residential house has to conclude agreements regarding the basic utilities (heating, cold water, sewerage and removal of waste), the auxiliary services and a compulsory lease agreement, if relevant. In other cases, either the landlord or the tenant may conclude the contracts for provision of utilities.

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

The landlord may charge all utilities which the tenant agreed to receive. As indicated, the tenant is not entitled to refuse from the basic services, but a range and types of the auxiliary services may be freely determined by the parties of the rental contract.

The tenant may pay directly to service providers or to the landlord, who then pays to service providers, unless the landlord and the tenant agreed on another procedure.

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

The tenant has to pay the immovable tax levied by local municipalities.

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

It is lawful to shift condominium costs. However, the tenant has to cover not all expenses, but only the following costs: the residential house's sanitary and technical maintenance, as well as management and service personal costs. Incidentally, at the moment the tenant has to cover only those costs which have already occurred.

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

The amount of the deposit depends on the agreement of the parties in cases of private renting. The usual amount is equal to the two or three amounts of the rental payment agreed with the tenant. When the State or a local municipality concludes a rental contract without public tasks, an amount of the deposit may not exceed the amount of a twelve-month rental payment for the residential space. If the matter concerns social rent, when a local municipality has to provide assistance in solving apartment matters, the deposit may not be required at all.

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

The landlord has to manage the deposit reasonably and carefully. All important issues – for example, the question of how exactly the landlord must manage the deposit – are determined by mutual agreement. If there is no particular agreement, however, the landlord has to return the deposit in full or in part, interest shall be paid (if parties have agreed on this issue) and the landlord has used the deposit for his interest.

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

Additional guarantees (surety, pledge of movables, contractual penalty, and earnest money) may be asked and depend on a particular case and/or a mutual agreement. The parties are entitled to contract on or several guarantees in addition to the deposit.

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

The security deposit serves as a guarantee for rental payments, payments for utilities and losses.

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 neighbors; occupation by third parties)?

Defects can differ; we can distinguish between legal and material defects, as well as essential and minor defects. The defect is legal if a third person has such real, personal or other right on the property rented, that as a result of the exercise of these rights the tenant is disturbed and cannot not use the property in full or its significant part. Third persons or parties occupying dwelling will constitute a legal defect.

As regarding material defects, the landlord is responsible that the property has no hidden defects, including such defects which the landlord was not aware of, as well as the property has all the good features which are usually presumed or positively warranted by the landlord. The landlord is also liable for defects which the landlord has not knowingly disclosed to the tenant. Furthermore, the property shall have no defects which the landlord has declared to be non-existent. The property has to be transferred to the tenant together with all its appurtenances, utilities, etc. and in such state that the tenant had the right to expect or that have been agreed in the rental contract. However, the landlord is only responsible for the defects existed before entering into the rental contract. Additionally, the defect has to be essential, i.e., to hinder use of a property in full or of its main part.

Mould and humidity in the dwelling would mean that the residential dwelling is not fit for rent, i.e., does not comply with the mandatory construction and hygiene requirements, be suitable for long-term human accommodation, as well as for placing household items, therefore may not be rented out.

Generally speaking, the exposure of the house to noise from a building site in front of the house or the existence of noisy neighbours will be a defect of the residential space, if the landlord has declared them to be non-existent or warranted that no building works are planned or that the neighbours are quiet, respectively. Noise will not be considered as a defect in other cases, not to mention, there are public law rules regulating issues about maximum allowable noise in the both cases; if a person violates these legal provisions, an administrative fine be imposed.

- 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)

First of all, the tenant has to check the rental contract, whether and, if yes, then what provisions exactly are contained in the contract regarding the possible liability of the landlord for different defects. When the contract does not comprise any remedies in this connection, the responsibility shall be established on the basis of law as follows:

If the landlord is responsible for the defects, the tenant is entitled to ask the landlord to: recalculate (usually reduce proportionally) the rental payment and the payments for services (utilities) for a time of delay services (utilities) for a time of delay; claim back already paid rental payments, if delay happened (disputable); refuse the performance of the rental contract, i.e., retain payments which have to be made under the contract until the dwellings are transferred (disputable); compensate losses incurred unless, they are not covered by the previous legal means; terminate unilaterally the valid rental contract, if the landlord delays the transfer of the property

for so long that the tenant is no more interested in acquiring it for use (disputable); pay contractual penalty, insofar as it has been agreed for non-performance or delayed performance; pay earnest money, insofar as it has been agreed.

Unilateral actions are not allowed if the contract does not grant such rights, for example, in cases when the landlord does not agree and undertakes no actions to cure the defect. If a dispute arises, the court resolves it.

If the previous tenant refuses to clear and hand over the premises, the new tenant has no legal means which he could use against the former tenant, although the new tenant may use the legal remedies against the landlord which are indicated above.

- Repairs of the dwelling

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

The landlord must perform capital repairs of the residential house (residential space). The capital repairs means repairs of the constructional elements, engineering and communications systems of the residential house or residential space.

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

The landlord and the tenant may agree that the tenant performs the necessary capital repairs or fully or partially covers the costs thereof. The question about reimbursement of expenses is not clearly regulated by law, if no agreement has been reached, but the tenant repaired the residential house instead of the landlord. For this reason, it is recommendable to inform the landlord and receive his consent prior to performing capital repairs, as well as to negotiate the question about reimbursement of expenses, concluding an additional agreement, preferably (but not mandatorily) in writing.

- Alterations of the dwelling

Since this question is not indisputably and clearly regulated by law, the issue shall be primarily regulated by the rental contract. If the agreement has not been concluded, the tenant shall notify the landlord about proposed alterations, in writing and by registered mail, if possible, in order to preserve evidence for the case of a possible dispute. If the landlord has consented, the tenant may make changes to the dwelling. To add, it is advisable to conclude an additional agreement or to amend the rental contract in writing in this regard.

- Is the tenant allowed to make other changes to the dwelling?

The tenant is allowed to make other changes to the dwelling after the landlord has agreed to these changes.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

This may be done only with the consent of the landlord.

- Affixing antennas and dishes

Affixing antennas and dishes are allowed upon the consent of the landlord.

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

Normally, it will be determined by a mutual agreement, that is, by the rental contract. If repainting is a part of routine repairs, the tenant is responsible for routine repairs under the Law on Residential Tenancy. Minor changes, for instance, drilling the walls if there is no contractual prohibition for this, will be allowed.

- Uses of the dwelling

- Are the following uses allowed or prohibited?

- keeping domestic animals, producing smells, receiving guests over night fixing pamphlets outside

There are various administrative provisions which relate to keeping animals, producing smells and sounds, fixing pamphlets outside etc. Upon the landlord's consent, all these things are allowed, if mandatory provisions of public law are observed. Nevertheless, the tenant may not disturb other persons making it is impossible for them to reside together with the tenant in the same house or apartment, keeping animals, producing smells and sounds etc.

- small-scale commercial activity

The Latvian Law on the Residential Tenancy does not recognize mixed, i.e., residence and commercial rent contracts; using of living dwellings for purposes other than living can lead to termination of the rental contract. However, it is disputable that insofar the landlord and the tenant may derogate from the legal provision that the

space can be used for small-scale commercial activity by a mutual agreement. Therefore, it is advisable to agree only to residential use.

3.2. Landlord's rights

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

Article 11 of the Law on Residential Tenancy stipulates that rent consists of residential house (space) maintenance expenses and profit. Please note that all other payments which are not residential house maintenance expenses and profit, though they are agreed or have to be made because of law, are not rent in the meaning of the Law on Residential Tenancy. Rent control as the determination of the highest possible rental payments in relations of two private persons does not exist in private renting in Latvia. Nevertheless, law stipulates which expenses of house maintenance may be shifted to the tenant (sanitary, technical maintenance of the residential house, management personal expenses etc.), the list of the expenses set by law may not be extended by the landlord, even though the tenant agrees. On the other hand, the principle of freedom of contract applies to the second part of rent which is profit, therefore parties may freely agree on an amount of this part of rent.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?

In Latvia rent increases may take place, if a rental contract contains the respective clause which shall be examined in order to tell whether increase is allowed; how many times rent may be increased; after what time the next increase may follow. If the parties have not agreed on the latter issue, i.e., after what time ordinary rent increase may happen, the next increase may take place in six months after the previous increase.

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

There is no possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully since it depends on the circumstances of the specific case.

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

The landlord must notify the tenant of an ordinary rent increase six months in advance unless parties agreed otherwise. The financial justification of the rental payment increase shall be specified in the notification. The goal of the notification is to provide timely and appropriate information on new contractual terms and conditions to the tenant so that he can decide whether to agree with rent increase. The tenant has to notify the landlord within six months from the day of the receipt of the notification, if he agrees with the proposed new amount of rent, otherwise it will be presumed that the tenant has consent to rent increase. The tenant can object to the financial justification of increase and the court settles all disputes connected with rent increase. It will be also assumed that the tenant has agreed, if the tenant starts paying the new increased amount. After the consent has been given or presumed, the tenant may not withdraw it.

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

This issue is not regulated by law; hence it depends on a mutual agreement of parties.

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

This issue is not regulated by law and depends on a mutual agreement of parties.

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

The landlord may not legally lock a tenant out of the rented premises, e.g. for not paying rent.

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

The landlord may obtain actual control over movables which the tenant has placed in the dwellings, for example, by removing them. The landlord has this right, if a claim or claims – for example, for rental payments owed and any other claim – arise from a

rental contract. The landlord may keep the property of the tenant until his claim is satisfied; at the same time the landlord has no right to sell the tenant's personal property.

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 the rental contract at any time, notifying the landlord thereof in writing one month in advance (Article 27 of the Law on Residential Tenancy). The tenant can deliver the notice personally, by post, as well as by a registered mail. Additionally, the tenant may ask the court bailiff or the notary public to deliver the notice. The court bailiff can be asked if the landlord (unlawfully) refuses to receive the notice, however, the place of residence of the landlord has to be known in this case. The notary may deliver the notice of termination to the landlord in person or send by post as a registered mail, one of the advantages of this particular delivery method is that, if the residence of the landlord is unknown, then the notary publishes the notice in the official paper *Latvijas Vēstnesis*.

- 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 legal rule – Article 27 of the Law on Residential Tenancy – does not impose any limitation except the written notice mentioned above and one months' term.

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

As indicated, Article 27 of the Law on the Residential Tenancy does not provide other preconditions such as finding a suitable replacement tenant.

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)?

Article 28 of the Law on Residential Tenancy stipulates that the rental contract may be terminated at the initiative of the landlord only in the cases set by the Law on Residential Tenancy. The landlord may do so if the tenant breaches the contract or law,

i.e., if one of the following legal grounds exists:

- Damage to or demolition of the dwellings transferred into use of the tenant (termination notice without prior warning);
- Damage to or demolition of the dwellings in the common use which the tenant uses together with other inhabitants or users of the building, for example, stairs (termination notice without prior warning);
- Disturbance through use by persons living with the tenant in one common apartment or one house impossible for other persons (termination notice without prior warning);
- Not agreed use of the dwellings (termination notice one month in advance);
- Unlawful use of the dwelling by third persons allowed by the tenant without consent of the landlord (termination notice one month in advance);
- Overdue rental payment or basic services for more than three months (termination notice one month in advance);
- Necessity of capital repairs of dwellings (termination notice three months in advance);
- Demolition of a house, apartment etc. (termination notice three months in advance);
- Necessity of personal use of dwellings for living purposes by the landlord who regained his immovable property in the course of denationalisation (termination notice six months in advance).

In order to send the notice the landlord can use the same means which were described in case of the tenant's notice.

- Must the landlord resort to court?

If the tenant does not vacate the dwelling after the notice has been received and the time period set by law (see above) has expired, the landlord has to bring a court action; other methods of eviction are illegal.

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

Eviction may take place if there is a positive court judgement. All disputes, including possible objections of the tenant against an eviction, are resolved by the court. The tenant is entitled to make use of all legal aims to end court proceedings. The objections can follow from substantial law (payments owed to the landlord are not due; payments have been already made etc.) or from the procedural law (the landlord has not submitted a written notice to the tenant; the parties have concluded a settlement agreement etc.). Moreover, the tenant may submit a counter-claim asking, for example, to recognize factual rental relations, or to perform set-off etc.

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

Please see the answer about the termination of open-ended rental contracts because the legal rules are the same.

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

Please see the answer about the termination of open-ended rental contracts because the legal rules are the same.

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

If the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling, the landlord may claim losses connected with not handing over of the keys of the dwelling. In addition, if the tenant does not clear the dwelling after the notice has been received and the time period set by law (see above) expired, the landlord has to bring a court action; other methods of eviction are illegal.

4.3. Return of the deposit

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

The landlord is entitled to use the security money after the termination of the rental contract. Nonetheless, the law does not associate the use of the security money with particular termination grounds. It follows from the law that the tenant and the landlord may freely contract a particular day of return of the tenant's security deposit. If the parties have not entered an agreement about return of the deposit, the landlord must return an unused part of the security money, if remained, not later than on the day when the tenant vacates the residential space.

- What deductions can the landlord make from the security deposit?

As indicated, the landlord has the right to use the deposit to cover owed rental payments, payments for utilities, as well as to compensate losses which the tenant has caused by acting against the rental contract or law.

- In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

The tenant is not responsible for the natural wear and tear of the property, i.e., for reduction of the value of the property (dwellings, furnishing etc.) that occurred in the course of ordinary use. For this reason, the landlord may not make a deduction for reduction of the property's value due to the ordinary use of furniture.

From the practical point of view, the deed of transfer and acceptance (inventory deed), which fixes the state of the property, can be useful when a dispute about the state of the dwellings and/or furnishing later arises if it is drawn up and signed by the both parties. Therefore, it is recommended to inspect the property before signing the deed, as well as to include precise and accurate information on any defects discovered during the inspection.

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?

The ordinary courts (private renting) or administrative courts (social renting) adjudicate disputes arising from tenancy contracts in accordance with their specialization.

- Are there specialized courts for adjudication of tenancy disputes?

There are no specialized courts for adjudication of tenancy disputes in Latvia.

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

There is no accelerated form of procedure used for the adjudication of tenancy cases in Latvia; disputes are resolved within 3-12 months by the court of first instance.

- Is conciliation, mediation or some other form of alternative dispute

resolution available or even compulsory?

As already mentioned, normally the courts resolve tenancy disputes; at the moment (compulsory) alternative dispute resolution are not available in Latvia, although the Mediation Law is being prepared by the Parliament. According to the draft law, mediation will be only possible in disputes concerning civil matters, including, but not limited to rental contracts.

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?

A prospective tenant has to address the respective municipality in order to get social or subsidized housing.

- Is any kind of insurance recommendable to a tenant?

Insurance is not compulsory and depends on the wishes of a particular tenant.

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

The tenant may address a lawyer or the notary public asking for legal assistance for consideration. For free legal aid the Legal Aid Administration has to be contacted.

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

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The Latvian Council of Sworn Attorneys

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The Consumer Rights Protection Centre

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The Legal Aid Administration

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The Rental Council of the Riga

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The state courts

General information, including addresses, email addresses and phone numbers etc.,
under www.tiesas.lv

The State Police (Administration)

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LITHUANIA

Tenant's Rights Brochure

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1. Introductory information

- Introduction on the national rental market

At the end of the year 2007, when the economic crisis had begun, the real property market started showing first signs of stagnation. The housing market of Lithuania in 2011 retained the stability of the year. Even though residential property prices in the major cities of Lithuania remained fairly stable, further growth in the number of transactions was recorded. It has been estimated that at the end of June 2009 in five largest cities of Lithuania there were about 3500 unsold newly built flats. Most of them – about 2100 were built from projects which had been developed in the year 2008.

In accordance with the above mentioned circumstances, it was particularly difficult to find tenants or buyers; even the reduction of rental or sale price did not help. The supply of new flats in the largest cities of Lithuania in 2009 and 2010 (compared to 2008) went down by 2.5-3 times.

In the Republic of Lithuania the official rental housing market almost does not exist. Lithuania is experiencing a shortage of rental housing, especially for low-income families (young and elderly families). The prices of private rental housing vary depending on location and housing standards, and the prices of municipal social housing are lower by tenfold. Social housing accounts for only a few percentage points of the total housing stock. The development of social housing has been slowing down as a result of reduced public and municipal investments.

It should be noted that according to the data provided by the Statistics department of Lithuania the national stock of dwellings consists of 1,280,200 dwellings, i.e. there are about 400 dwellings per 1000 population.

It should be noted that in Lithuania it is doubtful what the share of the rental housing sector is, because to date no database is available that consistently registers types of tenure choices in transition countries, and the correct share of tenants is most likely to be underestimated. Additionally, due to tax avoidance a large number of small landlords (individual people) avoid stating that they lend dwellings. In Lithuania the private rental housing market is mostly informal.

- Current supply and demand situation

The market supply of rental housing is sufficient because people of Lithuania prefer having their own dwellings than living in rented houses. However, the number of social housing and municipality owned shelters is not sufficient and demands larger supply.

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

The main current problem for tenants in the case of rental housing with the public task is the insufficient supply of the rental housing.

The main current problem for tenants in the cases of the rental housing without public task is the refusal of the landlords to formally conclude the housing lease contract in order to avoid paying taxes. In such situations the problem is that tenants have difficulties to protect their legal rights.

- Significance of different forms of rental tenure

In Lithuania we could distinguish two main regulatory types of tenure:

- commercial rental housing and

- social rental housing.
 - Private renting

This is the subject of the regulation, which is mentioned in the Civil Code of Lithuania. There are no special requirements for landlords and tenants, but there are special rules to protect the tenants. It is difficult to carry out state surveillance of this type of leasing as there are a lot of illegal activities in purpose to avoid taxes.

This type of tenure occupies 9 percent of the dwelling stock market. It should be noted that this data could be inexact because landlords seek to avoid taxes and they hide their rental housing activities.

In the commercial-professional rental housing market of the Republic of Lithuania, these subjects play the most important role:

- natural persons who provide rental housing services;
- legal persons who provide rental housing services.
 - “Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc.)

In Lithuania rental tenures with a public task are called social housing: non commercial, municipality owned living premises that are rented based on the governmental order.

This type of tenure has the public interest element. It has special purposes – to provide state aid to supply residential accommodation for low-income people (families). This type of rental housing is regulated by the Civil Code (there are established requirements for the lease contracts) and the special law – the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) (there are established special requirements for the tenants). Such type of lease is strictly controlled by the state and municipalities.

This type of tenure makes up 3 percent of the dwelling stock market. This number should increase because the number of people (families) who need social housing is increasing, and one of the state’s housing policy aims is also to increase the amount of social housing.

In the largest cities of the Republic of Lithuania (Vilnius, Kaunas, etc.), there are common lodging-houses (hostels for homelessness) – local social service institutions of municipalities with a purpose to provide temporary shelter and integrate socially vulnerable people into the society. These hostels provide only temporary accommodation services, however, and they are not related to social housing.

- Some general recommendations to foreigners on how to find a rental home (including any specificities with respect to the position of foreigners on the national rental market)

Some general recommendations to foreigners on how to find a rental home:

1. It is recommended that foreigners rent a dwelling through the real estate agencies or agents, because they know the rental housing market very well and could propose the best dwelling for the specific tenant. Moreover, real estate agencies and agents conclude the dwelling rent contract, which is very important for the protection of the tenant’s rights;
2. It is not recommended that foreigners rent a dwelling from a natural person, because the natural persons avoid concluding rental contracts in order to avoid paying taxes. In cases in which a contract is not signed, the tenant’s rights are not

clearly defined and the landlord can abuse the tenant's rights. Also, a natural person could consider that the foreigner tenant does not know local rental market well (or at all), so the foreigner could be cheated by offering him the excessive rental price or by concealing the facts from him about the dwelling, its location etc.;

3. First of all, it is necessary to ask the landlord to show the documents which prove the landlord's right to rent the dwelling (for example, the documents which prove the rights of ownership or the rights of possession of the dwelling, the power of attorney to rent the dwelling, etc.);

4. It is recommended to discuss in detail the provisions of the contract, for example, the duration of the tenancy, the rent payment (the sum of payment, the sum of deposit, the periodicity of the payment), the question of keeping pets in the dwelling, the payment of the communal services, margin responsibilities of the landlord and of the tenant, the conditions of the contract withdrawal and termination, etc.;

5. It is recommended that foreigners consult other foreigners or friends who live in the Republic of Lithuania regarding questions pertaining to renting.

- Main problems and "traps" in tenancy law from the perspective of tenants

1. In cases when there is no rent contract, the protection of the tenant's rights become difficult and the landlord can abuse on this fact.

2. The parties to the rent contract do not establish clearly necessary conditions of rent contract.

3. The tenants often do not know if the landlord has the right to rent the dwelling, i.e. if the landlord is the legal owner or possessor of the dwelling.

4. The tenants often do not know if the dwelling is fit for residence – for example, if a tenant does not demand to landlord to represent the certificate of energy saving.

5. The Government of the Republic of Lithuania still does not adopt a maximum limit for the amount of rent.

6. There is no legislation about the minimum and maximum levels of brokerage fee charged by real estate agents.

- **Important legal terms related to tenancy law in the Republic of Lithuania**

<u>Lithuanian term</u>	<u>Translation into English</u>
Lietuvos Respublikos civilinis kodeksas	the Civil Code of the Republic of Lithuania
Būstas	the dwelling; the housing
Būsto nuoma	lease (rent) of dwellings
Būsto subnuoma	sublease of a dwelling
Komercinė būsto nuoma	the commercial housing rent
Socialinio būsto nuoma	the social housing rent
Nuomotojas	the landlord
Nuomininkas	the tenant
Nuomos	the lease contract; the rent contract

sutartis	
Nuomos sutarties sąlygos	the rent contract's conditions
Nuomininko teisės	the rights of the tenant
Nuomininko pareigos	the obligations of the tenant
Nuomotojo teisės	the rights of the landlord
Nuomotojo pareigos	the obligations of the landlord
Nuomos sutarties terminas	duration of the contract
Sutarties pripažinimo negaliojančia ir niekine pagrindai	grounds for acknowledgement of a contract null and void
Nuomininko pirmumo teisė atnaujinti nuomos sutartį	priority right of the tenant in renewing the lease contract
Nuomos mokestis	payment of lease
Mokestis už komunalines paslaugas	payment for cold and hot water, electric energy, gas, heating and public utilities (disposal of garbage, lifts, cleaning of premises of communal use and territory, etc.) usually paid by the tenant
Rankpinigiai	Deposit
Nuomos sutarties pabaiga	the termination of rent contract
Nuomos sutarties nutraukimas	dissolution of the rent contract
Nuomos sutarties pakeitimas	modification of the rent contract
Iškeldinimas	Eviction
Einamasis būsto remontas	maintenance of the dwelling
Kapitalinis remontas	capital repair of the dwelling
Nuomininko šeimos nariai	members of the tenant's family

Gyvūnai	pets
Ginčai	disputes

2. Looking for a place to live

2.1. Rights of Prospective Tenants

- 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?

There are some provisions in the Civil Code which restrict the landlord's freedom of contract. For example, the landlord shall have no right to refuse conclusion of a lease contract with a person – or refuse to prolong it, or to impose more onerous conditions on the tenant – for the sole reason that the person concerned is a pregnant woman or has minor children, with the exception of cases where such refusal is justified by the size of the dwelling or by the arrest thereof.

In Lithuania there are recognized national and European Union antidiscrimination principles restricting the landlord's discretion in choosing a tenant. These antidiscrimination principles are fixed in the Law of the Republic of Lithuania on the Equal Opportunities and in the Law of the Republic of Lithuania on Equal Opportunities of Women and Men. The first one prohibits discriminating against people according to sex, race, nationality, language, origin, social status, religion and the second one prohibits gender-based discrimination. It should be noted that these are only general rules, and there are no of specific antidiscrimination rules regarding residential leases.

Discrimination is also prohibited under Article 25 of the Constitution of the Republic of Lithuania (which prohibits excluding people based on gender, race, nationality, language, origin, social status, religion, and creed) and by the European Convention on Human Rights, which is the part of the Lithuanian law.

Status as a foreigner, student, unmarried partner, or person with a short-term work contract cannot be a legal ground for refusing to sign a residential lease contract, but such status is important for determining some provisions of the contract – for example, from the tenant with a short-term work contract the landlord likely can ask to pay a deposit, etc.

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

Questions with discriminative content and purposes are not allowed, i.e. the questions considering gender, race, nationality, language, origin, social status, religion, and creed. However, in practice discriminative questions can be asked. The tenant has always the right to refuse to answer discriminative questions.

The tenant has no right to lie and in case the tenant lies, the landlord has the right to terminate the contract in the following situations: questions concerning the number of tenant's family members, questions concerning age and number of children, questions about co-habitants etc.

- Is a "reservation fee" usual and legal (i.e. money charged by the landlord to

allow the prospective tenant to participate in the selection process)?

In the Republic of Lithuania “reservation fee” could be usable in the process of the public tender. According the Civil code of the Republic of Lithuania the person who wants to participate in the public tender must pay fee which is not reimbursed.

- 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)?

Usually the landlord checks about tenant’s social and financial status: age and gender of tenant, marital status, number of family members, number of children, state of health of tenant and his family members and their diseases, previous conviction(s) of tenant or his family members, profession of tenant and his position, domestic animals of tenant, his salary, credits and debts, permanent work. It should also be noted that there is almost no possibility for the landlord to collect the information about the tenant from other legal sources because such information is prevented by the Law on Legal Protection of Personal Data. However, it is possible to get some kind of information from non-official sources. For example, information about the debts of the person can be collected from the register of debtors, which is recorded and stored by the creditor companies, for example, “Mano CreditInfo”, “SAIA”, “InfoBankas”.

- 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?

Real estate agents who are acting in the residential rental market provide appropriate services for both landlords and tenants. For tenants, they help to find the dwelling according to tenant’s needs and requests and his financial situation. For landlords, they help to rent the dwelling for faithful and responsible tenants and also help to get the best rental fee. The real estate agents also prepare rental contracts.

It should be noted that in Lithuania not many people choose the services of real estate agents in the dwelling rental market. People prefer to rent dwelling without agents because of the two main reasons. First, they do not want to pay fee to the agent. Second, they would like to avoid of paying taxes. If a contract is concluded via real estate agent who work in most cases only with legal and official contracts between landlord and tenant, the tenant has to pay taxes to the budget.

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

In Lithuania there are no public blacklists of “bad landlords/tenants”. The real estate agents and agencies have such blacklists but they do not publish such blacklists because it is unlawful and it is violation of the personality rights. They only could give and advice to the clients privately based on blacklists of “bad tenants” or “bad landlords”. So these blacklists are non-public and therefore do not constitute the matter of data protection.

2.2. The Rental Agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?

The necessary requirement for the valid conclusion of the rental contract is an agreement in essential terms of the contract. The form of the contract has an importance for the validity or non-validity of the contract only in the cases indicated by the laws.

Lease contracts which are listed below must be in written form to be valid:

- (i) if the landlord is the state, municipality or a legal person;
- (ii) if contract of lease of a dwelling is concluded for a fixed-term, irrespective of who is the landlord.

Rental contracts of a dwelling may be invoked against third persons only if the contracts were registered in the Public Register within the procedure established by the law. Rental contracts of a dwelling are registered only in one register – the Real Property Register (Nekilnojamojo turto registras).

There is no fee provided by law for the conclusion of the contract. Also, in practice contracting fees are not demanded by landlords to cover the costs of the conclusion of contract.

- What is the mandatory content of a contract?

Under Articles 6.159 and 6.181 of the Civil Code for the valid conclusion of the contract it is sufficient that the both parties of the contract have civil active capacity and they agree on fundamental conditions of the contract. The form of the contract has an importance for the validity of the contract only in cases indicated by the laws (the Part 2 of the Article 1.93 of the Civil Code). Article 6.579 of the Civil Code does not indicate that the noncompliance of the form of the dwelling rent contract makes this contract invalid. So, where any dispute arises upon the fact of forming or performance of a transaction which fails to meet the necessary requirements for its ordinary written form, the parties lose the right to use testimony of witnesses as evidence to prove the facts indicated above (the Part 2 of Article 1.93 of the Civil Code).

Under Article 6.579 of the Civil Code, lease contracts between natural persons may be formed orally.

These lease contracts must be made in written form:

- (i) in the event where the lessor is the state, municipality or a legal person;
- (ii) a fixed-term contract of lease of a dwelling irrespective of who is the lessor.

It should be noted that municipalities (the cities' councils) have confirmed the typical forms of the social housing lease contract.

- Which data and information must be contained in a contract?

A contract for a residential lease shall include the following data: the address of the leased premises, number of rooms or any other premises, dwelling space, engineering (technical) installations which are in the premises, the appurtenances and the conditions for the use of common premises, amount of the lease payment

and periods for this payment, procedure for the payment for public utilities.

At the time of concluding a lease contract of a dwelling, the landlord shall be obliged to submit to the tenant a copy of the by-laws of the dwelling-house condominium or any other document establishing the requirements for the care, use and maintenance of common premises and other rules. A copy of this document shall be an inherent part of a lease contract of a dwelling. The landlord must transfer to the tenant the energy performance certificate (or a copy of it) of the building or its relevant part.

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

A contract for a residential lease may be concluded for an indeterminate term or for a fixed term. A written lease contract shall be deemed to be concluded from the date of its signature by the parties, while an oral contract shall become binding from the day when the parties agree on the conditions of the contract or a permission to take residence in the premises concerned is given.

There is no mandatory minimum duration for limited in time contracts, but there is mandatory maximum duration – in all cases the period of lease may not exceed one hundred years.

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

These indications regarding the rent payment must be contained in the rent contract: the amount of the lease payment and periods for this payment, procedure for the payment for public utilities, the manner of rent payment (via bank transfer or in cash). The landlord shall have no right to demand the payment of lease in advance, with the exception of the lease payment for the first month;

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

In Lithuania a tenant has a duty with regard to maintenance of a leased dwelling: the tenant shall be obliged to maintain the leased dwelling in a proper state and to bear expenses for the maintenance of this dwelling and to make its current repair at his own expense unless otherwise provided for by laws or the contract. Is it lawful and usual to shift the costs for minor maintenance works and cosmetic works to the tenant?

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

The landlord is required only to provide – fit for habitation – a dwelling house or a part of it, a separate apartment or an isolated dwelling consisting of one or several rooms with related non-residential premises.

Furnishings and/or major appliances are the subject of the concrete lease contract: if the parties agree on some furnishings and/or major appliances in the dwelling, the landlord must provide it. But if there are no such conditions, the tenant could not require that furnishings and/or major appliances are provided. There are no requirements in law concerning major appliances (toilet, one bathtub or shower and a kitchen or a kitchenette etc)

It should be noted that in Article 6.605 of the Civil Code it is stated that the tenant of a dwelling of state, municipalities and legal persons and his family members may

modify and change the plan of the dwelling and non-residential premises only upon written permission of the landlord and the consent of the family members of full age residing together, likewise upon that of any other interested persons whose rights and lawful interests may be violated in the course of executing modification and change of plan of the dwelling and non-residential premises. In the event of disagreement between the tenant, his family members and other interested persons, the dispute may be resolved through judicial proceedings.

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

Yes, the tenant is advised to have an inventory made so as to avoid future liability for losses and deteriorations. In practice the landlord and the tenant often conclude a certificate of transfer-acceptance of the dwelling (appendix of the dwelling rental contract in which the dwelling state, number of rooms, furnishing, etc. are registered).

- Any other usual contractual clauses of relevance to the tenant

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

- clause about the right of family members to move in an apartment together with the tenant;
- clause of priority right to conclude the contract for the next period;
- clause about the right to modify and change the plan of the dwelling and non-residential premises;
- clause about the right of the landlord to inspect the dwelling;
- clause about the right of the tenant to sublease the dwelling;
- clause about the right to modify and change the plan of the dwelling and non-residential premises;
- clause about the priority right of the tenant in renewing the contract of lease.

- 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.)?

Members of the tenant's family are allowed to move into an apartment together with the tenant.

The members of the tenant's family are: the spouse (cohabitant), their minor children, parents of the tenant and those of the spouse residing together with the tenant. Children of full age, their spouses (cohabitants) and grandchildren of the tenant shall be attributed to his family members in the event that they maintain a common household with the tenant; guardians and those under guardianship who having taken residence in the dwellings of their guardian or person under guardianship shall not acquire the rights of a member of the family of the guardian or person under guardianship; close relatives, other dependents who have resided with the tenant, his family members or with any one of them at least for a period of one year and have maintained a common household, may be acknowledged through judicial proceedings to be family members of the tenant.

The family members of the tenant of a dwelling shall have the same rights and duties arising from the lease contract of a dwelling as the tenant himself.

Having agreed among themselves and having accordingly informed the landlord beforehand, the tenant and his family members may allow temporary gratuitous occupancy in the dwelling in their use to other persons (temporary dwellers) without forming a contract of sublease.

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

The tenant has no direct obligation to live in the dwelling. But this obligation can be derived from the concept of a contract of lease of a dwelling: under a contract of lease of a dwelling, the landlord shall undertake an obligation to provide for payment the tenant with dwellings for temporary possession and use for residence, while the tenant undertakes an obligation to use the premises in accordance with their designation – to use the leased dwelling in such a way as not to hinder the use of that dwelling by other lawful users and pay the payment of lease. It should also be noted that the tenant of a dwelling upon written consent of all the family members residing together with him as well as that of the landlord shall have the right to sublease the dwelling. It is obvious that in such cases a tenant is not obliged to occupy the dwelling.

The landlord cannot use remedies in cases where the tenant is not using the dwelling.

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

In case of divorce (and equivalents such as separation of non-married couples) or in case of separation of the adult family member, an adult member of the family of the tenant and a former member of the family have the right to conclude a separate lease contract of a dwelling (to divide the apartment) if the landlord, the tenant and other family members of full age do not object. Such family member, taking in regard the part of the dwelling area attributable to him may lease a separate isolated dwelling premise. In such event, separate lease contracts shall be concluded with every tenant. The tenant, his family members of full age or former family members may determine the order and conditions for the use of the leased dwelling without modifying the lease contract.

Under Paragraph 3 of Article 3.86 of the Civil Code in cases when the spouses rent a family dwelling, the court may transfer the tenancy rights to the spouse with whom the children will live or the spouse who lacks earning capacity.

Article 3.235 of the Civil Code states that having regard to the duration of cohabitation, the interests of the minor children of the cohabitees, the age, health, financial situation of the cohabitees and other important circumstances, the court shall have a right to award the use of the rented dwelling place to the cohabitee who is in greater need of the dwelling place. Having regard to the circumstances of the case, the court may obligate the cohabitee who has been awarded the right to use the rented dwelling place to pay compensation to the other cohabitee for the expenses related to the search for and movement to another dwelling place.

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

In case when apartments are shared among students, a student moving out may be replaced by motion of the other students if this possibility is indicated in the procedure of granting a hostel dwelling which is confirmed by the decision of the

managing bodies of the institutions of science and learning.

- death of tenant;

In case of death of a tenant and upon the agreement among the family members of the tenant, the lease contract of a dwelling may be changed in the event of the tenant's death where his family members continue to occupy the leased dwelling, and inform the landlord accordingly within two months after the tenant's death. The family members have the right to demand the replacement of the contract.

- bankruptcy of the landlord;

In general, if ownership of a dwelling passes from the landlord to another person, the contract of lease of a dwelling shall remain valid in respect of the new owner if the contract of lease of a dwelling was registered in the Public Register.

According to the Law on the bankruptcy of natural persons of the Republic of Lithuania, the administrator of bankruptcy revises all the person's contracts and decides if the contracts must be continued or must be terminated.

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

The tenant of a dwelling has the right to sublease the dwelling only upon written consent of all the family members residing together with the tenant as well as that of the landlord (two permissions are needed). The contract for the sublease of a dwelling may be formed both in written and oral form, and for fixed or indeterminate term, though the duration of the sublease contract may not be longer than the duration of the lease contract and it must end together with main contract.

The payment for the sublease of a dwelling shall be determined upon the agreement of the parties.

Upon the termination of the period of sublease, the subtenant shall have no priority for a renewal of the contract and shall have upon the demand of the tenant to vacate the premises held under the lease contract. In the event where a contract of sublease is formed without a term being fixed, the tenant shall be obliged to notify the subtenant three months in advance about the dissolution of the contract of sublease. In the event of the refusal of the subtenant to vacate the dwelling, the subtenant shall be evicted under judicial proceedings without another dwelling being granted to him.

Upon concluding a sublease contract, the tenant shall continue to be liable towards the landlord under the lease contract. Upon termination of a lease contract of a dwelling, a sublease contract shall also terminate at the same time.

There are cases when the landlord (landlord) is acting as a sublandlord and offers for tenant a sublease contract instead of the lease contract, because the subtenant has less rights than the tenant, for example, the sublease contract must terminate when lease contract is terminated, the subtenant does not have priority for a renewal of the contract, etc., and it is favourable for the landlord.

This phenomenon can be counteracted in only one way: the tenant should conclude only a lease contract and not a sublease contract.

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

If the ownership of a dwelling passes from the landlord to another person, the lease contract of a dwelling shall remain valid in respect to the new owner, providing that the lease contract of a dwelling was registered in the Public Register within the

procedure established by laws.

- Costs and Utility Charges

- What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?

The landlord is obliged to ensure proper use of the dwelling house in which the leased dwelling is situated, to grant or to ensure that the necessary utilities specified in the lease contract are granted to the tenant for payment, guarantee the repair of the common property of an apartment house and of the devices for rendering utility services situated in the dwelling house. So the duty to conclude the contracts of supply falls on the landlord.

It should be noted that the Supreme Court of the Republic of Lithuania (Decision of the Supreme Court of Lithuania in the civil case No. 3K-3-185/2009 (14 April 2009)) has stated that a person who is a tenant and wants to have electricity in a dwelling for his personal, family and household needs, is to be regarded as a consumer of electricity, and therefore as the weaker party has statutory consumer rights. The essential requirement for a person who wants to enter into purchase and sale agreement is to have electricity-consuming devices (internal network) connected to the electricity supply network and metering devices. If such requirements are fulfilled, the electricity supplier must enter into purchase and sale agreement, regardless of whether a person is an owner of a dwelling or not.

It should be noted that this statement applies also to other utilities.

The tenant has a right to conclude the contract for supply of utilities in his name when he has the power of attorney of the landlord to conclude such contracts.

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

The issues of payment for cold and hot water, electric energy, gas, heating and public utilities shall be determined upon the agreement of the parties.

According to the regulation of the Civil Code the tenant is charged with paying for these utilities: cold and hot water, electric energy, gas, heating and public utilities (disposal of garbage lifts, cleaning of premises of communal use and territory, etc.).

As the tenant has a duty to pay for utilities, in the case of increase of prices for utilities the tenant must pay the increased price.

As the landlord has a duty to conclude the contracts of supply, in the case of a disruption of supply he has duty to carry out restoring the supply.

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

The issues of payment for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair) shall be determined upon the agreement of the parties. In practice, such taxes are usually paid by the tenant.

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

The tenant is usually responsible for paying public utilities: disposal of garbage lifts, cleaning of premises of communal use and territory, etc.

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

Under Paragraph 5 of Article 6.583 of the Civil Code, the payment for the first month is the usual and lawful amount of a deposit, but in practice often the landlord asks for more than the payment for the first month. This action is unlawful.

If the lawful deposit is not paid, the landlord has a right to terminate the contract.

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

There are no special requirements for the landlord's actions in managing the deposit (e.g. there is no requirement to hold the money in the bank account).

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

Additional guarantees or a personal guarantor are lawful but they are not usual.

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

According the Civil Code the performance of obligations may be secured in accordance with a contract or laws in the form of penalty, pledge (hypothec), suretyship, guarantee or earnest money, or any other forms resulting from the contract.

In the legal relationships of the lease, securing the performance of obligations is not usual or usable.

In general, in the Republic of Lithuania a guarantee is a unilateral obligation of a guarantor by which he binds himself within the sum indicated in the guarantee to be liable fully or in part towards another person (creditor/landlord) if a person (debtor/tenant) fails to perform the obligation, or performs it improperly; the guarantor also binds himself to compensate the creditor/landlord for damages under certain conditions (when the debtor/tenant becomes insolvent, and in other cases). The guarantor shall be subsidiarily liable. In the case of the contract of suretyship, the surety binds himself to be liable towards the creditor of another person gratuitously or for remuneration in the event where the person in whose favour suretyship is granted fails to perform the obligation in whole or in part.

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; exposition to noise e.g. from a building site in front of the dwelling; noisy neighbours; occupation by third parties)?

The dwelling must maintain these requirements:

- mechanical resistance and stability;
- fire safety;
- hygiene, health and the environment;
- safe use;
- protection against noise;
- energy-saving and heat preservation;
- use of premises fit for purpose, registered with the Real Estate Cadastre;
- to maintain an aesthetically pleasing home environment and its appearance;
- do not disturb the living and operating conditions of third parties.

If the dwelling does not fulfil these requirements, it can be stated that the dwelling has appropriate 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)

The landlord shall be liable for defects of the dwelling leased out which wholly or partially obstruct the designated use thereof even if the landlord was not aware of those defects at the time of concluding the contract. The landlord shall not be liable for those defects of the leased dwelling which were stipulated by him when concluding the contract or which should have been known to the tenant, or which should have been noticed by the tenant without any additional inspection when concluding the contract or delivering the dwelling, but which were not discovered through his own gross negligence.

In the event of discovery of such defects, the tenant shall have the right at his choice to:

- 1) demand from the landlord either elimination of those defects without compensation or a commensurate reduction of the lease payment, or compensation of the expenses of the tenant incurred in the elimination of the defects;
- 2) withhold the amount of expenses incurred for the elimination of defects from the lease payment if the landlord was informed of this in advance;
- 3) demand the early dissolution of the lease contract.

The landlord who is informed about the demands of the tenant or about the latter's intention to eliminate the defects of the dwelling at the expense of the landlord shall have the right to replace the leased dwelling of inferior quality with another analogous dwelling of proper quality or to eliminate the defects of the dwelling himself without compensation.

In the event where after the satisfaction of the demands of the tenant or after the withholding of expenses for the elimination of defects from the lease payment damages caused to the tenant are not fully compensated, he shall have the right to demand the reparation of the uncompensated part of the damages.

The tenant shall have the right to bring an action to a court for early dissolution of the

lease contract, if the dwelling transferred has defects which were not stipulated by the landlord and were unknown to the tenant and which render the dwelling impossible to be used in accordance with its designation and the conditions of the contract.

Also, it should be noted that the tenant is lawful possessor of the dwelling, and so he has the right to a negatory claim if third persons impede the possession of the dwelling.

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

The landlord shall be obliged to make capital repairs of the leased dwelling at his own expense unless otherwise provided for by laws or the contract (for example, is legal to agree that the tenant will make capital repairs).

Violation by the landlord of this shall vest the tenant with the right, upon obtaining the authorization of the court, to make the capital repairs and to recover from the landlord the costs of the repairs, or to withhold them from the lease payment, or to dissolve the contract and claim damages caused by failure to perform the contract. In this event the tenant shall be bound to submit to the landlord the estimate and account of the work of the capital repairs.

The tenant whose right to use the leased dwelling is restricted shall have the right to obtain reduction of the lease payment, to demand compensation, or to apply for the dissolution of the contract of lease.

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

Yes, as it was mentioned above, a tenant has the right to make repairs at his own expense and then deduct the repair costs from the rent payment.

- Is the tenant allowed to make other changes to the dwelling?

The general rule is that the tenant and his family members may modify and change the plan of the dwelling and non-residential premises only upon written permission of the landlord and the consent of the family members of full age residing together, likewise upon that of any other interested persons whose rights and lawful interests may be violated in the course of executing modification and change of plan of the dwelling and non-residential premises. The tenant may claim reimbursement if he has carried out for instance necessary renovation works or repairs which correspond to the landlord's interests and will, but to which he has not been instructed by the landlord.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

The tenant can make adaptations for disability only upon written permission of the landlord and the consent of the family members of full age residing together. There has not yet been any court practice regarding the grounds on which a landlord may refuse to give consent.

- Affixing antennas and dishes

The tenant can affix antennas and dishes only upon written permission of the landlord and the consent of the family members of full age residing together. There has not yet been any court practice regarding the grounds on which a landlord may refuse to give consent.

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

The tenant can repaint and drill the walls only upon written permission of the landlord and the consent of the family members of full age residing together. There has not yet been any court practice regarding the grounds on which a landlord may refuse to give consent.

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

Usually a tenant is allowed to keep pets (in accordance with the requirements of the Law on the animals care, keeping and use of the Republic of Lithuania), to receive guests, to smoke in the dwelling. However, the contract of lease may include clauses which prohibit keeping pets or smoking in the dwelling.

Tenant's actions like commercial uses of dwelling, removing an internal wall, fixing pamphlets outside are not in accordance with the rent contract and designation of the dwelling. Furthermore, these actions create such conditions which render it impossible for other persons who reside together or in the neighbourhood to lead a normal life, and these uses of dwelling are forbidden.

3.2. Landlord's Rights

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

A rent control mechanism is carried out by the contracting parties and the courts. Firstly, this mechanism is applied when the landlord establishes the rent payment amount, because he must verify if the amount chosen for the rent payment does not exceed the reasonable lease payment.

The tenant who is a consumer may use the special legal norms which protect the rights of consumers.

Ultimately, the parties can apply to the courts with demand to assess the rent payment amount. The courts could decide whether the rent amount is appropriate or non-convenient and in such a way could carry out the rent payment control mechanism. Usually courts apply the legal standard that the dwelling's rent payment must be the same as the rent payment of the identical or very similar dwelling.

It should also be noted that the state does not control the rental sector, except insofar as it is related to tax payments. The State Tax Inspectorate monitors only whether a landlord pays income tax.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?

The lease contract may provide for a modification of the amount of the rent payment upon the agreement of the parties, but not more often than once a year. The clauses of a lease contract of a dwelling providing the landlord with the right to unilaterally modify the rent payment or to demand such recalculation before the expiry of a twelve-month period from the date when the contract was formed or more often than once a year shall be null and void.

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

In the Civil Code of the Republic of Lithuania it is settled that rent payment cannot exceed the maximum level determined in accordance with the procedure established by the Government, but the Government still has not adopted the Resolution on this question.

So there is no cap which determines the maximum rent that may be charged lawfully.

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

Rent can be increased only upon the agreement of the parties. The landlord cannot increase rent ex-parte, only if such right is determined in the lease contract of a dwelling. Court practice formed the rule that the increase must be in accordance with the usual level of rent in similar dwellings.

The tenant shall be obliged to pay the rent payment on time. Unless otherwise provided for by laws or the contract, the tenant shall have the right to demand a commensurate reduction of the rent payment if due to circumstances for which the tenant is not responsible, conditions of the use of the dwelling established in the contract or the state of the dwelling have essentially got worse.

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

The landlord shall have the right (without interfering with rights of the tenant) to check if the tenant uses the leased dwelling in a proper way. In addition, the landlord shall have the right to show the leased dwelling to a prospective tenant or acquirer.

The tenant must make suitable conditions for exercise the duty of the landlord to make capital repair of a leased dwelling. According to the Article 6.492 of the Civil Code the tenant shall be obliged to provide for all the conditions necessary for the proper performance of the duty of the landlord to make capital repair of the leased dwelling.

The tenant whose right to use the leased dwelling is restricted shall have the right to obtain reduction of the lease payment, to demand compensation, or to apply for the dissolution of the lease contract.

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

The landlord is allowed to keep a set of keys to the rented apartment because he has the right (without interfering with rights of the tenant) to check if the tenant uses the leased dwelling in a proper way and the right to show the leased dwelling to a prospective tenant or acquirer.

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

There is a general rule, that the tenant can be evicted from the renting dwelling if the tenant violates the lease contract.

If the tenant regularly (at least for three months, unless a more extended period is provided for in the contract) fails to pay the lease payment or the payment for public utility services, or if the tenant, his family members or other persons residing together with him destroy or damage the dwelling or use it for other than its designation, the lease contract may be dissolved and the persons concerned may be evicted from the dwelling without other dwelling being provided. If the tenant, his family members or other persons residing together with him create by their improper behaviour such conditions which render it impossible for other persons who reside together or in the neighbourhood to lead normal life, they may be evicted upon the request of the landlord or the latter persons without other dwelling being provided.

There are no special rules about the right to cure.

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

Under the general rules of the Civil Code the creditor has a right to withhold the dwelling until the debtor executes his duties. So the landlord legally can withhold a tenant's personal property in the rented dwelling until a tenant pays his debts.

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 of a dwelling has the right to dissolve the lease contract by warning the landlord in writing a month in advance if the contract is open ended.

- 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)?

A lease contract with a fixed term shall be terminated upon expiry of its time-limit unless it is renewed by the parties by entering into a new agreement.

The tenant has the right to bring an action to a court for termination of a lease contract before time, if:

- 1) the landlord fails to carry out the repair he is obliged to;
- 2) the dwelling becomes not fit for use by virtue of circumstances for which the tenant is not liable;
- 3) the landlord fails to transfer the dwelling to the tenant or hinders the use of the dwelling in accordance with its designation and the conditions of the contract;
- 4) the transferred dwelling has defects which were not stipulated by the landlord and were unknown to the tenant and which render the dwelling impossible to be used in accordance with its designation and the conditions of the contract;
- 5) there exist other grounds provided for by the lease contract.

The termination will be valid only after a court decision, which means that no unilateral termination is valid.

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

There are no preconditions to the implementation of the tenant's right to terminate the contract. But it should be noted that by proposing a new tenant, the previous tenant can avoid the landlord's claim for unreceived income if the previous tenant terminates the time-limited rent contract early without any legal grounds.

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)?

A contract for the lease of a dwelling for indeterminate term in respect of premises leased on commercial grounds may be dissolved upon the demand of the landlord with a written warning issued to the tenant six months in advance. The causes of termination (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future) in this case are not important. The landlord simply demands in advance to terminate the lease contract.

- Must the landlord resort to court?

When the landlord wants dissolve the lease contract and evict the tenant because the tenant breaches the contract, the landlord must apply to the court unless the parties determined in the lease contract the right to terminate the lease contract unilaterally without applying to the court.

If the tenant regularly (at least for three months, unless a more extended period is provided for in the contract) fails to pay the rent payment or the payment for public utility services, or if the tenant, his family members or other persons residing together with him destroy or damage the dwelling or use it for other than its designation, the lease contract may be dissolved and the persons concerned may be evicted from the dwelling without other dwelling being provided if the tenant, his family members or other persons residing together with him create by their improper behaviour such conditions which render it impossible for other persons who reside together or in the neighbourhood to lead normal life, they may be evicted upon the request of the landlord or the latter persons without another dwelling being provided.

The landlord shall have the right to demand early dissolution of the lease contract only after having sent a written warning to the tenant about the necessity to perform the obligation or eliminate violations within reasonable time.

A contract for the lease of a dwelling of indeterminate term in respect to premises leased by legal and natural persons on commercial grounds may be dissolved upon the demand of the landlord with a written warning issued to the lessee six months in advance.

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

The eviction of natural persons from the dwelling premises may be executed exclusively upon judicial proceedings, except in the case of eviction executed with the sanction of the public prosecutor.

If there is a justifiable reason, the court, the prosecutor who has given sanction to evict, as well as higher-ranking prosecutor upon the application of persons concerned or the bailiff's application has the right to postpone the eviction. For example, under Article 768 of the Civil Procedure Code of the Republic of Lithuania Article (Eviction from residential premises by a prosecutor's sanction) upon presence of sound reasons, the court, public prosecutor who rendered eviction sanction as well as the senior public prosecutor may postpone eviction at a petition of persons concerned or the bailiff.

Under Article 769 of the Civil Procedure Code in accordance with the court judgment, only persons indicated in the enforceable instrument shall be evicted from residential premises together with property belonging to them. The debtor shall be notified on the time of eviction in writing at least five days in advance. When minor children shall be evicted without provision of other residential premises, the bailiff must notify the state institution for protection of the children's rights in writing on the time and place of eviction latest five days in advance. Eviction normally takes place in the presence of the evictee.

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

The landlord shall have the right to bring an action into a court for the early dissolution of a lease contract, if:

- 1) the tenant uses the dwelling in violation of the contract or not according to the designation of the dwelling;
- 2) the tenant intentionally or through negligence worsens the state of the dwelling;
- 3) the tenant fails to pay the payment of lease;
- 4) the tenant fails to perform capital repair in those cases where the laws or the contract obligate him to do so;
- 5) there exist other grounds provided for by the contract of lease.

The landlord shall have the right to demand early dissolution of the lease contract only after having sent a written warning to the tenant about the necessity to perform the obligation or eliminate violations within reasonable time. However, the tenant must perform the obligation or eliminate the violations within a reasonable time after receiving such warning.

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

In that case the tenant can argue in court that he executed suitably all his contractual duties. The tenant has the right to bring a counter-claim against the landlord and try to prove his fault.

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

If the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling, the landlord can apply to the court upon judicial

proceedings for eviction of the tenant. If the landlord will not apply to the court, the rent will be claimed on the bases of unjustified enrichment.

4.3. Return of the Deposit

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

The right of the landlord to demand the deposit is restricted by the sum of rental payment for one month.

There is no time frame for the returning a security deposit, but the landlord must return the tenant's deposit when the lease contract of the dwelling is terminated. It should be noted that the security deposit is usually included into the rental payment.

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

There are no special requirements for allowed uses of the security deposit by the landlord. In the cases when the tenant breaches contract, the landlord can make a deduction from deposit for damages.

4.4. Adjudication of Disputes

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

Disputes arising from the tenancy relationship are judged in courts of general jurisdiction.

Hence there is no special jurisdiction for the tenancy disputes. Possibilities of appeal in the disputes which arise from the tenancy relationships are ordinary, and there are no any particularities.

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

There is no 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?

The parties first try to carry out their disputes voluntary. When the lease contract of a dwelling is not concluded, the parties – especially the landlord – avoid revealing the fact of the lease's legal relationship so they try to negotiate. When the lease contract of a dwelling is concluded, commonly there is a provision about the solution of disputes which indicates that the parties must first negotiate, and if they do not agree during the appropriate period, then they can appeal to the court.

5. Additional Information

- How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?

The Law on the Lithuanian state support for housing to purchase or lease and apartment buildings renovation (modernization) (hereinafter – the Law) set two forms of state support to individuals and families **who have a permanent residence in Lithuania**:

- 1) municipal social rented housing and
- 2) support for housing purchase and construction (reconstruction).

Low-income persons (families) may apply to the local municipality for social housing. Families and individuals in accordance with the provisions of the Law, entitled to the municipal social housing or the improvement of the conditions, upon written request, recorded in the municipal executive authority by a person in need or in cases of family by one of the spouses. The request must be recorded to the municipality of the declared place of residence, or if the person does not have a place of residence, to the municipality in which they live. Along with the application, additional documentation proving entitlement to social housing or improvement of their housing conditions has to be provided.

Since 1 January 2003 (when the new version of the Law came into force), the family and individuals, which meet the criteria provided for in the Law, can take advantage of the opportunity to receive a state-sponsored mortgage loan and take advantage of the support. They are granted to pay part of the mortgage loan, if they received the state-sponsored housing loan from banks in accordance with the municipal state-backed mortgage loan limit.

In 2012 the state began to subsidize the first purchase of a home for low income households. All residents have the right to state support for housing and the right to apply for state-sponsored housing credits.

Government-supported mortgage loans are designated for socially disadvantaged people with housing needs. The State is obliged to return to the Bank 10 to 20 percent of the amount of the loan, when persons are eligible for the State support according to the Law. The loan can be granted:

- to buy or build the dwelling if the property of the dwelling will be transferred to the borrower in 2012;
- for house construction;
- for dwelling reconstruction;
- for dwelling adaptation for needs of the disabled.

Loans are rendered in Lithuanian litas and euros. The maximum term of a mortgage – 40 years, minimum – 5 years.

Such loans shall not exceed:

- ca. EUR 52,133 – for a single person with no family;
- ca. EUR 86,899 – for family of two or more people;
- ca. EUR 34,754 – for housing reconstruction, as well as housing adaptation for disabled, incapacitated or partially disabled person's needs, regardless of the number of persons in family.

In addition, the housing loan amount will depend on:

- fixed monthly income received and existing size of obligations;

- Purchased dwelling market values and age of person or estimated value of house construction.

In 1 January 2009, when the changes of the Law on Profit Tax of Republic of Lithuania came into force, the housing credit benefit was withdrawn, ceasing the continuous application of this benefit. Residents of the Republic of Lithuania can subtract paid interests of their annual taxable income only if they took credit by 31 December 2008 for one dwelling construction or purchase and made a written agreement for dwelling construction or acquisition or by 31 December 2008 made lease (leasing) contract for one dwelling and made a written agreement for dwelling construction or acquisition.

If by 1 January 2009 a resident of the Republic Lithuania had taken more than one loan for the construction or acquisition of a dwelling and/or have made more than one dwelling lease (leasing) contract, in the year 2009 and subsequent fiscal periods, he (or she) will be able to deduct the interest paid only for one credit (or part thereof) or for a lease (leasing) contract.

- Is any kind of insurance recommendable to a tenant?

Insurance companies offer a wide range of services for home insurance:

1. building insurance;
2. investments in the building insurance;
3. home property insurance;
4. property owner liability insurance; etc.

These are the main types of insurance concerned with dwellings, but it may also include other types of insurance indicated in the specific insurance contract. However, considering the fact that the tenant is not the owner of the dwelling but only its legal possessor, it is reasonable for the tenant to get his liability insurance (which is designed to compensate third parties) and home property insurance (home property refers to movable items intended for home furnishing and for domestic use and consumption). Home property also includes work tools and equipment used by the insured or their family for professional or business activity; borrowed property transferred to the insured with the right to use and manage it; furniture (including integrated), household equipment (including integrated), etc.; radio and television antenna installations (excluding those for common use); water vehicles not subject to registration with the Register of Inland Waterway Vessels; a reasonable quantity of vehicle spare parts, details and supplies (excluding starting keys, remotes and other additional equipment located in the vehicle), self-propelled multifunctional area management facilities, wheelchairs. Home property shall be insured only at the address specified on the insurance policy when it is located inside the buildings, except for radio and TV antenna equipment, which is attached to the exterior structures of the building.

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

There are two types of legal aid in the Republic of Lithuania: primary legal aid and secondary legal aid.

Primary legal aid means the provision of legal information, legal advice and drafting of documents to be submitted to state and municipal institutions, with the exception of judicial documents. The persons willing to obtain primary legal aid should apply to the municipality of the place of their declared residence. Civil servants, employees of the municipality administration, as well as advocates or specialists from public institutions with whom the municipality has signed an agreement give personal advice how to resolve a dispute out of court, inform about the legal system, laws and other legal

acts, help to draw up a peaceful settlement agreement and complete an application for legal aid.

Primary legal aid should be provided immediately. If it is not possible, a person will be notified of the time of an appointment, which must take place not later than 5 days from the day of his application. The duration of legal advice should not be longer than one hour. Its duration may be extended by a decision of the executive institution of a municipality or a person authorised by it.

A person may apply for primary legal aid on the same issue only once.

Primary legal aid will be provided if the person:

- is a citizen of the Republic of Lithuania;
- is a citizen of the member state of the European Union;
- resides lawfully in the Republic of Lithuania or other member state of the European Union;
- is entitled to legal aid according to international treaties of the Republic of Lithuania.

Secondary legal aid means the state-guaranteed lawyer's assistance in judicial proceedings: drafting of documents, defence and representation in proceedings, including enforcement proceedings, as well as representation of your interests in dispute resolution out-of-court.

The appointed lawyers will prepare the documents necessary and will represent the person's interests at court or in dispute resolution out of court. The lawyer will also take other actions in the lawyer's competence, as specified in the decision of the court. Persons receiving secondary legal aid may get reimbursement of the litigation costs incurred in civil proceedings, in administrative proceedings or if related to the hearing of a civil action brought in criminal proceedings.

There are two levels of financing. If a person's income and assets do not exceed the first level of financing, he will receive a lawyer free of charge. If a person's income and assets do not exceed the second level of financing, 50 percent of the costs will be reimbursed by the state.

In order to get a state-financed lawyer, a person must contact the state-guaranteed legal aid service assigned to the municipality and submit an application, which may be filled out with the assistance of a specialist of primary legal aid.

If a person's income and assets exceed the levels set by the Government, the person's infringed or disputed rights may be defended by a private lawyer. Contact details of the lawyers registered in Lithuania are available on the special website www.advoco.lt.

A person can receive secondary legal aid if the person's assets and annual income do not exceed the asset and income level set by the Government of the Republic of Lithuania and the person:

- is a citizen of the Republic of Lithuania or
- is a citizen of the member state of the European Union or
- resides lawfully in the Republic of Lithuania or other member state of the European Union

There are groups eligible for secondary legal aid irrespective of personal asset and income levels, for example, persons entitled to social allowance, persons entitled to aid in criminal proceedings, etc.

Insurance companies acting in Lithuania offer the services of insurance against legal costs but only for their business clients. According to the rules of employers' civil liability insurance, legal costs are the part of the insurance allowance.

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

Organisati on, institution	Protected tenant's rights	Contacts
The municipality of the place of tenant's declared residence	Provide primary legal aid	http://www.teisinepagalba.lt/en/pirmine/tm/wheretosapply/ http://www.akmene.lt/index.php?cid=4876 http://www.ams.lt/New/index.php?Lang=34&ItemId=77066 http://www.arsa.lt/?action=menu&id=196 http://www.anyksciai.lt/lt/paslaugos/teisine_pagalba#c http://www.birstonas.lt/index.php?1163079522 http://www.birzai.lt/index.php?-1161699764 http://www.druskininkai.lt/index.php/lt/40299/ http://www.elektrenai.lt/go.php/lit/pirmine/2198 http://www.elektrenai.lt/go.php/lit/pirmine/2198 http://www.elektrenai.lt/go.php/lit/pirmine/2198 http://www.ignalina.lt/index.php?2757272271 http://www.jurbarkas.lt/index.php?801830673 http://www.joniskis.lt/Juridinis-skyrius-720-1-317s.html http://www.jonava.lt/index.php/lt/38112/ http://www.kaisiadorys.lt/index.php?option=com_content&task=view&id=85&Itemid=111 http://www.kazluruda.lt/?id=6 http://www.kaunas.lt/index.php?3444205588 http://www.klaipedos-r.lt/?lt=1121857368 http://www.kretinga.lt/?q=node/59 http://www.kupiskis.lt/index.php/lt/39125/ http://www.kelme.lt/Savivalda/Teisine-informacija/Teisine-pagalba/KAS-TEIKIA-PIRMINE-TEISINE-PAGALBA-KAS-TURI-TEISE-JA-GAUTI-KOKIOMIS-SALYGOMIS

		<p>http://www.krs.lt/index.php?-1110131274</p> <p>http://www.kedainiai.lt/index.php?2852028885</p> <p>http://www.kalvarija.lt/index.php?fuseaction=displayHTML&file=File_252.php&langparam=LT</p> <p>http://www.lazdijai.lt/lzd/index.php?akcija=showRes&refid=SK_0023&sritis=Skelbimai</p> <p>http://www.mazeikiai.lt/index.php?632619265</p> <p>http://www.marijampole.lt/vid.php3?menu_id=599&=lt</p> <p>http://www.moletai.lt/index.php?1876561834</p> <p>http://www.neringa.lt/index.php?1512310261</p> <p>http://www.pagegiai.lt/index.php?1723014243</p> <p>http://www.pakruojis.lt/content/teisine-pagalba</p> <p>http://www.palanga.lt/index.php?807748916</p> <p>http://www.panevezys.lt/DesktopDefault.aspx?tabID=1064</p> <p>www.panrs.lt/teise/info.htm</p> <p>http://www.pasvalys.lt/index.php?area=1&p=static&page=pteispagalba</p> <p>http://www.plunge.lt/</p> <p>http://www.prienai.lt/index.php?1979888172</p> <p>http://www.radviliskis.lt/co</p> <p>http://www.rokiskis.lt/index.php?1486861569</p> <p>http://www.raseiniai.lt/index.php?3861003814</p> <p>http://www.telsiai.lt/go.php/lit/TEISINE_PAGALBA/895</p> <p>http://www.skuodas.lt/index.php?par=25&g=160&iras=208</p> <p>http://www.rietavas.lt/index.php?2114079846</p> <p>http://www.svencionys.lt/index.php?272515032</p>
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		<p>http://www.salcininkai.lt/index.php/lt/veikla/veiklos-kryptys/teisine-pagalba/</p> <p>http://www.siauliai.lt/ti/tpagalba1.php</p> <p>http://www.sirvintos.lt/index.php?id=1023</p> <p>http://silute.kryptis.lt/main.php?parent=344</p> <p>http://www.siauliai-r.sav.lt/index.php?1485131604</p> <p>http://www.silale.lt/Rajono-gyventojams/Pirmine-teisine-pagalba</p> <p>http://www.sakiai.lt/132</p> <p>http://www.taurage.lt/index.php?1953854567</p> <p>http://www.trakai.lt/index.php?2155172418</p> <p>http://www.ukmerge.lt/index.php/lt/31594/</p> <p>http://www.utena.lt/index.php?ItemId=25405</p> <p>http://www.spcentras.lt/spc/index.php?m=3&l=255</p> <p>http://www.visaginas.lt/index.php?1440306141</p> <p>http://www.vilkaviskis.lt/index.php?-1827342965</p> <p>http://www.vilniaus-r.lt/index.php?id=3575</p> <p>http://www.varena.lt/lt/teisine-informacija/pirmine-teisine-pagalba.html</p> <p>http://www.zarasai.lt/informacija-valstybes-garantuojama-teisine-pagalba_22</p>
The State-Guaranteed Legal Aid Services	Provide secondary legal aid	<p>http://www.teisinepagalba.lt/en/antrine/tm/whatisitsecondary/</p> <p>The territory of activities of the State-Guaranteed Legal Aid Service of Vilnius matches the territory covered by Vilnius Regional Court and includes Vilnius city, Vilnius district, Elektrėnai, Šalčininkai district, Širvintos district, Švenčionys district, Trakai and Ukmergė district municipalities.</p> <p>Contact by telephone: (8-5) 2647 480 Address of the Service: Odminių g. 3, LT-01122 Vilnius</p> <p>The territory of activities of the State-Guaranteed Legal</p>

		<p>Aid Service of Kaunas matches the territory covered by Kaunas Regional Court and includes Kaunas city, Kaunas district, Alytus city, Alytus district, Birštonas, Druskininkai, Jonava district, Jurbarkas district, Kaišiadoriai district, Kalvarija, Kazlų Rūda, Kėdainiai district, Lazdijai district, Marijampolė, Prienai district, Šakiai district, Varėna district and Vilkaviškis district municipalities.</p> <p>Contact by telephone: (8~37) 408 601, (8~37) 428 404 Address of the Service: Kęstučio g. 21, LT-44320 Kaunas</p> <p>The territory of activities of the State-Guaranteed Legal Aid Service of Klaipėda matches the territory covered by Klaipėda Regional Court and includes Klaipėda city, Klaipėda district, Kretinga district, Neringa town, Pagėgiai, Palanga town, Plungė district, Rietavas, Skuodas district, Šilalė district, Šilutė district, Tauragė district municipalities.</p> <p>Contact by telephone: (8~46) 256 176 Address of the Service: Herkaus Manto g. 37, LT-92236 Klaipėda</p> <p>The territory of activities of the State-Guaranteed Legal Aid Service of Panevėžys matches the territory covered by Panevėžys Regional Court and includes Panevėžys city, Panevėžys district, Anykščiai district, Biržai district, Kėdainiai district, Kupiškis district, Pasvalys district, Rokiškis district and Utena district municipalities.</p> <p>Contact by telephone: (8 45) 570152 Address of the Service: Klaipėdos g. 72, LT-35193 Panevėžys</p> <p>The territory of activities of the Service matches the territory covered by Šiauliai Regional Court and includes the whole county of Šiauliai, one district of the county of Telšiai and one district of the county of Kaunas. This area includes Šiauliai city, Šiauliai district, Telšiai district, Mažeikiai district, Akmenė district, Joniškis district, Pakruojis district, Radviliškis district, Kelmė district, Raseiniai district municipalities. There are 12 courts and more than 30 law enforcement institution in the territory of activities of the Service.</p> <p>Services to citizens are also available during lunch break hours.</p> <p>Contact by telephone: (8 41) 399 764, (8 41) 399 108 Address of the Service: Dvaro g. 123A, LT-76208 Šiauliai</p>
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State Consumer Rights Protection Authority	Protects the rights of the consumers (of the tenant who has a dwelling rent contract with businessman)	http://www.vvtat.lt/index.php?225846438 Contact by telephone: (8 5) 262 67 51 Contact by fax: (8 5) 279 14 66 Address: Vilniaus g. 25, 01402 Vilnius Email: tarnyba@nvtat.lt
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LUXEMBOURG

Tenant's Rights Brochure

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1. Introductory information

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

Currently, the supply of dwellings does not meet demand, especially because of the very high increase of the population during the last years. There is a lack of affordable housing in Luxembourg: buying or constructing a house is only accessible to the middle and upper classes, especially due to the high cost of land, and relatively expensive rents of apartments (particularly close to Luxembourg City and its outskirts). This has been translated into the commuting of citizens between work (in Luxembourg) and home, across the border, where rents are generally cheaper. The social housing available is insignificant (about 2% of the full housing stock) and students' housing is also insufficient to accommodate the large international community of students found in the country. Some further constructions for accommodating students and lower-income households are planned. In the meantime, the Ministry of Housing is working on solutions to increase the offer of dwellings, e.g. by promoting the use of the vacant dwellings in the private market for people with housing needs, namely through social rental agencies (*gestion locative sociale*) and by introducing in the legal procedure the housing sector plan which defines the future priorities for a sustainable land management in Luxembourg.

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

From the perspective of tenants, the greatest problem of the national rental market consists in finding affordable housing in the main cities of the country, particularly in the capital city of Luxembourg. Some workers are even "forced" to commute to work, every day, from the nearby neighbouring countries, where it is relatively easier to find a qualitative dwelling for an affordable price.

For those with more modest financial capacity, social housing is hardly an option: there are currently only very few constructions and very few dwellings available to new households. Therefore, applicants could be on the waiting lists for years.

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

- **Private renting**

About 70% of the population in Luxembourg are home-owners. However, a significant percentage of the population (about 30%) rents a dwelling in the private market. The high percentage of tenants might be due, on the one hand, to the significant costs involved in constructing or purchasing a dwelling, and, on the other hand, to the fact that Luxembourg is a country where there is a relevant percentage of temporary workers (particularly working for European institutions) who opt for renting instead of buying, for being a more flexible option.

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

In Luxembourg, within the label “housing with a public task”, we can distinguish two types of housing: “social housing”, on the one hand, and “private housing used for social purposes”, on the other hand.

Social housing is unrepresentative in Luxembourg, as we have mentioned, it represents no more than 2% of the full housing stock in the country. Due to budget constraints, it is not expected that it will be increased significantly in the next few years.

The second type of “housing with a public task”, which has been developed due to the limitations of the first type and to the fact that rents in the private rental market are unaffordable to many households, relates to dwellings owned by private landlords which are rented, through an intermediary (public entity), at lower rents to people with housing needs who are not eligible to social housing or who are still in the “waiting list”. Currently (March 2014), there is only one agency which provides this service (*Agence Immobilière Sociale*, <http://www.ais.lu>). However, the Housing Ministry intends to develop these organisms of “social rental management”, so that other agencies are planned for the next few years. There are also some social associations (non-profit organizations, foundations) - partly subsidized by the Housing Ministry or the Family Ministry – which provide dwellings and houses to households with low incomes or going through severe financial problems.

- **Some general recommendations to foreigners on how to find a rental home (including specificities with respect to the position of foreigners on the national rental market)**

Considering that the private rental market in Luxembourg is limited, it is recommended that one starts searching for an accommodation as soon as the decision of moving into Luxembourg is taken.

There are several websites with rental offers which are worth a visit. It can be also helpful to check for offers in local newspapers and door-to-door free sheets, or in magazines specialized in real estate. It may also be a good idea to walk or ride a bike along the preferred neighborhoods and look for advertisements in windows. To let friends, relatives, or co-workers know that one is looking for a place to live might also be helpful, because sometimes they “know someone who knows someone” who just left a rented dwelling or has a dwelling available for renting (cf. <http://www.ulc.lu>, in French or German only).

As tenant-to-be, it is important to define beforehand the characteristics of the dwelling that will meet ones expectations. If an affordable price is the main criterion, it shall be noticed that it is usually possible to find affordable housing close to the main train station (except Pétrusse), Hollerich, South Bonnevoie, Cessange, Mühlenbach, Eich and Eimerskirch. For foreigners with children, the neighborhoods where European or international schools are located are: Merl-Belair (ISL, International School), Kirchberg (European School I), Hamm (English St. George School), Mamer (European School II). Kirchberg, Weimershof and Neudorf are residential areas which are particularly close to the European Institutions and thereby might be good options for foreigners who work there. They should mind, however, that these are some of the areas where rents are most expensive. Hollerich (close to Gasperich), Cessange, Mühlenbach, Eich, Weimerskirch, South Bonnevoie and the area close to the train station offer a good balance between the cost of rent and location. The last are also recommended for those who are willing to live in lively areas. For these and further indications on recommended neighborhoods, have a look at the practical guide for newcomers: <http://justarrived.lu/>.

Luxembourg is a multinational and multicultural country and Luxembourgers are generally considered open and welcoming. There are no registries of cases of discrimination in access to housing. Should that happen, two organizations could be approached: the Luxembourg Reception and Integration Office (OLAI, *Office Luxembourgeois de l'Accueil et de l'Intégration*, <http://www.olai.public.lu/fr/lutte-discrimination/index.html>) and the Luxembourg Consumers Union (ULC, *Union Luxembourgeoise des Consommateurs*, see website indicated *supra*).

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

Sometimes, the tenant is tempted to **withhold rent and/or charges** when the landlord does not act towards the full enjoyment of the dwelling, for example, when the landlord does not promptly repair a major defect in the dwelling (humidity, malfunctioning of the heating, etc.). However, if this is done for several months, the landlord is entitled to terminate the lease, evict the tenant and claim damages. Therefore, the tenant must always resort to court first.

Before the rental agreement starts being performed, the tenant sometimes neglects the importance of an **inventory**, particularly when the dwelling is furnished. As a rule, tenant and landlord should provide an inventory, both in the beginning and in the end of the contractual relationship. The inventory is compulsory by law, in case the landlord demands a rent guarantee. These documents show the losses for which the tenant is liable, and which do not include those which arise from the normal use of the dwelling and/or its content. If such inventory is not made, this situation will benefit the landlord, because the Civil Code (Art. 1720) provides that the rental dwelling must always be delivered to the tenant in a perfect state and that it also should be returned by the latter in the same state. Therefore, in case there is no inventory, the tenant might have to financially support costs which will turn the dwelling into a much better state than it was in upon the delivery of the dwelling.

Quite frequently, the **increase of rent** by the landlord is unlawful. This happens, for example, when the landlord increases the rent before he or she is legally allowed to do so, and when he or she settles on an amount which is against the law. The increase of rents must go through a specific process if the tenant does *not* agree with the increase of the rent. In such a case, the landlord must first notify his or her intention in written form, and the tenant must then wait one month before being able to present its case before the rent commission of the municipality where the dwelling is situated. The competent rent commission summons the parties and attempts for a conciliation. If an agreement is reached, minutes are written and signed by the parties; otherwise, the commission determines the amount of rent (or the amount of advances for charges).

Sometimes, the tenant **terminates the rent contract without proper withdrawal notice**. This can happen sometimes with EU workers, which are called to work in another city and must leave within a short period of time. In a contract for an indefinite period, termination implies a minimum period of notice of three months (six months in case of personal need of the landlord), except if the contract provides for a longer period of notice. If it is a fixed-term contract, it must be terminated in the last day of the contract. If the periods of notice are not adhered to by the tenant, the latter might have to pay damages to the landlord. To avoid this, the tenant might have interested in convincing the landlord to draft a diplomatic clause in the rental agreement.

According to the law in force, the landlord cannot impose on the tenant the responsibility for all costs. He or she can only be responsible for the costs he or she 'consumed' or contributed to (*charges locatives*).

The costs which **will normally be placed at the expenses of the tenant** are:

- the energy consumption within the dwelling and common parts of the building (lightening of stairs and elevator);
- the maintenance costs of the common parts (gardener, cleaning up of stairs, elevator);
- the costs of minor reparations in case they are not due to the dilapidated condition of the dwelling or *force majeure*;
- municipal taxes connected to the use of the dwelling, for example, the household waste removal tax.
- technical assistance expenses (*frais de gérance technique*).

The costs which **cannot be placed at the expenses of the tenant** are:

- the reading fees of the calorimeters;
- replacement of floors due to deterioration caused by normal use and all the works related to the roof of the dwelling (isolation, maintenance of gutters; repair of the curb, etc.).

- Important legal terms related to tenancy law*

Français	Deutsch	English
<i>Agent immobilier</i>	<i>Immobilienmakler</i>	Estate agent
<i>Augmentation de loyer</i>	<i>Mieterhöhung</i>	Rent increase
<i>Bail à loyer</i>	<i>Mietvertrag</i>	Rental agreement
<i>Bailleur</i>	<i>Vermieter(in)</i>	Landlord
<i>Charges locatives</i>	<i>Mietnebenkosten</i>	Utilities
<i>Copropriété</i>	<i>Mieteigentümerschaft</i>	Condominium
<i>État des lieux</i>	<i>Übergabeprotokoll</i>	Inventory
<i>Frais de commission</i>	<i>Maklergebühren</i>	(Real) estate fees
<i>Garantie locative</i>	<i>Kaution / Mietgarantie</i>	Security deposit
<i>Hypothèque</i>	<i>Hypothek</i>	Mortgage
<i>Locataire</i>	<i>Mieter(in)</i>	Tenant
<i>Logement</i>	<i>Unterkunft / Wohnung</i>	Dwelling
<i>Loyer</i>	<i>Miete</i>	Rent
<i>Maison en range/Maison mitoyenne</i>	<i>Reihenhaus</i>	Townhouse/rowhouse
<i>Préavis</i>	<i>Kündigungsfrist</i>	Termination notice
<i>Remise des clés</i>	<i>Schlüsselübergabe</i>	Handover of the keys
<i>Réparations</i>	<i>Reparaturen</i>	Maintenance works
<i>Réparations esthétiques</i>	<i>Schönheitsreparaturen</i>	Cosmetic repairs
<i>Résiliation</i>	<i>Kündigung</i>	Termination
<i>Sous-location</i>	<i>Untervermietung</i>	Sublease
<i>Sursis à déguerpissement</i>	<i>Räumungsaufschub</i>	Delay for eviction

* Although Luxembourgish is also an official language in Luxembourg, it is less used in written language than French and German and thereby it was not included in this table.

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 or prohibited?**

Usually, the landlord chooses the tenant he or she wishes and does not have a duty of justifying the grounds for the refusal. However, the landlord is not entitled to discriminate against tenants based upon certain grounds. Indeed, the law on equal treatment (*Loi sur l'égalité de traitement*) from 28 November 2006 **prohibits any kind of discrimination** on the grounds of religion, handicap, age, sexual orientation, race or ethnical origin in several spheres of private life, among which access to housing (Art. 2, h). Therefore, the landlord does not have the right of refusing to rent the dwelling to a person on the grounds of any of these reasons. These prohibitions are, however, very general and unspecified.

The Centre for Equal Treatment (CET) "*provides assistance to people who feel that they have been the victim of discrimination by providing them with an advisory and orientation service intended to inform victims regarding their individual rights, the legislation, case law and the means for claiming their rights*" (<http://cet.lu/en/>) but it only intervenes as far as the grounds for discrimination prohibited by the law on equal treatment are present. This means that students, unmarried partners and persons with short-term work contracts could not rely on a national law to invoke discrimination in the access to housing. Therefore, in case any of these people considers to have been victim of discrimination, he or she should contact the *Service Logement* of the Luxembourg Acceptance and Integration Office (OLAI).

There, are, however, some **grounds of discrimination which are admitted**, and which are aimed at benefiting the less wealthy sectors of the population.

As regards social housing, the *Fonds du Logement* (<http://www.fondsdulogement.lu>) excludes applicants who are owners or usufructuaries of another dwelling or have a right to inhabit another dwelling. The *Agence Immobilière Sociale* also excludes applicants who own already a dwelling or dwellings. It also excludes applicants who have an income which surpasses a specific amount, who do not have a valid residence permit and those who are not enrolled in a health system.

Only students registered at the University of Luxembourg can accede to a student accommodation rented by such University.

- **What kinds of questions by the landlord are allowed? If a prohibited question is asked, does the tenant have the right to lie?**

For an entity to be entitled to process private data, it has to observe the "principle of legitimacy". This principle provides that private data can be processed, among other reasons, when that data is necessary for the execution of a contract. When it is not, the entity shall prove, at least, that it has a justified interest and that the process of data will not affect the life of the individual it concerns.

The health state and the sexual orientation, however, belong to the so-called group of "sensitive" private data. The processing of this data is, in principle, prohibited and it can only take place when it is preceded by an express authorisation

by the National Commission for the Protection of Data (*Commission nationale pour la protection des données*, www.cnpd.lu).

- **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)?**

According to the law on residential rental agreements, from 21 September 2006 (available in French: <http://eli.legilux.public.lu/eli/etat/leg/loi/2006/09/21/n1>), the “celebration of the rental agreement cannot be connected to the payment of amounts other than the rent”. Exception if made, in the same article, for the payment of the guarantee deposit, which is allowed, but not to any kind of reservation fees. From that we may conclude that these would be null and void, i.e., invalid and of no effect.

- **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)?**

Very often, the landlord requires from the tenant a copy of a recent pay sheet (*fiche de salaire*) to insure him or herself that the tenant has regular income which would allow him or her to pay the rent. Some landlords demand a certificate of good conduct (*certificat de bonnes vie et mœurs*). This information is considered in accordance to law, justified and legitimate and therefore the tenant is advised to provide it.

- **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?**

Estate agents have different roles, depending on the power of attorney (*procuration*) they have. Agents with a general power of attorney are usually in charge of finding a new tenant, writing the lease agreement, providing rental management service (when the dwelling is aimed at being leased) or finding a purchaser, writing the sales agreement and taking over administrative tasks (whenever the dwelling is aimed at being sold). Agents with a special power of attorney will be entitled to find a new tenant or purchaser and/or to write the lease or sales agreement respectively.

Besides real estate agencies, also relocation agencies (*agences de relocation*, <http://www.editus.lu/ed/fr/recherche.html?q=relocation>) provide personalized assistance to prospective tenants to find a dwelling, a school for their children, etc. European institutions may provide as well some assistance in finding a dwelling in relation to their workers.

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

Such lists are not available and, if they were, they would be in infringement of the law, as they would place serious privacy issues.

2.2. The rental agreement

- **What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?**

The Luxembourg Civil Code and the law of 2006 on rents provides that rental agreements do not have to be written to be valid, i.e., that they can be oral as well. The tenant is however advised to ask the landlord for a written, signed contract, which might be important in the event of a dispute. Written agreements should be registered within the three months which follow to the signature of the contract. For that purpose, an original of the contract shall be presented to the Land Registration and Estates Department (*Administration de l'Enregistrement et des Domaines*, www.aed.public.lu). This institution will charge the landlord an amount correspondent to 0,6% of the cumulated amount of rents for the period of validity of the contract. If, for example, the contract is concluded for two years, the amount will be calculated on the basis of 36 months of rent. In case the contract is concluded on an open-ended basis, the amount will be calculated on a basis of 20 years of rent. A registered rental agreement can be beneficiary for the tenant, among other reasons because it can protect him or her in case the dwelling is put on sale. Therefore, the tenant is advised to ask the landlord for a proof of registration (stamp of the Land Registration and Estates Department) or, otherwise, to do the registration him or herself, as it is gratuitous.

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

In Luxembourg, the parties to a rental agreement are totally free to define the contents of the contract, and therefore tenants shall be particularly careful with the contractual terms. Before signing, the tenant should verify if the contract includes:

- the **identity** of the parties (and, in case there is more than one tenant, if they are jointly liable for the performance of the contract);
- the **start date** of the agreement;
- the exact amount of the **rent**;
- the rental **charges**;
- the **management fees** (if the tenant has to pay them);
- the **length** of the rental agreement (if it is not indicated, the agreement will be open-ended) and the modalities of termination foreseen (with or without period of notice);
- the **description** of the object of the agreement, namely, every room or part of the dwelling or building (e.g., does it include the garage or the garden?).
- in case the dwelling can be characterised as a **luxurious dwelling** (under Art. 6 of the law on rental agreements, the contract shall expressly indicate it and provide that Arts. 3 to 5 of the same law are not applicable).
- the amount of the **deposit** and, if possible, the way how it will be managed by the landlord (deposit in a bank account?) and whether the tenant is allowed to collect interests (important in case a large amount is involved).
- who is responsible for which **repairs**.

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

It is common in Luxembourg that rental agreements run for one to three years, renewable by tacit agreement from year to year or for a period of several years. Nevertheless, as the parties to a rental agreement enjoy full contractual freedom concerning the contract's length, a shorter or longer lease is admissible as well.

If the length of the contract is not indicated in the contract – or in case the contract is only verbal – it will, as we have mentioned, be qualified as an open-ended contract.

The tenant should therefore check the relevant clause and bear in mind that he or she may not be able to terminate a fixed-term lease early if it does not contain a diplomatic clause; the landlord may refuse to terminate it and the rent will be payable until the end of the specified fixed duration (e.g. three years).

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

As far as the rent is concerned, it is important to ascertain whether the amount provided for in the contract includes or not the advances on rental charges.

In the case the landlord arranges with the tenant that the latter will not pay the first rent(s) in exchange for carrying works, that arrangement shall be expressly stated in the agreement as well.

- **Repairs, furnishings, and other usual content of importance to tenant**

- **Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?**

Art. 1754 of the Civil Code provides that, in case nothing is provided at that respect in the rental agreement, the tenant will be responsible for minor repairs (*menues réparations locatives*). "Minor reparations" are those which arise from the use of the dwelling, among others, the reparation of leaking taps, the replacement of light bulbs and the maintenance of the hot water system. Minor reparations will, nevertheless, have to be done at the expenses of the landlord in case the tenant proves that they are due to wear and tear.

Except where the contract provides otherwise, the landlord is responsible for major reparations. This is expressly provided for Art. 1720 of the Civil Code. However, the landlord might be able to prove that major works had to be carried only due to the negligent use that the tenant made of the installations or in case of voluntary degradations. In that case, the tenant will be responsible for the costs of the works.

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

Art. 1720 of the Civil Code provides that the landlord should "deliver the thing in a good state of repair in all respects", i.e., a dwelling correspondent to certain criteria of safety and cleanliness.

If the rental agreement is over a furnished dwelling, the landlord is expected to provide the furniture which is considered necessary for a normal use of the dwelling. Otherwise, i.e., if the tenant signed a rental agreement over a non-furnished dwelling, the tenant shall provide furniture. In fact, in the latter case providing the necessary furniture will be one of the tenant's contractual obligations.

- **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)?**

It is in the tenant's best interest that an inventory is made *before* the rental agreement takes effect, as it is otherwise assumed that the tenant received the dwelling in a state fit for renting. Any defect that the dwelling had before the contract starts being executed, shall be registered in the same inventory, otherwise the tenant must be obliged to repair it or compensate the landlord. For elaborating the inventory, the tenant is advised to check the functioning of doors, windows, electrical and sanitary equipment, taps, floor, etc. The landlord might want to register the number of movable objects available for use as well (keys, sanitary appliances, entrance mat, etc.).

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

As we have described, it is usual that tenants and landlords celebrate one to three-year leases, with tacit renewal on a yearly basis thereafter. If the tenant intends to terminate the agreement before that period is reached, he or she will probably be expected to pay the remaining rents until the end of the length settled under the agreement. Any tenant who is likely to be transferred on a short notice, e.g., workers at the European Union institutions, should ask for the insertion of a "diplomatic clause" in the tenancy agreement. This clause should provide for the right of the tenant of terminating the lease by giving notice at any time in case he or she is transferred by the respective employer. This clause should remain in force for the whole length of the lease. In exchange for early cancellation, the landlord may require that the tenant incurs expenses for renovations necessary for renting the dwelling to another tenant. That is the case of the costs of the professional repainting of the walls or cleaning of the premises.

- **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.)?**

Whenever a married couple moves into a rental dwelling, the dwelling will be the residence of the family and thus the children will be entitled to live there as well. In this case, only one of the spouses must sign the contract.

In case of a partnership (*loi du 9 juillet 2004*), or another non-marital relationship, both should sign the contract; if only one signs, on the one hand, only he or she will be responsible for the whole performance towards the landlord; on the other hand, however, only he or she will be recognized as tenant towards the landlord and thus only he or she will have security of tenure.

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

Within the private rental sector, there is no rule from where we may conclude that the tenant must occupy the dwelling permanently. The tenant might as well use it as a secondary home, or as a private office, provided that he or she carries on paying regularly the rent, that he or she uses the dwelling as a landlord would do (as a "*bon père de famille*") and that he or she maintains the dwelling in good condition. Before long periods of absence the tenant must, for example, ensure that the dwelling is properly closed (to avoid thefts) and protected from direct sun exposure (to avoid damage to wooden furniture or floor), that the taps are not dropping (to avoid floods), that the dust bin is emptied (to avoid smells), etc.

In the social rental housing, however, the non-occupation of a dwelling effectively and continuously by the household (without "legitimated motivated absence") is a serious and legitimate grounds for termination of the rental agreement (Art. 35 of the Grand-ducal Regulation of 16 November 1998 setting the execution measures concerning social rental dwellings).

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

Whenever the tenant separates from his or her spouse or partner, the landlord can be approached to celebrate a new rental agreement. In case the landlord is not interested in celebrating a new contract, both tenants will be jointly liable for the performance of the contract until the respective regular termination. In case the couple is not married, they will only be so in case both figure as co-tenants in the contract.

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

According to Luxembourg tenancy law, a person (student or not) can dispose of the respective position as tenant in a rental agreement. This situation, through which a person takes the contractual position of another in a contract (*cession de bail*) is, as a rule, allowed. In residential tenancy agreements (contrarily to what occurs in commercial rental agreements), the former tenant is not liable for the non-performance of the new tenant. Usually, landlords do not oppose to a cession; however, to avoid finding themselves in a situation where the tenant is financially incapable of meeting his financial duties towards the landlord, some landlords include a clause of non-disposal of the tenant's position without their previous landlord.

This means that if an apartment is shared among students, one student intends to leave definitely the apartment and the contract does not contain a clause prohibiting the disposal of their position without previous permission of the landlord, he or she will be able to find a replacement without permission of the landlord.

- **death of tenant;**

Art. 1742 of the Luxembourg Civil Code provides that the rental agreement is not extinguished by the death of the tenant. The law of 21 September 2006 completes this rule: according to Art. 13 in case of death of the tenant the rental agreement continues, for an undetermined time, in benefit of the married spouse or declared partner (according to the law on partnerships, *loi du 9 juillet 2004*) or in benefit of the ascendants, descendants and live-in partners who had lived with the tenant in domestic community for at least 6 months and that had declared their address administratively, i.e., in the municipality where the dwelling is located.

- **bankruptcy of the landlord;**

The bankruptcy of one of the parties to the contract does not automatically imply the end of the tenancy agreement and it does not modify the rights and obligations of the parties.

This means that if the landlord becomes bankrupted, it shall leave the rental agreement he or she celebrated unaffected. However, the agreement concluded during the suspected period (up to 6 months before bankruptcy is declared) may be declared null by the court in case the value of what was consented by the bankrupted significantly surpasses what he or she received in return, namely the rent and charges (Art. 445 of the Commercial Code).

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

Art. 1717 of the Civil Code provides that a tenant has the right of subletting a dwelling every time this was not expressly prohibited in the rental agreement.

In relation to an ordinary lease contract, a sublease contract presents fewer benefits for the tenant (Art. 2 of the law of 21 September 2006 on rental agreements). Indeed, the sub-tenant cannot e.g. ask for a legal prorogation of the lease in case of termination (Art. 12 of the law of 2006) nor benefit from the delay for eviction (Arts 16 to 18 of the same law).

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

In case of sale of the premises, the old owner is bonded by the rental agreement and cannot expel the tenant. The law does not consider the sale of the dwelling as a “serious and legitimate grounds” for immediate termination of the rental agreement. However, the law provides a special procedure for termination of the rental agreement by the new owner (Art. 12-6 of the law of 21 September 2006).

- **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?**

Most of the rental agreements provide that the rental charges are to be paid by the tenant to the landlord through monthly accounts with the establishment of a count in the end of the exercise. This means that usually the landlord – not the tenant – will conclude the contracts for provision of utilities. Nevertheless, landlord and tenant can agree that the tenant will celebrate the contracts for provision of utilities. In this case, the tenant is free to opt for the company supplier of his or her preference.

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

According to Art. 5-3 of the law of 21 September 2006, the landlord can only charge the tenant the amounts that he or she is able to justify to have spent on the interest of the tenant. Those are the costs of energy consumption, current maintenance of the dwelling and common parts, minor reparations and costs connected to the use of the dwelling. Most rental agreements provide that rental charges are to be paid through monthly accounts, and that a final account has to be made after the end of each year.

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

The tenant is usually expected to pay the municipal taxes connected to the use of the dwelling, for example, the household waste removal tax. Nevertheless, landlord and tenant may agree that these expenses will be paid by the landlord.

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

Under Luxembourg tenancy law, it is usual to shift condominium costs onto the tenant, namely the maintenance costs of the common parts (house-cleaning, gardener, etc.). It would also be possible to agree that technical assistance expenses (*frais de gérance technique*) shall be paid by the tenant.

- **Deposits and additional guarantees**

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

The landlord is not obliged by law to ask the tenant for a deposit or bank guarantee, but most of the landlords do it. It may not surpass three months' rent. It shall be highlighted that the law prohibits the landlord to accept any other amount, which is not the rent or the deposit.

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

The law does not provide for a way of managing the deposit. It is, however, in the tenant's best interest that he or she asks the landlord to whom will be provided the interests, especially when the amount of the deposit is significant. Ideally, the way of managing the deposit should be described in the written rental agreement.

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

Art. 2102 of the Civil Code provides the landlord a property lien (*privilège mobilier*) over everything which is inside the dwelling. This allows the landlord to whom due rents or charges have not been paid to seize the movable assets which furnish the rented dwelling.

Additional conventional guarantees or a personal guarantor are lawful and, whenever they exist, they shall be described in the rental agreement. However, they will rarely be particularly useful.

- **What kinds of expenses are covered by the guarantee/ the guarantor?**

Whenever there is a guarantee or guarantor, the kinds of expenses which will most likely be covered will be damages made to the dwelling, but also unpaid due rents or charges.

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)**

Luxembourgish tenancy law does not refer specifically to what shall be considered as a legally relevant "defect".

The Grand-ducal regulation of 25 February 1979 provides for the criteria of healthiness and hygiene that dwellings shall observe for being placed at the rental market. According to this regulation, dwellings shall present a "normal habitability" (Art. 2) and be constructed with materials which offer a "sufficient acoustic protection" (Art. 4).

Moreover, it is the landlord's main contractual obligation to ensure the tenant a "*jouissance paisible des lieux*", i.e., a pleasant, undisturbed enjoyment of the premises. The courts have been interpreting this obligation quite broadly and therefore mould and humidity of the dwelling would certainly amount to non-performance by the landlord.

As far as disturbances which are caused by thirds, especially as far as noise is concerned (building sites where the noise is produced during the day, discos or bars where noise is produced during the night etc.), the landlord cannot be made liable, and these would amount to neighborhood disturbances "*trouble de voisinage*" which, ultimately, would have to be solved before court.

- **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)

As we have mentioned, the landlord is responsible for every major reparation in the dwelling which is not due to negligence of the tenant and for every reparation which is due to wear and tear. This means that the tenant is not, in principle, authorized to carry out such reparations: the landlord has thus a “right to cure”. Whenever the landlord does not comply with the respective obligation, namely whenever the tenant informed him or her of the need of providing specific maintenance works or repairs, the tenant is not allowed to reduce the rent or charges unilaterally: the tenant needs a judicial authorization to reduce the rent or costs to be paid to the landlord. If the works are urgent and if the landlord does not react, the tenant can carry them and ask the landlord for their reimbursement, provided that it is proved that the works were done at the lowest possible cost.

- **Repairs of the dwelling**

- **Which kinds of repairs is the landlord obliged to carry out?**

As we have referred, the landlord is liable for major works or reparations and for reparations which are due to wear and tear. The tenant will be responsible for major works only when he or she gave cause to them through negligent behaviour.

- **Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?**

Minor reparations are on the tenant’s responsibility, which means that he or she has the right and duty of making them, without having the right of deducting them from the rent payment.

As far as major reparations are concerned, the tenant shall communicate the need of their execution to the landlord; as the latter is not entitled to enter the premises without previous authorisation of the tenant and without that he or she is present, there is no other possibility of being informed that such reparations are necessary. In case the landlord refuses to provide such reparations (either by doing them personally or by paying someone to carry them), the tenant will be entitled to do them at his or her own expenses, but he or she must obtain an authorization of a court first. In case such authorisation is not requested by the tenant, the tenant can still ask for a reimbursement of the costs paid, but it must be proved that the works were urgent and inevitable and that the tenant has done them at the lower cost possible.

- **Alterations of the dwelling**

- **Is the tenant allowed to make other changes to the dwelling?**

- **In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

The main obligation to the landlord resulting from a rental agreement consists in providing the tenant a pleasant enjoyment of the premises. This means that the landlord will be expected – if not to ensure the adaptation of the dwelling at his or own expenses - at least authorise the tenant to provide the same.

In case the dwelling is located in a condominium, and changes needed concerned the common parts (e.g. the stairs, the entrance, etc.) the general assembly of co-owners would have to be necessarily consulted and the works would depend on the respective authorization.

- **Affixing antennas and dishes**

Very often, the installation of a parabolic antenna at the façade or the respective placement on the terrace may provoke a lively discussion. The contract term providing that installation when it is prohibited is valid. The tenant must comply with this rule, also because the co-ownership regulations may provide for the same prohibition. The installation of a parabolic antenna modifies the appearance of the condominium and must be authorised by the general assembly of co-owners.

- **Repainting and drilling the walls (to hang pictures etc.)**

Rental agreements often contain a clause which prohibits the tenant of performing works in the dwelling (“every work is prohibited, except when the landlord previously authorized it”). In case of disagreement, it is the judge who shall appreciate the seriousness of the infringement but everything that one makes in a dwelling may be considered as a work (painting of a premise, change of a tap, installation of a built-in wardrobe, etc.). The judge shall evaluate whether the rejection of such works will lead to a loss in the enjoyment of the dwelling by the tenant or to a loss of the owner.

- **Uses of the dwelling**

- **Are the following uses allowed or prohibited?**

- **keeping domestic animals**

Some rental agreements contain a clause which expressly prohibits the tenant from having domestic animals or otherwise submits it to the previous authorization of the landlord. Some other times, the rental agreement does not refer to whether tenants are or not entitled to keep domestic animals in the dwelling.

The internal rules of the condominiums often forbid domestic animals; if that it is case, and because such rules apply to every occupier of the dwelling (not only the owners), the tenant will have to comply with this rule. In case the tenant disrespects the prohibition in the contract, in the internal rules of the condominium or does not require the necessary previous authorization to keep these animals, the landlord is entitled to terminate the rental agreement.

- **producing smells**

The tenant is only allowed to produce smells as far as this does not disturb the remaining occupants of the building.

- **receiving guests over night**

The landlord shall ensure that the tenant enjoys the premises and must respect his or her private life and intimacy. For this reason, there would be, in

principle, no reason for prohibiting him or her from receiving guests overnight, provided that it would not disturb the neighbourhood nor such reception would be done within a use of the dwelling which would attempt against good morals and public order (e.g., if the tenant received clients for prostitution activities).

It shall be highlighted that the accommodation of guests for regular, lengthy periods may constitute a serious and legitimate reason for termination of social rental agreements (Art. 35 Grand-ducal regulation of 16 November 1998).

- **fixing pamphlets outside**

It is unlikely that a rental agreement will refer to whether this activity is or not admitted. This situation would be more likely problematic under the point of view of the internal regulations of the building where the dwelling is.

- **small-scale commercial activity**

According to Luxembourgish law, if a dwelling contains a room which is used for commercial purposes (for example, a doctor office), but this use is secondary in relation to the residential use, this contract consists of a mix lease ("*bail mixte*"), to which the law of 21 September 2006 applies. These mix tenancies are possible, as far as the lease contract authorises the exercise of a professional activity within the dwelling. As far as social rental agreements are concerned, the exercise of a profession inside the premises without previous authorization of the landlord is a serious and legitimate reason for termination of the rental agreement.

3.2. Landlord's rights

- **Is there any form of rent control (restrictions of the rent a landlord may charge)?**

Landlords have an interest in increasing rents at every opportunity law allows them to. Indeed, they might want to increase their profits or at least maintain them, given the increase of the cost of living and the devaluation of money. However, there are legal limits to the increase of rents by landlords.

First of all, rents cannot be automatically increased: the law of 21 September 2006 prohibits the automatic indexation terms (*clauses d'indexation automatique*) of the rent. Secondly, the landlord cannot increase the rent in the first six months of beginning of the rental agreement and afterwards only after every two years according to ratios of adaptation or, in some rare cases, within a procedure before a rent assessment commission.

The regulations on rent do not apply to social rental dwellings. Here, the rent is calculated on the basis of the income of the household, the composition of the household and the surface of the dwelling (Art. 18 of the amended Grand-ducal regulation of 16 November 1998).

The calculation of the rent is made based upon the available income, the composition of the household and the surface of the dwelling. The public promoter calculates the annual rent to be paid by the tenant based upon presentation, by the tenant, of certificates of the income effectively received in the previous year (Art. 33 of the amended Grand-ducal regulation of 16 November 2006). Based upon this information, a settlement on the new rent is made (Art. 18). If the tenant does not provide such documentation, the rent which will be in force from the 1st of May that

year on will be a rent calculated upon 10% of the capital which was invested in the building.

- **Rent and the implementation of rent increases**

- **When is a rent increase legal? In particular:**

- **Are there restrictions on how many times the rent may be increased in a certain period?**

In private rental agreements, the rent cannot be increased in the first six months of the contract and, after that, it can only be increased every two years.

In social rental agreements, the rent is updated every year according to the income of the household; if the household income has increased in relation to the previous year, a rent increase will take place.

- **Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?**

As far as private rental agreements are concerned, the law of 21 September 2006 imposes a ceiling which determines the maximum rent that may be charged lawfully: that ceiling is 5% of the total invested capital. It is considered that this includes the capital which was invested initially, at the time of the purchase or construction, but also the improvement works and all other expenses in relation with the rented dwelling. This means that the landlord has the possibility of increasing the rent in proportion with the costs he or she spent on the energetic improvement of the dwelling.

- **What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?**

After six months have elapsed since the celebration of a rental agreement, the landlord is enabled to increase the rent. He or she shall communicate such intention through written letter, indicating and explaining the reason for the rent increase. In case the tenant does not accept the increase of the rent, the landlord may apply to the local rents commission for a rent increase. This can happen only after the legally fixed period of one month, during which the parties should try to find an agreement without seizing the rents commission (Art. 8 of the Law of 21 September 2006).

As we have mentioned, the rules on rents do not apply to social rental dwellings. Here the amended Grand-ducal regulation of 16 November 1998 applies. Its Art. 33 refers that the public promoter calculates the annual rent to be paid by the tenant based upon presentation, by the tenant, of certificates of the income effectively received in the previous year. Based upon this information, a settlement on the new rent is made (Art. 18 of the amended Grand-ducal regulation of 16 November 1998). If the tenant does not provide such documentation, the rent which will be in force from the 1st of May that year on will be a rent calculated upon 10% of the capital which was invested in the building.

- **Entering the premises and related issues**

- **Under what conditions may the landlord enter the premises?**

Except urgent situations, the landlord can only enter the premises with previous authorisation and in the presence of the tenant.

- **Is the landlord allowed to keep a set of keys to the rented apartment?**

The landlord is allowed to keep a set of keys to the rented dwelling but he or she can only use it to enter the dwelling whenever the tenant is in the premises and authorises the visit or in case of urgency (e.g. the tenant is inside the premises, unconscious; case of flood or fire, etc.).

- **Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?**

The landlord cannot legally lock a tenant out of the rented premises for not paying the rent. That would have to be preceded by judicial order (*jugement de déguerpissement avec titre exécutoire*), through which a public officer (*huissier*) will be entitled and requested to expel the tenant by force and take out his or her furniture. In case it is necessary to saw the locks (namely, when the landlord did not keep a set of keys of his or her own), a public authority would have to be convoked by the public officer to be present.

- **Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?**

Art. 2102 of the Civil Code provides the landlord a property lien (*privilège mobilier*) over everything which is inside the dwelling. This allows the landlord to whom due rents or charges have not been paid to seize the movable assets which furnish the rented dwelling.

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 will most of the time intend to terminate the rental agreement based on reasons of personal convenience: decision to purchase a dwelling, decision to move to a cheaper or bigger dwelling, the change of professional address, etc.). Sometimes, the tenant will want to terminate the rental agreement due to a *motif grave* of the landlord and, but also in this case, the contract must, in principle, be terminated by the tenant with a three months' notice.

- **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)?

A tenant may terminate the rental agreement with a three months' notice whenever a *motif grave* of the landlord is in stake.

It is also possible for the tenant to terminate the rental agreement before it reaches its term whenever urgent to the dwelling have lasted for more than 40 days.

Finally, it is possible for the tenant to terminate the tenancy before the end of the rental term whenever a diplomatic clause (*clause diplomatique*) is included in the contract. This happens for cases where the tenant might be professionally relocated with short notice.

- **May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?**

In principle, whenever any of the three situations we mentioned in the preceding question does not take place, the tenant shall pay the rents until the end of the term of the contract. Nevertheless, if the tenant finds a suitable replacement, he or she might be freed from this obligation. This will only not happen if the rental agreement expressly provides that such cession would have to be authorised and, either the tenant does not ask for such obligation, or the tenant asks the landlord and he or she does not authorise.

4.2. Termination by the landlord

- **Open ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?**
 - **Must the landlord resort to court?**

For the landlord, termination is only legally possible in the cases foreseen by Art. 12-2 of the law of 21 September 2006: personal need, breach of a contractual duty by the tenant or other serious and legitimate reasons.

In case of personal need, the landlord shall give notice to the tenant at least 6 months before the term is reached and, subsequently, occupy the dwelling within 3 months after the tenant vacates it (in case of renovation or transformation works, this period is suspended).

In case of breach of a contractual duty by the tenant, the landlord shall invoke the general principles of contract law and immediately address a request to the peace judge, asking for judicial termination of the contract.

Finally, whenever the landlord intends to terminate the rental agreement due to other serious and legitimate reasons, he or she shall give notice to tenant 3 months before the term is reached.

- **Are there any defences available for the tenant against an eviction?**

The tenant who received a letter of termination by the landlord or who was condemned to leave the premises, has, at the respective disposal, a few

mechanisms which allow him or her seeing the period of notice extended or, as the case may be, to be awarded a delay for eviction.

- **Under what circumstances may the landlord terminate a tenancy before the end of the rental term?**

As we have mentioned, the landlord may terminate the lease in the cases foreseen by Art. 12-2 of the law of 21 September 2006: personal need, breach of a contractual duty by the tenant or other serious and legitimate reasons. However, in all three cases, the landlord is only entitled to terminate the rental agreement when it reaches its term or, in case it is an open-ended contract, with a 6 months' notice in case of personal need, and 3 months' notice in all other cases.

- **Are there any defences available for the tenant in that case?**

In case the landlord informs the tenant of his or her intention of terminating the tenancy, the tenant can ask for an extension of the time for eviction, under Art. 12 of the law of 21 September 2006.

- **What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?**

The tenant is obliged to reconstitute the dwelling in the end of the tenancy. Before leaving, he or she is also due to reconstitute the keys to the landlord.

Every time the landlord (and, eventually, future tenant) are faced with the situation where the previous tenant refuses to clear the premises and handover the dwelling (which is done by the symbolic act of delivering the keys), the law provides that the landlord as such is not entitled to personally enter and expel the tenant from the dwelling.

That would have to be preceded by judicial order (*jugement de déguerpissement avec titre exécutoire*), through which a public officer (*huissier*) will be entitled and requested to expel the tenant by force and take out his or her furniture. In case it is necessary to saw the locks (namely, when the landlord did not keep a set of keys of his or her own), a public authority would have to be convoked by the public officer to be present.

4.3. Return of the deposit

- **Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?**

The landlord is, in principle, allowed to keep the deposit only during the 6 months subsequent to the termination of the rental agreement. The maintenance of the deposit (or part of it) can be maintained by the landlord upon proof of the expenses incurred in benefit of the tenant.

In case the landlord keeps the deposit beyond 6 months without the support of any legal provision or presentation of any reasonable justification (which happens relatively often), the Luxembourg Union of Consumers advises tenants to inform the landlord of his or her intention to resort to a justice of peace. Justices of peace usually decide in favour of the tenant. However, these cases do not usually come to court, as the landlord very often returns the deposit first.

- **What deductions can the landlord make from the security deposit?**

The landlord is entitled to deduct from the security deposit any damage that is found in the dwelling which did not exist (or was not identified in the inventory) before the rental agreement started being performed, as well as any rent or charges in arrears.

- **In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?**

It would be unlawful if the landlord deducted to the deposit paid by the tenant damages due to the ordinary use of furniture. Wear and tear is damage for which the landlord is responsible, and this applies to furniture as well, whenever we are before a furnished dwelling.

4.4. Adjudicating a dispute

- **In what forum are tenancy cases typically adjudicated?**

Tenancy cases are typically adjudicated before the judges of peace and rent commissions.

Every dispute that concerns the existence and the execution of rental agreements and violation of right of first refusal (or pre-emptive right) are judged in the Court of Peace of the municipality where the rented dwelling is located (Art. 19 of the law of 21 September 2006), with possibility of appeal to the District Court (*tribunal d'arrondissement*). The latter will be, in principle, a first instance court whenever the claim respects damages following to an abusive termination of the rental agreement.

Disputes on the amount of the rent are brought before the rents commission of the municipality where the dwelling is located.

- **Are there specialized courts for adjudication of tenancy disputes?**

The rents commissions are specialized instances for adjudication of tenancy law disputes, and their role is to determine the amount of the rent and/or the charges that the tenant shall pay to the owner if both do not reach an agreement. Most of the times, in the origin of the dispute, is the intention of the landlord of increasing the rent. These commissions have a role of mediators and they aim at reaching an amicable settlement between the parties to a rental agreement, thus avoiding that the situation will reach the court.

- **Is an accelerated form of procedure used for the adjudication of tenancy cases?**

Usually, no accelerated forms of procedure are used for the adjudication of tenancy cases. Nevertheless, that might be necessary in cases of urgency, such as to restore basic services as water or heating supply which might have been eventually cut by the landlord. For these cases, the judge is able to act urgently through an "*ordonnance*", i.e., an urgent judgment with provisional measures, thereby avoiding imminent damage for the tenant.

- **Is conciliation, mediation or some other form of alternative dispute**

resolution available or even compulsory?

Rents commissions are conciliatory bodies, which are aimed at reaching amicable agreements between tenant and landlord as far as disputes over the amount of the rent are concerned.

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?**

The proceedings to accede to a dwelling with a public task provided by public developers and AIS are distinct.

At the National Company for Affordable Housing (*Société Nationale des Habitations à Bon Marché*, <http://www.snhbm.lu>), the applicant shall schedule an appointment at the Rental Service to fill in an application form. To such appointment the applicant shall bring: the three last income receipts of the income of each and every member of the household; a certificate of the received family allowances; a certificate of the composition of the household; a copy of the identity card and a certificate of non-ownership in Luxembourg and abroad.

At the Housing Fund (*Fonds du Logement*), as far as the social dwellings are concerned (the Funds provides dwellings at private market prices as well), applicants accede to dwellings based upon an application procedure which is based in the requirements of the Grand-ducal Regulation of 16 November 1998. The candidate must always (except concerning dwellings for senior and people with reduced mobility) fulfill the following requirements: not be an owner, nor usufructuary of another dwelling, in Luxembourg or abroad (Art. 4) nor benefit from a right to occupation of another dwelling. The applicant must normally provide: a certificate of composition of the household, issued by the municipal administration of the residency site; a proof of civil status, issued by the municipal administration; a certificate of income or pensions of the last three months of the applicant and respective spouse (whenever applicable); certificates of income or pensions of all the children of the household who execute a remunerated activity; certificates of revenue or pension of the last three months of any other person who integrates the household; certificate of the amount of the family allowances, established by the *Caisse Nationale des Prestations Familiales (CNPF)*; certificate of parental leave compensation granted by the CNPF; certificate of the amount of the alimony received or paid (copy of the divorce court decision); social security registration certificate, issued by the *Caisse Nationale de Santé, CNS*; copy of the identity card or residence card; whenever applicable, a copy of the letter of termination of the former rental agreement (or copy of the court decision) of the preceding dwelling; a certificate, issued by the *Service des Evaluations immobilières* (for foreigners, the embassy of respective country), that the applicant and spouse are not owners, nor usufructuaries of a dwelling. After the reception of the documents, the application is analyzed. In case it is considered complete and formally rightly introduced, it is examined in order of arrival and, whenever required, are object of a social survey.

- **Is any kind of insurance recommendable to a tenant?**

Most of the private rental agreements provide that the tenant has the obligation of insuring him or herself or herself against the insurance 'rental risk' (*risque locatif*), which covers the risk of fire. Also when such term is not present at the tenancy agreement, it is in the tenant's best interest to pay the insurance premium.

As far as social rental housing is concerned, the refusal of the tenant of ensuring at his or her own expenses the housing costs against fire, water and other rental risks next to an insurance company consists of a serious and legitimate reason for termination of the contract (Art. 35 of the grand-ducal regulation of 16 November 1998).

- **Are legal aid services available in the area of tenancy law?**

There is, so far, no national association for the protection of the rights of tenants.

Nevertheless, there are two institutions to which a tenant may resort to for obtaining legal advice as far as tenancy law is concerned.

The first is the Luxembourg Consumer Protection Association (*Union Luxembourgeoise des Consommateurs*, <http://www.ulc.lu/>) which aims at informing, advising and protecting tenants about housing issues.

Tenants, landlords and home-owners may contact two services of the Housing Ministry: the Service for housing aids ("Service des aides au logement") with its "Info'Logement" (<http://www.ml.public.lu/fr/aides-logement/>) or the "Cabinet ministériel" of the Housing Ministry (to whom they can ask for the assistance of a legal affairs counsellor or send an e-mail to the contacts indicated under <http://www.ml.public.lu/fr/support/contact/index.php>).

They provide information and advice concerning any kind of information of individual and collective subsidies, information for the construction or purchase of a dwelling and for improvement works, sanitation works and land development, more precisely in the field of ecological construction and energy efficiency, as well as in technical aspects (isolation, security, healthiness, etc.). It also provides information on legislative and tax questions, as well as in tenancy law.

- **To which organizations, institutions etc. may a tenant turn to have his/her rights protected? [please indicate addresses, email addresses and phone numbers]**

Service des aides au logement

Service for housing aids and Info'Logement

<http://www.ml.public.lu/fr/aides-logement/>

Address: 11, rue de Hollerich, L-1741 Luxembourg

E-mail: info@ml.public.lu

Phone number: (+352) 247 84860

Ministère du Logement - Cabinet ministériel

Housing Ministry

<http://www.ml.public.lu/fr/support/contact/index.php>

Address: 4, place de l'Europe, L-1499 Luxembourg

E-mail: info@ml.public.lu

Phone number: (+352) 247-84819

Office Luxembourgeois de l'Accueil et de l'Intégration (OLAI)

Luxembourg Reception and Integration Office

<http://www.olai.public.lu/fr/lutte-discrimination/index.html>)

Address: 7-9, avenue Victor Hugo, L-1750 Luxembourg

E-mail: info@olai.public.lu

Phone number: (+352) 247 85700

Centre pour l'Égalité de Traitement (CET)

Centre for Equal Treatment

<http://cet.lu/en/>

Address: B.P. 2026 L-1020 Luxembourg (for post) / 87, rte de Thionville L-2611
Luxembourg (for appointments)

E-mail: info@cet.lu

Phone number: (+352) 264 83033

Commission nationale pour la protection des données

National Commission for the Protection of Data

www.cnpd.lu

Address: 1, avenue du Rock'n'Roll, L-4361 Esch-sur-Alzette

Phone number: (+352) 261 060-1

Union Luxembourgeoise des Consommateurs (ULC)

Luxembourg Consumers Union

<http://www.ulc.lu/>

Address: Union Luxembourgeoise des Consommateurs nouvelle a.s.b.l, 55, rue des
Bruyères, L-1274 Howald

E-mail: ulc@pt.lu

Phone number: (+352) 49 60 22-1

MALTA

Tenant's Rights Brochure

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1. Introductory information

- Give a very brief introduction on the national rental market
 - Current supply and demand situation

The majority of occupied dwellings in Malta are owner occupied (75.5%). The number of rented dwellings amount to roughly one-fifth of the total housing stock (20.%). With a current vacant stock estimated at around 32% of the total number of dwellings Malta's housing problem lies in affordability rather than availability, however, in this respect the liberalisation of the housing market seems to have been successful both in encouraging the release of new properties into the rental market as well as in bringing about a general lowering of prices. The number of households is expected to keep rising at least till 2020 due to the growing numbers of single parents, separated persons and foreign migrants.

In 2005, households that rented their dwellings paid on average €719.78 annually. The relatively low amount is owed to around to the large number of tenancies that were protected by the special laws (Caps. 69 and 158 of the Laws of Malta). The leases that were entered into prior to 1995 will be gradually phased out through the operation of Articles 1531B to 1531L of the Civil Code along with the means test criteria established in the Continuation of Tenancies (Means Testing Criteria) Regulations.

- Main current problems of the national rental market from the perspective of tenants
 - a) Absence of a reference index: it is difficult for tenants to assess whether they are paying a fair price for the property that they would be renting.
 - b) Lawful amount of deposit: no provision on the lawful amount of deposit/down-payment which may lead landlords to demand excessive rates in certain cases
 - c) Utility bills: if landlords do not allow tenants to register the billing account on their names tenants might be charged higher rates than the subsidised ones that they would be eligible for
 - d) Interruption of water and electricity supply: it appears customary amongst landlords to interrupt the provision of water and electricity if the tenant defaults payment – this practice is uncensored by the Court.

e) Tenants' Union: Malta does not have a tenants' union which means that tenants who cannot afford lawyer's fees remain unassisted.

- Significance of different forms of rental tenure
 - Private renting

The private renting sector is estimated to comprise around 70% of all rented dwellings. Within this sector, however, lie hundreds of frozen and controlled rents that keep rates at well-below market levels. In 2005, 72% of all rents paid to private landlords did not exceed the annual €465.

- "Housing with a public task" (e.g. dwellings offered by housing associations, public bodies etc.)

Social Housing is estimated to constitute around 6% of the total dwelling stock. In 2005, the Government's share of rented dwellings stood at 28.02% of the total rented dwellings whilst that of the Church amounted to 1.98%. In Malta, rented social housing is represented solely by Government-owned dwellings (with a small number of exceptions that are owned by the Church but still administered by the State). A number of NGOs also provide temporary shelter for those who those persons who end up in homelessness. Government additionally subsidises the rents of low-income families who rent privately owned dwellings: in the last ten years the Housing Authority received 4,646 applications for this particular subsidy.

- 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)

Foreigners may choose from a wide array of estate agencies that operate within the private rental sector. The steady number of property purchases during the past years, particularly in the up-market range, has very much opened up the sector to foreigners. Communication barriers are certainly non-existent for English speakers since Malta is a bilingual island. The recent issue regarding the differentiation in tariffs between Maltese and foreign nationals has also been cleared and passports or e-residence cards (issued by the Maltese authorities to EU foreigners) are now sufficient to ensure the subsidised "residential" rates for non-Maltese citizens.

- Main problems and "traps" (circa 5) in tenancy law from the perspective of tenants

Written contract: tax-evading landlords might refuse to draw up a contract in writing; the law is now clear in stipulating that a contract of lease must necessarily be penned

down – this case is particularly serious when the tenant would be eligible to apply for rent subsidies

Retention of deposit: it is a common occurrence for landlords to refuse to return the deposited amount by claiming that their property would have been damaged by the tenant; the drawing up of an inventory is highly suggested

Utility bills: in the absence of specific provisions certain landlords may fail to provide tenants with a copy of the bill

Discrimination: it is very common for landlords and estate agents to ask for the prospective tenant's nationality prior to answering any further questions; any such cases of discrimination have to be reported to the National Commission for the Promotion of Equality

Persons with disability: certain landlords might not allow persons with disability to introduce certain necessary ameliorations to their rented dwellings; however, they may do so by right as long as they would be able to restore the premises as it was prior to their arrival

- Compile a very brief section of “*Important legal terms related to tenancy law*” by quoting their original in the national language

Term in Maltese	English Translation
<i>Avviż</i>	Notice
<i>Bord li Jirregola l-Kera</i>	Rent Regulation Board
<i>Danni</i>	Damages
<i>Depożitu ta' garanzija</i>	Security deposit
<i>Fond</i>	Premises
<i>Ftehim tal-kiri</i>	Rent agreement
<i>Garanzija b'ipoteka</i>	Hypothecary security
<i>Ħall tal-kuntratt</i>	Dissolution of contract
<i>Indennizz</i>	Indemnification
<i>Inkwilin/Kerrej/Konduttur</i>	Lessee/Tenant
<i>Kera</i>	Rental
<i>Kera/Korrispettiv</i>	Rent
<i>Kreditu privileġġati fuq ħwejjeġ mobbli</i>	Privileged debts over particular movables
<i>Lokazzjoni/Kirja</i>	Lease

<i>Manutenzjoni ordinararja</i>	Ordinary maintenance
<i>Miljoramenti</i>	Improvements
<i>Obbligi</i>	Obligations
<i>Rekwiziti tal-kuntratt</i>	Contractual requirements
<i>Rexxissjoni</i>	Rescission
<i>Rizoluzzjoni</i>	Resolution
<i>Sid il-keru/Lokatur</i>	Lessor/Landlord
<i>Sub-konduttur</i>	Sublessee
<i>Sullokatur</i>	Sublessor
<i>Sullokazzjoni</i>	Sublease
<i>Tiswijiet strutturali</i>	Structural repairs
<i>Użu miftiehem</i>	Agreed use
<i>Żgumbrament</i>	Eviction

In general the market is highly accessible to foreigners since the use of the English language is widely diffused on the island. The leading journals, where for instance most of the properties are advertised, are in English. Both locals as well as foreigners are therefore as likely to encounter the term in English as much as in Maltese.

2. Looking for a place to live

2.1. Rights of Prospective Tenants

- 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?

The Equal Treatment of Persons Order prohibits discrimination on the part of either a private or public entity in relation to housing. The Status of Long-Term Residents (Third Country Nationals) Regulations also guarantee equal treatment to third country nationals who are granted long-term residence status in Malta in regard to “procedures for obtaining housing”. In the social sector however, certain categories are given preferential status. These are: danger or substandard condition of the premises, lack of sanitary facilities, overcrowding, social cases, homelessness, disability, elderly cases who live on their own or share accommodation, cases of refugees and excessive rent.

- What kinds of questions by the landlord are allowed (e.g. on sexual orientation, intention to have children etc)? If a prohibited question is asked,

does the tenant have the right to lie?

Questions on the basis of gender and family responsibilities, race/ethnic origin, sexual orientation, age, religion or belief, and gender identity are prohibited and if this information were to be requested, tenants could report these landlords to the National Commission for the Promotion of Equality (NCPE). Nothing, however, precludes a landlord from making questions regarding the tenant's employment or from requesting a copy of his fiscal transactions, although the diffused practice in case of untrusted tenants is that of requesting a hefty advance payment.

- 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)?

Several landlords request a down payment upon the tenant's entry into the property. This usually consists of one or two months' rent although in certain cases, especially in the particular one referred above, the requested amount could be much higher. This practice is not foreseen by the Civil Code therefore, besides being unregulated there is also doubt regarding the legal nature of such deposits.

- 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 Data Protection Act prohibits any institution from giving away any personal data without the subject's consent. It follows that such details may only be provided voluntarily by the prospective tenant and the landlord is certainly not entitled to request such information from any third parties.

- 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?

The majority of local property owners seem to prefer to let out property directly to tenants rather than make use of the services of estate agents. Low-income tenants may similarly opt to carry out the search for their prospective dwellings on their own. There is no doubt, however, that due to their better knowledge of the market conditions they would be a very useful source for tenants. This sector is not regulated by any special legislation but estate agents are held to be brokers by Maltese law; the amount requested by them upon the conclusion of a tenancy agreement is usually equivalent to one month's rent (these costs are usually divided by the landlord and the tenant). In Malta, however, estate agents have also proven to be "gatekeepers" for certain areas and they are often led by the landlords into the perpetration of several discriminatory offences in respect of Sub-Saharan and North-African tenants.

In the absence of a union tenants have no other means of assistance on the private rental market. Properties are identified through personal contacts, news paper adverts, magazines, online classifieds or “To Let” signs.

- Are there any accessible “blacklists” (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?

No such registries are available.

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)?

Any contract of lease for a residential dwelling has to be made in writing regardless of its duration. Prior to the 1 of January 2010 only contracts in excess of two years’ duration had to be in the written form, either through a private writing or a public deed.

In the absence of a lease registry there is no obligation on any of the parties to register their contract anywhere. Although provisions for the establishment of this registry were introduced in 2010 no administration has yet proceeded with its implementation. The Civil Code also states that the Minister may eventually decide whether to make the registration of the contract necessary for the validity itself of the contract.

- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?

The five necessary requirements that need to be listed in the contract are: i) the property being leased, ii) the agreed use for the property, iii) the period for which that property would be let, iv) whether such lease might be extended and in what manner and finally v) the amount of rent to be paid and the manner in which such payment would have to be made.

- Duration: open-ended vs. time limited contracts (if legal, under what conditions?)

No open-ended lease contracts are possible in Malta since the law states that the

contract must be for a specified time. Courts would consider any clause stating the lease to be indefinite as null.

Indefinite contracts are only permissible under the special statutes that give lifetime security of tenure the lessees. This applies only to contracts signed up till the 31 May 1995. In such cases the tenant would also have the right to transfer the lease to his spouse and to certain cases, which have however been limited severely, to his descendants or ascendants.

- Which indications regarding the rent payment must be contained in the contract?

A lease contract must necessarily contain the amount of rent to be paid as well as the manner in which such payment would have to be made; by *manner* the law intends the period after which the rent would be due and whether it would be payable in advance or in arrears. Usually tenants are asked to pay in advance. Arrangements regarding utility costs do not need to feature in the agreement.

According to the law, should the tenant fail to pay the rent punctually, the landlord would be entitled to summon him by means of a judicial letter demanding him to proceed with the payment within a period of fifteen days. If the tenant persisted in his fault he would be liable to eviction.

- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

Under Maltese law the lessee of an urban tenement is responsible for all repairs other than the structural ones. *Structural repairs* are any works relating to the structure of the building including the ceilings. Works of routine maintenance are therefore the responsibility of the lessee including the cleansing of cisterns, sinks, cesspits and chimneys that are specifically mentioned in the law.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

The only obligation laid down by the Code of Police Laws is that every house should be provided with a lavatory. There are no other provisions concerning kitchens, bathtubs or showers although in relation to habitability the Development Control Policy and Design Guidance 2007 establishes the minimum gross floor area of all new built and rehabilitated housing units at 45m², 76m² and 96m² for one-, two- and three-bedroom apartments respectively. Any furniture or appliances that the landlord

would have to provide would depend on the lease agreement.

- 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)?

An inventory, checked by the tenant in the presence of the landlord, would usually be attached to the rental contract and signed by both parties. The tenant would be excused for fair wear and tear of the furniture or the appliances. It is certainly advisable for tenants to press for such inventories since one of the most reported malpractices on the part of local landlords is that of alleging any excuse in order to retain any deposited amounts. Contracts might also stipulate the condition in which the tenant would be expected to leave the premises on the expiration of the lease.

- Any other usual contractual clauses of relevance to the tenant

Usual contractual clauses of relevance to the tenant are the following:

- a. clauses on any security deposit and the conditions for its return
- b. clauses on the payment of water, electricity and telephone bills
- c. clause on improvements to the dwelling
- d. clauses on the prohibition to keep domestic animals, hang clothes in the balcony
- e. clause on the right of the landlord to inspect the dwelling
- f. clause on period of notice in case tenant were to have to leave the premises due to force majeure

- 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.)?

The tenant enjoys considerable freedom in housing third parties with him as long as he would not be subletting any part of the property without the landlord's consent. Spouses, partners, children or any ascendants may therefore move in with the tenant quite freely although they would hold no direct link with the landlord. The number of persons that can live within the premises is, however, limited by the Police laws (each person requires a minimum surface of 3.75m² and a height of 2.75m).

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

If the premises would be rented for residential purposes, the failure on the part of the tenant to reside in it for a period exceeding one year would be considered to constitute a bad use. This would of course entitle the landlord to file proceedings for eviction. The only justifiable absences would be those due to work, study or reception of health care.

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

In case of separation it would be the Court to decide which of the parties would be entitled to remain in occupation of the premises, both whilst the proceedings would be taking place as well as after the separation would be declared. If the property would be used as the matrimonial home it would not make a difference whether the lease would have been contracted individually prior to the marriage or jointly by both spouses. The position in respect of civil unions, upon the imminent introduction of the Civil Unions Act, will be identical.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);

A student tenant is allowed to assign his lease to another, however, this possibility would require the prior consent of the landlord. The assignment entails the complete transfer of the sitting tenant's rights and obligations onto the replacing one. In some cases assignment might be prohibited by the rental contract, and unless it would expressly allowed the tenant would not be able to proceed with the assignment without permission. If the assignment takes place behind the landlord's back the latter would have the right to terminate the contract.

- death of tenant;

Under Maltese law the lease does not end with the death of the tenant and his heirs would therefore be entitled to remain, or continue to make use of the premises, until the contract reached its natural expiration. The tenant may also bestow the lease as a legacy on any other person, such as a cohabitant.

- bankruptcy of the landlord;

The alienation of the property does not affect the tenant's right to remain in occupation of the premises until the expiration of the stipulated term. The landlord could, however, reserve to himself the power to dissolve the lease upon the alienation of the property in the rental contract.

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

The tenant cannot sublet the premises unless this right were to be expressly agreed upon in the contract. Where the contract would be silent the tenant would therefore require the consent of the landlord before proceeding with subletting. Under Maltese law a sublease would create a whole new contract and the principal landlord would be totally extraneous to it; there would be no link between the original landlord and the sublessee and the former would, for instance, be unable to institute a contractual action for damages directly against the latter. If the tenant were to sublet the premises without the landlord's consent it would constitute a ground for the dissolution of the original lease.

- Does the contract bind the new owner in the case of sale of the premises?

The acquirer of a rented premises would step into the shoes of the previous landlord and he would not have any right to terminate the letting contract with the sitting tenant. The new owner would therefore have to respect the contract until the expiration of its term along with any conditions that would have been stipulated by his predecessor.

- 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?

Maltese law does not regulate the payment of utilities in lease agreements. Tenants are allowed to apply for a new service at Automated Revenue Management Services (ARMS) as long as they presented the lease agreement as proof of their link to the property. The relationship from then on would be strictly between ARMS and the account holder. This is the most advisable option since the tenant would be able to benefit from the discounted 'residential' rates although the movement of the registration from one premises to another is restricted to once yearly.

The respective water and electricity corporations are entitled to require the landlord to bind himself with the tenant for the regular payment of any amounts that become due if the premises were let or if they were let for a period inferior to 3 months. If any request for payment is not honoured within fourteen days of its presentation, the corporation would be able to interrupt the supply.

- Which utilities may be charged from the tenant by the landlord? What is the standard practice?

Although landlords prefer to keep the billing accounts on their name it is extremely important for tenants to be aware of the importance of either transferring the account on their name or else seek registration on it. This is the only way through which they might access the discounted residential rates and the related eco-benefits. The methods through which a tenant may apply for the residential rate are either through ARMS Form F (Registration of Change of Customer) or ARMS Form H (Change in number of persons declaration). If the tenant transfers the account onto his name, besides the administration fee of €4.66, he would also be requested to pay a guarantee deposit of €466 although if the consumer is registered as a social case this amount could be waived.

In case that the landlord would oppose himself to the transfer, the tenant could alternatively request the registration of his household directly onto the premises (by filling in Form H) without resorting to the change of customer procedure. The obvious advantage in this case is that the tenant would not be liable to leave any deposit, however, in turn he would not have direct access to the account since the registered consumer would remain the landlord. In both cases the tenant does not have a rightfully direct access to the billing company and whichever avenue he opted for would involve both the landlord's prior consent as well as his acceptance to sign the relevant forms.

A further subsidy known as the 'Energy Benefit' is available to certain low-income households in order to mitigate the effect of the increase in expenditure on water and electricity bills.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

No such specific taxes are levied on property owners or tenants.

- Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?

According to the Condominium Act the landlord has the right to demand from the tenant such part of any expenses relating to preservation, maintenance, repairs, or alterations to the common parts, unless it would have been otherwise agreed between them. It is further specified that the tenant may even decide to partake in the enjoyment of certain excessively onerous costs or decorative alterations to the common parts – by obviously giving his contribution – despite the landlords' refusal to participate in such expenses. Such costs would, in line with the Civil Code principles, not be reimbursable by the landlord at the end of the tenancy.

- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?

Having been left unregulated the amount of deposit is ruled completely by custom. Security deposits, in fact, seem to be characterised by an element of self-help on the part of landlords and these would be perfectly enforceable under Maltese law due to the wide observance of the principle of *pacta sunt servanda* (lit: agreements must be respected). Some landlords require a month or two months' worth in the form of a down payment; if there are doubts or feelings of distrust towards the tenant, the amount could even rise higher. Other landlords might instead request two separate deposits; one as a guarantee against any damage to the property or the furniture and another as a form of security towards the payment of utility bills.

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

It is still unclear under which legal form would the deposit be qualified. Although functionally similar to a pledge it does not endow the landlord with any privilege over the other creditors. If, nevertheless, an analogy were to be drawn with a Pledge, the landlord would be forbidden from deriving any advantage from the deposited sum and he would only be able to appropriate any yields or interests accruing from it for the specific purpose of deducting them from any interests that would be owed to him.

- Are additional guarantees or a personal guarantor usual and lawful?

The request of a personal guarantor is both foreseen and allowed by Maltese law. Landlords are therefore entitled to request the tenant to be backed by a surety, or a personal guarantor, although the security would not be extended automatically if the tenant chose to renew the lease or if he prolonged his occupation beyond the agreed term (unless the surety would have expressly bound himself for the whole time until the lessee would have surrendered the thing).

- What kinds of expenses are covered by the guarantee/ the guarantor?

The personal guarantor would usually cover all rent payments together with any ancillary expenses such as utility bills and, if agreed upon, condominium costs. The practice of requiring a surety seems to have largely given way to that of requesting a deposit.

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; exposition to noise e.g. from a building site in front of the dwelling; noisy neighbours; occupation by third parties)?

The landlord is not bound to warrant against molestations caused by the acts of third parties, unless it were an act that touched on their right to occupy the leased premises. Maltese law, in fact, makes a distinction between the so-called 'molestations of right' and 'molestations of fact'. The warranty against molestations of right stems from the landlord's obligation to ensure the peaceful possession of the premises. If, on the other hand, the molestations did not affect the rights emanating from the contract of lease, the tenant would not be able to call on the landlord in order to remove those nuisances, but he would have to act on his own behalf. Molestations of fact include exposition to noise and similar inconveniences.

Hidden defects in the property, on the other hand, have to be warranted by the landlord. This is a corollary of the landlord's obligation to deliver the thing in a proper state for the tenant's enjoyment. The defect in this case must be serious i.e. it must be such that it prevented or lessened the use of the premises and if the defect pre-existed the contract it must have been latent i.e. it must have been noticeable to the tenant prior to the moment of conclusion of the contract. The landlord must similarly warrant property against accidents and events caused by 'force majeure'.

- What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)

A variety of remedies exist for the tenant depending on the situation:

- a) Rent reduction can be afforded in the case of:
 - i) Urgent repairs lasting longer than forty days
 - ii) ...

artial destruction of the property or partial eviction (dissolution of contract in this case would only be possible if the part of the property left could no longer serve the purpose for which it would have been rented)

- iii) discovery of latent faults and defects d

- b) recovery of damages would be possible in case of: R
 - i) eviction by third parties (in such cases the tenant has to give notice of the molestation to the landlord in due time, the cause for eviction has to have arisen before the stipulation of the contract and the landlord must have been aware of the matter)
 - ii) hidden defects (if the tenant could prove bad faith on part of landlord)

- c) the tenant would be able to proceed with the necessary works if: T
 - i) despite being called to take action through a judicial act, the landlord persisted in neglecting any structural damage
 - ii) if the nature of the damage was so urgent that it required immediate action (saving, in both cases, the right to be reimbursed by the landlord)

- d) A tenant would also be able to exercise the action for spoliation if he suffered any illicit trespass on his leased property

The period of prescription for these remedies is the usual contractual timeframe of five years from the first day on which such right could have been exercised.

- Repairs of the dwelling
 - Which kind of repairs is the landlord obliged to carry out?

The landlord is obliged to carry out all repairs of a structural nature; ordinary works of maintenance, on the other hand, are at the charge of the tenant. However, the tenant may still be made to shoulder responsibility for structural damages if he ever failed to: i) invigilate on the integrity and safety of the property, ii) take all necessary precautions for its conservation, iii) see to the ordinary repairs that he would have been responsible for and iv) give the landlord immediate notification regarding any repairs that would have been at his charge. The law, therefore, requires the tenant to assume an active attitude in protecting the capital interests of the landlord.

- Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

Under Maltese law a tenant is not entitled to refuse payment or to keep the rent on the basis of an alleged claim against the landlord. An exception is constituted by two specific instances in which the tenant would be authorised to proceed with any necessary structural repairs (that should have been at the charge of the landlord) and consequently set off the incurred costs against the rental payments. These concern the carrying out of neglected structural repairs following the unsuccessful summoning of the landlord and the undertaking of such works which needed immediate attention due to their urgency.

- Alterations of the dwelling

The tenant may not make any alterations to the leased dwellings without the consent of the landlord, he may, however, carry out works of a temporary nature and restore the property as it was prior to his departure. In no case can the tenant claim the value of any unconsented improvements, although if these could be separated from the premises, and the landlord refused to offer compensation, he would be allowed to take them with him. If, however, the unconsented alterations caused any prejudice to the property, the tenant would be liable for damages.

The improvements which the landlord is expected to tolerate:

- a) have to be partial and of no particular importance
- b) do not have to change the express or presumed use of the dwelling
- c) do not have to prejudice property rights, particularly what concerns the solidity of the building
- d) would have to be capable of being restored at the end of the lease
- e) have to be necessary and useful for the enjoyment of the premises

If the alterations did not respect any of these criteria the landlord would be entitled to file an action for the dissolution of the contract.

- Is the tenant allowed to make other changes to the dwelling?
 - In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

The Equal Opportunities (Persons with Disability) Act expressly lays down that no person can prohibit a person with disability from making alterations to his property if i) the latter would have undertaken to restore, at his own expense, the accommodation back to its original condition and ii) the works did not involve the alteration of property

occupied by other persons. The Condominium Act also provides that a tenant may, at his own expense, install or erect any facilities that would enable him to mitigate or eliminate problems of mobility although in no case could these works prejudice the rights of the other condomini. Therefore, under Maltese law, a landlord would be limited in refusing certain changes. In case of such improvements persons with disability could additionally benefit from grants offered by the Housing Authority.

- Affixing antennas and dishes

There does not seem to be any prohibition on the affixation of such devices although the case could be different if the leased property formed part of a condominium. The tenant would need to verify whether the wall or the roof on which the antenna or dish were going to be fixed were considered as a common part or not. In that event the other condomini would possibly have a rightful claim against him if he proceeded to install any devices without their consent. In addition, if the installation were sizable enough to detract from the character of the façade, the tenant would require the unanimous consent of all the other condomini.

- Repainting and drilling the walls (to hang pictures etc.)

A tenant is certainly allowed to proceed with such improvements although he would be bound to restore the premises back to their original state.

- Uses of the dwelling

The tenant is bound to make use of the property as a prudent father of the family and for the sole purpose stated in the contract. A bad or improper use of the dwelling on the part of the tenant would give the landlord a ground for the dissolution of the contract.

- Are the following uses allowed or forbidden?
 - keeping domestic animals

There is no express preclusion from keeping animals within the rented premises under Maltese law so any prohibition would have to be contained in the rental agreement. The issue could additionally be regulated by the specific set of rules of the condominium agreement.

- producing smells

In line with the Abandonment, Dumping and Disposal of Waste in Streets and Public Places or Areas Regulations the deposit of any litter receptacle or bag in any street

or public place is unlawful unless it is left at a time that is reasonably approximate to the time of collection.

- receiving guests over night

The Criminal Code lists amongst its contraventions the disturbance of the repose of inhabitants due to rowdiness, bawling or any other reason. Tenants would be able to host such functions as long as they ensured the orderly behaviour of their guests.

- fixing pamphlets outside

The only prohibition against fixing pamphlets would be the one contained in the Condominium Act in the case that it detracted from the character of the façade (it would require the unanimous consent of the condomini). In addition the pamphlets should be in rule with any relevant legislation amongst which the Press Act, the Seditious Propaganda (Prohibition) Ordinance and the Advertisements (Regulation) Order.

- small commercial activity

Whether this use would be prohibited or not depends on the entity of the activity. The tenant would certainly not be precluded from carrying on minor profit-making trade, however, the same could not be said if the premises were used in the ambit of a much larger business activity. The transformation of a room into a clinic, for instance, would be in clear breach of the contract since the tenant cannot singlehandedly decide to change the use of the premises, even if just a part of it, from a residential to a commercial one.

3.2. Landlord's Rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

There is no rent control mechanism foreseen for contracts signed after the 1 June 1995. In such contracts, therefore, increases can either be foreseen by the rental contract or else negotiated by the parties upon renewal.

Contracts signed prior to the 1 June 1995 increase statutorily on a triennial basis according to index of inflation.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:

- Are there restrictions on how many times the rent may be increased in a certain period?

The only restrictions that exist concern pre-1995 contracts. In such cases increases can only take place once every three years, with the first permitted increase having taken place on the 1 January 2013.

- Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?

Increase caps are similarly foreseen solely for contracts signed prior to 1995. The permitted increase rate is proportional to the index of inflation. This, however, does not apply in cases where a different increase method would have been contemplated in the contract.

- What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?

The landlord can proceed to request the permitted amount at the turn of every three-year period; in case the tenant wanted to contest the increase he would be able to clarify the issue in front of the Rent Regulation Board.

- Entering the premises and related issues
 - Under what conditions may the landlord enter the premises?

The landlord has the right to enter the premises during any time and in any manner that would have been agreed upon in the contract. If in any case the tenant denied him access the landlord would be able to apply to the Rent Regulation Board and the matter could even be decided summarily. If the tenant persisted in his obstructive behaviour the ruling would be exercised under the supervision of a court marshal.

- Is the landlord allowed to keep a set of keys to the rented apartment?

Although the law does not expressly prohibit a landlord from keeping a set of keys to the apartment, the tenant would be justified in requesting the landlord to relinquish any set of keys in line with the latter's obligation of ensuring the peaceful possession of the premises.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

A landlord is absolutely prohibited from locking the tenant out of the premises. Maltese Courts would consider such action as arbitrary and proceed to order the reinstatement of the tenant within the premises. This would even be the case if the landlord were authorized to terminate the lease by the letting contract itself.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

Maltese law grants the landlord a special privilege over the value of any of the tenant's movables that serve to furnish the dwelling. This privilege cannot extend itself onto objects belonging to third parties.

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 only open-ended contracts that are allowed in Malta are those that were concluded prior to the 1 June 1995. In such cases the tenant would have lifelong security of tenure at rigorously controlled rents. The tenant could choose to abandon the tenancy at will although he would hardly be able to match the favourable conditions enjoyed under such protected contracts.

- 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 has six grounds upon which to file an action for dissolution of the contract:

- | | | |
|------|--|---|
| i) | Want of repairs (following a demand to the RRB and the latter's imposition of a time limit on the landlord for the carrying out of such repairs) | w |
| ii) | Discovery of fault or defects in the property (as long as they prevented or lessened the use for which the property would have been let) | d |
| iii) | Urgent repairs rendering the tenement inhabitable for any period of time | u |
| iv) | Partial eviction of the property following an action brought by a third party touching a right on the thing let | p |
| v) | The happening of an express resolutive condition | t |

vi) the happening of a tacit resolutive condition if the landlord failed to abide by any of his obligations t

- May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?

The tenant cannot decide to terminate the contract unilaterally and in the absence of a pre-negotiated resolutive condition that entitled him to do so he would have to respect the terms of the lease until the end of the stipulated period.

The concept of suitable replacement is not contemplated under Maltese law although the proposition of a new tenant could unarguably render the landlord much more willing to accept the rescission. If a new tenant were proposed and recognised by the landlord it be not be considered an assignment of the lease, but rather a whole new letting agreement altogether.

4.2. Termination by the Landlord

- Open ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?
 - Must the landlord resort to court?
 - Are there any defences available for the tenant against an eviction?

Open-ended, therefore pre-1995, contracts may only be terminated by the landlord after an application to the Rent Regulation Board. The allowed reasons for termination are:

- i) if the tenant failed to pay the rent punctually i
- ii) if the tenant caused any damage to the property or failed to comply with any conditions i
- iii) if the tenant used the premises for any purpose other than that stipulated in the contract i
- iv) if the tenant would have sublet the property without the landlord's consent i
- v) if the landlord required the premises for his own occupation or for that of any of his ascendants, descendants, brother or sister (the Board would i

have to be satisfied about the availability and the suitability of any alternative accommodation for the tenant and it would additionally have to assess whether the greater hardship would be caused to the landlord if permission for recovery were refused or to the tenant if it were granted)

vi)

i

f the tenant were recovering in a hospital or in an old people's home and such institution certified that tenant would have become permanently dependent on the institution (in such cases there must also be no qualifying beneficiary on whom the tenant would have the right to transfer the lease)

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?
 - Are there any defences available for the tenant in that case?

In any contract signed after 1 June 1995 the landlord would be able to avail himself of any following grounds:

- | | | |
|------|--|---|
| i) | change of use, improper use or non-use by the tenant (the failure to use the premises for a period of 12 months would be considered non-use unless the absence would be justifiable due to work, education or health care) | c |
| ii) | the happening of an express resolutive condition negotiated in the contract | t |
| iii) | the happening of a tacit resolutive condition if the tenant failed to respect any of his obligations | t |
| iv) | rent arrears | r |
| v) | immoral use of premises by sublessee despite consent to sublet | i |
| vi) | need of the premises for landlord's own habitation (only if expressly stipulated in the contract) | n |
| vii) | alienation of the dwelling (only if expressly stipulated in the contract) | a |

Prior to filing an action for dissolution due to default in rent payment, the landlord would have to call upon the lessee by means of a judicial letter and only if the tenant remained in default for a further 15-day period would the landlord be entitled to proceed with the judicial steps for dissolution. This procedure must be respected very strictly.

- What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?

If the tenant remained in occupation of the premises beyond the stipulated period the tenant would be able to file an action for his eviction in front of Rent Regulation Board. In this case he could request the case to be heard summarily and decided on the first hearing; this procedure would be accorded to the landlord unless the tenant brought any satisfactory *prima facie* defence.

If despite an unfavourable decision the tenant refused to vacate the premises the landlord would be able to file an application for a warrant of eviction. Upon the issue of the warrant by the competent judge the Court Marshall would give the tenant a final period of up to 8 days and if he still failed to comply with this request the judicial officer would be empowered to proceed with the physical ejection of the tenant. The law entitles the Court Marshall both to break any outer doors as well as to require the assistance of the police.

4.3. Return of the Deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?

Since the law does not foresee this practice there is no rule that lays down the time-limit within which the landlord would be obliged to return the security. Normally the agreement would state that the sum would be returned upon a final inspection of the premises or upon the final settlement of any remaining costs. The malpractice on the part of landlords to claim the deposit despite no sufficiently valid reason is one of the main obstacles faced by local tenants. The onus of proving the damage that justifies the retention of the deposit rests on the landlord.

- What deductions can the landlord make from the security deposit?
 - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

The deposited amount would usually cover any damage except for any deteriorations owed to ordinary wear and tear.

4.4. Adjudication of Disputes

- In what forum are tenancy cases typically adjudicated?
 - Are there specialised courts for adjudication of tenancy disputes?

All matters relating to lease of immovables lie within the competence of the Rent Regulation Board. The ordinary courts have nevertheless retained the power to decide matters relating to the contractual validity of the letting agreement although their competence would abate as soon as a valid title at law would emerge. The competence of the tribunal would therefore be determined by the declarations and pleas raised by the parties.

- Is an accelerated form of procedure used for the adjudication of tenancy cases?

In 2010 a new procedure was introduced in order to expedite cases of eviction. The Board is now vested with the authority to decide such matters on the basis of a special summary procedure i.e. judgment could be given directly on the first hearing should the respondent fail to either appear at the sitting or prove a valid defence in his favour. The application should be accompanied by a sworn affidavit containing the relevant facts and a clear reference to the summary procedure being employed must be made. The respondent would subsequently be ordered to appear within a period of fifteen to thirty days from the receipt of the application, at which point, the Board would either decide the matter forthwith, or else, in the case that the Board were to be satisfied with the *prima facie* defence brought by the respondent, provide him with a further twenty days to file a reply. Where leave to defend would be given, the action would be tried and determined in the ordinary course.

- Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?

Both Mediation and Arbitration are available in Malta. Despite the possible advantages of such methods of dispute resolution, these do not seem to be considered much by local landlords and tenants. In fact, neither the Mediation Centre nor the Arbitration Centre has ever received any applications regarding tenancy law. Moreover, arbitration is only mandatory in certain specific cases contemplated in the Condominium Act.

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?

Applicants can refer directly to the Housing Authority in order to apply for social accommodation. If a person's income did not exceed €8,200 in the case of single persons, or €10,500 plus an additional €700 per child in case of married couples and single or separated persons, he could qualify for a Government unit. Government properties are assigned according to a points system and certain applicants are afforded priority due to: danger or substandard condition of the premises, lack of sanitary facilities, overcrowding, social cases, homelessness, disability, elderly cases who live on their own or share accommodation, cases of refugees and excessive rent.

Individuals who, on the other hand, do not possess assets exceeding €10,000, may apply for a subsidy on the rent of their private rented dwelling, depending on the income that they would earn. The subsidy would be revised every two years.

Any information could be found on: <http://www.housingauthority.com.mt> and the authority could be contacted directly on: customer.care@ha.gov.mt.

- Is any kind of insurance recommendable to a tenant?

There is no legal provision compelling landlords or tenants to insure the premises. It is generally safe for the tenant to inquire whether the premises would have been insured by the landlord or not. In some cases it would be the landlord himself who would pass on the costs of the insurance to the tenant whilst in some others the landlord would simply insure the building, leaving the insurance of the contents in the hands of the tenant. In the case that the building were not insured at all, the tenant would have sufficient insurable interest to cover any possible liability himself. The policies that are offered in the sector are the 'Fire and Special Perils' (FSP), which is meant to cover damage to the property in general (fire, explosion, smoke, escape of water, storm, impact by vehicle etc.), and the 'Public Liability Policy' that covers liabilities for which the insured would be legally liable to pay third parties (e.g. fire spreading to adjacent premises). A tenant might additionally opt for a policy that covered his rent payments in the case that any unforeseeable event prevented him from fulfilling his legal obligations.

- Are legal aid services available in the area of tenancy law?

Legal aid is foreseen by the COCP and is provided at all levels including the appellate courts. It is available both when the person benefiting from legal aid would want to proceed against a third party as well as when any claim is brought against him. Any claim could be referred directly to the Advocate for Legal Aid, whose office is found inside the law courts.

- To which organisations, institutions etc. may a tenant turn to have his/her rights protected?

In the absence of tenant unions the only entities that might be able to help tenants are the Consumer's Association and the Malta Competition and Consumer Affairs Authority but only in those cases of leases contracted with professional landlords. These bodies can be contacted on: <http://www.camalta.org.mt> and www.mccaa.org.mt. In any other case the tenant would have to resort to his personal lawyer.

The NETHERLANDS

Tenant's Rights Brochure

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1. Introductory information

- Introduction on the national rental market
 - Current supply and demand situation

The total occupied housing stock in the Netherlands was 7.2 million dwellings in 2010. Of this total, 4.3 million dwellings are owned, while the private rental sector consists of 646,000 dwellings and the social rental sector increased slightly to 2.3 million dwellings.

The rental system in the Netherlands can be characterized with a few relatively unique features.

- It is the biggest social rental sector in Europe, covering 34% of the total housing stock.
- Tenancy law, especially rent control, is not organized based on dwelling ownership (social versus private), but on dwelling rent level. Therefore, the rent levels of 92% of the rental sector – dwellings with a monthly rent up to € 631.73 between 1 July 2008 and 1 July 2009 – are regulated (Section 3.2, 3.6 and 4.1). Dwellings with a rent level higher than the € 631.73 at the start of the rental contract have a so-called deregulated or liberalized rent level.
- Rent control is concerned with rent levels at the start of the rental contract (rent setting) and with annual rent increases (rent adjustment). The rent level is dependent on the quality of a dwelling which is expressed in number of quality points.
- Officially, social landlords have a public task, while private landlords do not. Having a public task or not is therefore irrelevant for tenancy law.
 - Main current problems of the national rental market from the perspective of tenants

At the moment there is shortage of rental dwellings in the price range € 700 - 1100.

Because of this shortage many tenants do not move to larger houses, although this would make sense regarding their personal situation.

Obtaining a rental apartment at an affordable price in the cities can therefore take a very long time.

- Significance of different forms of rental tenure
 - Private renting
 - “Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc)

For tenancy law as such, the difference between social and public is irrelevant as the legal regime that applies to a dwelling depends on the qualities of the dwelling and not on the nature of the landlord. The only practical difference between private renting and housing with a public task is that Housing Corporations, which own most of the houses in the social sector, use a waiting list for the allotment of their stock.

- 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)

For foreigners that look for a rental home in the Netherlands (and who are not immigrants) it is advisable to hire an agent, as most of the stock is divided by housing corporations that use a waiting list or are rented out for a high price.

- Main problems and “traps” (circa 5) in tenancy law from the perspective of tenants
- Tenants are often unaware of the mandatory nature of most of the provisions of tenancy law; therefore they often pay too much rent or have signed for obligations that they cannot be asked to sign;
- It is very hard for tenants who are already paying a rent that is lowered because of the defects in their dwelling, to force the landlord to repair the defect;

Important legal terms related to tenancy law (see Table 1.1)

Table 1.1 Important legal terms related to tenancy law

Dutch	English
<i>Kale huur</i>	Rent without extra costs
<i>Koop breekt geen huur</i>	Purchase is subject to existing lease
<i>Puntensysteem</i>	Point system; used to determine if a dwelling falls in or outside the regulated category and to determine the price of those that fall within that category
<i>Geliberaliseerde huurprijs</i>	Rent of a dwelling that falls outside the regulated category
<i>Huurcommissie</i>	Rental committee; rules on legal disputes regarding dwellings in regulated category
<i>Gebrek</i>	Defect
<i>Huuropzegging</i>	Notice
<i>Dringend eigen gebruik</i>	the landlord needs the dwelling for a compelling reason
<i>All-in huur</i>	The (illegal) practice of a rent that makes no difference between the price for the dwelling and other costs
<i>Servicekosten</i>	Extra costs for services charged by the landlord (he is not allowed to make a profit from these costs)
<i>Borgsom</i>	Deposit
<i>Goed huurderschap</i>	The legal requirements of behaviour from a tenant
<i>Naar zijn aard van korte duur</i>	Contracts that are of short term by nature (they fall outside the scope of tenancy law)
<i>Hospita</i>	Landlady (in case of rooming)
<i>Campuscontract</i>	Contract for studenthousing
<i>Onderhuur</i>	Subletting
<i>Huurverhoging</i>	Rent increase
<i>Duurzame huishouding</i>	Sustainable household (it is required to become a co-tenant, to have shared a household for at least two years with the main tenant)

<i>Medehuurder</i>	Co-tenant (has the same rights as the main tenant)
<i>Hoofdhuurder</i>	Main tenant
<i>Urgentieverklaring</i>	Declaration of the municipality that a person is in urgent need to get a house in the regulated sector
<i>Sleutelgeld</i>	Keymoney (illegal practice where landlords asks a sum for the mere closing of the contract (handing over the key))

2. Looking for a place to live

2.1. Rights of the prospective tenant

- What bases for discrimination in the selection of tenants are allowed/prohibited? What about, for example, status as a foreigner, student, unmarried partner, or person with a short-term work contract?

A prospective landlord can choose his own tenants when his dwelling falls in the liberalized price regime. However, he has to act within the limitations of the General Act of Equal Treatment that forbid him to discriminate on grounds or race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. A tenant has the right to live with his partner in a sustainable household, also when he is not married. For the majority of houses that fall within the regulated regime, some discrimination in the selection of the tenants is allowed. Housing corporations that rent out most of the stock use a waiting list system based on a mix of years of enlistment and other factors (e.g. urgent need). Municipalities often use a housing permit system for dwellings that fall within the system, based on which they will give permits only to people that fit social and economic requirements.

In metropolitan areas, a policy can be adopted that a housing permit will not be granted to people that want access to the housing market for regulated rental dwellings that have not already lived for six years or more in the neighbourhood. In addition, the policy can determine that the housing permit will only be issued if the applicant has a means of income.

There is a shortage of student housing in most university cities. The rules above apply to students. In addition, there are housing corporations that manage the housing stock of universities and only rent out to students. They use campus contracts that are terminated by the landlord, when the tenant is no longer registered as a student.

Immigrants that have received a residence permit must quickly take part in Dutch society. To that aim, central government based on the Housing Allocation sets a task for each municipality twice a year about the number households to be housed. Municipalities will usually make use of the social rental stock to house the immigrants with a residence permit. This procedure should take no longer than sixteen weeks.

- 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 can ask for information that concerns the personal situation, family size, solvency etc. (see directly below). A landlord cannot refuse to rent out a dwelling because of race, sexual orientation, or other information that is related to the Equal Treatment Act. Suppose that a potential tenant does not disclose that he or she is gay, the landlord cannot rescind the contract for that reason.

However, if a tenant has not disclosed the size of his family, this could provide a reason for rescission as the specific dwelling may not be meant for that number of persons.

- 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)?

A reservation fee is unusual and may be illegal as it seems to be analogue to the illegal practice where a tenant has to pay the landlord key money to receive the key to his dwelling.

Housing corporations charge tenants to become a member of their organization and thus to participate in their selection process. This is not illegal.

Fees for conclusion of contract

Fees for the conclusion of a lease contract will in most circumstances be qualified as ‘key money. By this is meant, that the tenant has to pay to receive the key to his apartment. Such agreements are void, as they are considered as unreasonable advantages for one of the parties to the agreement (landlord) that concern the creation of the contract.

Landlords can only charge tenants for costs that are also in the interest of tenants. A real estate agent cannot charge a tenant for an income check, because this check only serves the interests of the landlord. A housing corporation can only charge tenants for administration costs to the extent that tenants do actually profit from these checks.

Specific rules; broker costs

Contractual agreements that include unreasonable advantages for third parties in the context of the closing of a tenancy contract are void. The protection only applies if the landlord or the agency would have received an unreasonable advantage; charging for a service delivered is not unreasonable.

As a basic rule, an unreasonable advantage exists when the tenant does not (or hardly) profit from the service for which he has to pay. For example, a housing corporation was not allowed to charge its tenants for payments for ‘administration costs’ whereas on the other hand, it could charge its tenants for the costs that it made for getting them a housing permit from the municipality.

- 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)?

Housing corporations usually ask for:

1. Proof of income and financial reliability

- A declaration of income or a tax-overview. This is used to check if the income of the tenant makes him entitled to the house.

- Recent specifications of income or welfare; these are used for the same reason and are proof that the tenant is capable of paying the rent because of his income and/or his entitlement to subsidy.

- Proof from his mortgagee or his previous landlord that he pays regularly.

2. Identity and address

- Passport or European identity-card.

- A recent overview from the city register (*gemeentelijke basisadministratie / register of persons kept by the municipality of residence*); this shows the 'housing history' of tenant, including how long he has lived in the region of the housing corporation, the size of his household and his marital status.

3. Proof of behaviour

- Proof from previous landlord that he has behaved as a good tenant

Other checks:

When a housing permit is required from the municipality, the tenant will usually have to show that he is economically or socially bound to the region (see above, housing permit).

A real estate agency usually acts on behalf of the landlord and is bound to a duty of care that follows from the agency contract. Therefore, their checks on the credibility of the tenant are more extensive.

When the house is in the liberalized sector or is put on the market by a real estate agency, the checks usually only regard his financial situation. The Dutch association of real estate brokers has developed a standard screening test for tenants and includes: an identity check; a credit-check; and a list of questions based on which risk-factors (such as illegal behaviour) are checked.

The credit-check is more extensive than the one that housing corporations usually undertake and includes information from all public sources, such as real estate possession, phone companies, personal financial history (bankruptcy) etc. Usually, a letter from the tenant's employer on the nature of the employment contract is also required.

Information on potential tenants can also be gathered by specialized agencies that do credit checks. However, the landlord cannot check whether a tenant has a criminal record.

In addition, landlords cannot demand that the tenant shows a document on the nature of his behaviour (*Verklaring Omtrent Gedrag, VOG*). The latter is a formal document (provided by the government) that provides information on whether he has or does not have a criminal record. This document can only be asked for in the context of work-relations.

- 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?

Houses that are not owned by housing corporations are rented by individual landlords or through real estate agents. The large online providers of houses that are for sale have also opened rental sections on their websites. Most real estate agents have small sections for houses that are for rent. There are some agencies that specialise in tenancy contract. For most dwellings the role of estate agents is very limited, as housing corporations own them and they fall within the regulated category. Housing corporations have their own system to get tenants that combines a lottery system, a qualification of urgency (e.g. for medical reasons) and years of attendance.

Most importantly, dwellings are divided in accordance with the years of attendance, meaning that someone who has been waiting 10 years for a house, has more chance to gain the house than someone who has been waiting for only 1 year. However, prospective tenants that are in possession of declarations of urgency will go first.

The role of real estate agents outside of the sphere of housing corporations can be twofold: real estate agents operate as broker between landlord and tenant or as a trustee/administrator for the landlord. In the first situation, the agent's only role is to bring the parties together. In the second situation, the tenant will pay his rent to the administrator who is also responsible for the maintenance of the dwelling, delivery of utilities etc. The administrator can then, based on his contract with the owner, act in his own name or on behalf of the (known) landlord.

Note that real estate agents do not only rent out houses for a commercial rate. They often also administer a number of houses that fall in the regulated rent category and that are not owned by a housing corporation. In addition, they sometimes represent housing corporations for houses that fall within the liberalised rental market or that are for sale.

It is not allowed to charge a tenant for the broker-costs if the agency was hired by the landlord (see below). If the agency was hired by the tenant, there are no specific rules that would forbid the agency to charge for its (reasonable) costs as an agency that is hired by a tenant acts as a regular mandatory or broker.

- Are there any accessible “blacklists” (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?

To be able to exchange more information on the behaviour of tenants, housing corporations and professional landlords have started a Register of complaints and opportunities. They use it to collect and exchange information on tenants that have committed housing fraud (e.g. illegal subletting of their apartment) or have misbehaved. If a tenant has caused severe nuisance, this is registered by the landlord who also states if the nuisance is caused by ‘criminal behaviour’, ‘financial nuisance (non-payment, subletting etc.) or psychological nuisance (severe noise e.g. severe neglect of the state of the dwelling).

The register is only accessible for authorised employees of the large, institutional landlords. If a tenant's name is in the register, the landlord will only close a contract with him if he agrees to additional conditions that regard professional assistance regarding his personal and/ or social behaviour. Such a condition applies for 5 years.

Bad landlord

It is not common practice for tenants to perform checks on their landlords. An exception of some relevance is the landlord-blacklist that many student organizations keep that assist in finding rooms for students. There are some examples of lists of bad landlords in large cities and in Amsterdam there is a hotline for ‘undesirable landlord behaviour.’

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)?

Formal requirements

For a tenancy contract is required that the specific good (living space) is made available for the tenant in exchange for a specified counter-performance. Therefore, it is relevant that the object of the lease is determinable.

Except for that, the mere meeting of minds and legitimate trust-requirements of Dutch contract law are enough. It is sufficient that if a tenant starts to pay rent and if this rent is not refused by the landlord, it is assumed that there is a contract. In addition, it is not necessary that the rent is paid in money: it can also be paid by providing a service (such as maintenance or renovation of the dwelling) but only if parties have specifically agreed to that.

Duty to register

There are no registration duties for lease contracts.

- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?

A tenancy contract must include the address of the dwelling. If a mistake is made, this will usually be without consequences when both parties are aware of what is the actual object of the lease. Other formal requirements do not exist. A written contract is not a constitutive requirement for the emergence of the legal relation. If it is incomplete, the civil code-rules apply to the relation and, as most rules are mandatory, the most important aspects of the contract are the agreement on price, extra costs (service costs) and a description of the object of lease and its defects. Legal consequences will most likely occur when defects of the dwelling are not mentioned in the contract. They are then not said to be included in the rent and could result in a lower rent.

- Duration: open-ended vs. time limited contracts (if legal, under what conditions?)

The general rule in Dutch tenancy law is that contracts are open-ended. There are some exceptions. The so-called campus contract that applies to student housing can be terminated by the landlord, when the tenant is no longer registered as a student and on the condition that he rents out the dwelling or room to someone who is.

There are contracts that are closed to prevent vacancy of dwellings (based on the Vacancy Act). They have to be closed for a minimum period of six months and require a permit.

Note that if the contract does not specifically refer to this permit, the contracts will be considered to be for an open-ended period, no matter what parties have agreed to.

Also note that fixed term-contract do bind the tenant. Thus, if a tenant has agreed to stay in a dwelling for 1 year, he will have to do so. But after this year, the landlord can only terminate the contract under specific circumstance as open-endedness is the general legal rule.

- Which indications regarding the rent payment must be contained in the contract?

There are no specific requirements but, as a general rule, the contract will have to

separate rent from other costs. If the landlord fails to do so, he will risk a severe penalty (the rental committee will lower the rent to 55 % of what it deems to be the maximum reasonable price).

The general rule is that rent is paid monthly; if parties want to make a different agreement or want to set a specific date for payment, it is advisable to write this down.

- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

Dutch tenancy law draws a distinction between small defects that have to be repaired by the tenant, and all other defects that have to be repaired by the landlord. Landlords cannot shift the costs for repairs that he is legally obliged to carry out to tenants.

A defect is defined as a situation or feature of the good, for which the tenant cannot be blamed and due to which the good cannot be of use to the tenant in a way that a tenant, when the contract was signed, could have expected from the good as such. Specific shortcomings are listed as defects by Governmental Decree Decision on defects. This decision distinguishes three categories of defects: A, B and C. When a defect falls within one these categories, the legal consequence is that the rent can be reduced to 20% (A-defects), 30% (B-defects) or 40% (C-defects) of the so-called maximum reasonable rent for houses that fall into the regulated price category. For houses in the liberalised regime the lists of defects are still of some relevance but the tenant will have to start a procedure at a regular court, instead of turning to the Rental Committee, and legal consequences are not as clear.

Note that if the dwelling has a defect the tenant has first of all the duty to notify the landlord of the existence of the defect. If he fails to do so, he can be held responsible for the damages that are caused by his omission.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?
- No, not in a general sense.
 - Is the tenant advised to have an inventory made so as to avoid future liability for losses and deteriorations (especially in the case of a furnished dwelling)?

Yes, this is always advisable.

- Any other usual contractual clauses of relevance to the tenant

The tenant should check which defects are already included in the price of the apartment. It is advisable to have his contract and the rent checked within six months after closing by one of the many rental advice teams, as many landlords ask a rent that is too high or include other conditions (such as a fixed period) that are void. The six month period is of importance because a tenant who has signed for a liberalised rent can within this period ask the rental committee to declare that his dwelling falls in fact in the regulated category and lower the rent accordingly.

- 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.)?

There are no specific restrictions to who can or cannot be a tenant in Dutch tenancy law. The tenant is allowed to live with his spouse or his partner.

For Dutch law the concept of co-tenants and sustainable household are of importance in this regard.

The category applies to relations like those of married people between two people that live as partners in a sustainable household relation that is meant to last and not, for example, to students (that are sharing a household for financial reasons) or parents and children (the shared household of which is meant to end). Spouses and registered partners (unmarried couples that have registered their relation) are always regarded as co-tenants as long as the dwelling is their main residence. If a tenant shares a sustainable household with someone, he can apply for co-tenancy after two years.

Tenants can live with one (unregistered) partner who can also become co-tenant. It follows from the constitutional right to family life that a tenant can live with his children. In practice, if the tenant has somebody to move in, this is not in itself a ground for eviction as long as he keeps his main residence in the dwelling. He may also sub-lease a part of his dwelling.

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

As a general rule, the tenant is not obligated to live in the dwelling. However, the Civil Code requires the tenant to use his dwelling as a good lessee and that will under normal circumstances mean that he has to live in the dwelling. Of relevance here is that most dwellings are owned by housing corporations that have a duty towards other potential tenants. This makes the duty to use the dwelling as a main residence of enhanced importance, because if it is not used accordingly the landlord (housing corporation) has an interest to rent the dwelling to another tenant. If a dwelling is used as a *pied à terre* and the landlord is not a housing corporation, the situation will be different. Still, the duty to use the dwelling does not necessarily mean that the tenant needs to have his main residence in his dwelling, if the contract does not say so. Therefore, most landlords include this duty in the contract. Note that the tenant has the burden of proof that he uses the dwelling as his main residence if the landlord claims otherwise.

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

There is a specific regulation for the case of divorce or separation to protect the partner that moves out pending the separation procedure. His or hers moving out does not affect the position as co-tenant. However, when leaving of the marital dwelling is not connected to the divorce, the spouse will lose co-tenancy rights as a result of his/her moving out. However, he or she can still become main-tenant if determined in the divorce-covenant. If the spouses cannot reach an agreement on who should stay in the dwelling after separation, they may ask the court to take that

decision for them. He will make his decision, based on a weighing of interests. In the case of a non-marital relation, the situation depends on whether the partner is a co-tenant or not. If so, the ex-partners have to make an arrangement for the dwelling amongst them or have to ask the court to do so for them. If not, the dwelling will stay with the main tenant.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);

Contractual co-tenancy can be combined with a co-optation right for the group to choose a new tenant. This is often the case in student houses. There is no statutory regulation of co-optation. The practices are either based on contractual agreements with the landlord or on behavioural practices. If the latter is the case, the landlord has more options to change the practice if his interests outweigh those of tenants. If the co-optation right of tenants is mentioned in the contract, the landlord cannot end it. He may however choose to not rent out the specific room (-s) and choose an 'extinction' strategy to end the co-optation practice. He can also give notice to the group, but only on the limited grounds that are mentioned in the civil code.

- death of tenant;

When a tenant dies, the persons with whom he lived have a right to stay in the house for six months, after which he can become the main tenant, but only by court order if the landlord refuses to continue the contract with them.

- bankruptcy of the landlord;

When a tenant is bankrupt both, the receiver ('curator') and the landlord, may prematurely terminate the lease agreement, provided notice of termination is given at an effective termination date. Furthermore, the agreed or customary notice periods must be observed, on the understanding, however, that three months' notice will in any case be sufficient. If rent has been paid in advance, no notice of termination of the lease can be given at an effective termination date before the last day of the period for which the rent has been paid already. The rent that becomes indebted as of the day of the declaration of bankruptcy will be an estate debt.

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

Subletting: main rule

A tenant is not allowed to sublet the dwelling without consent of his landlord. However, he is allowed to sublet a part of his dwelling as long as he stays to have his 'main residence' in that dwelling. The consent for subletting can be tacit. However, this has to be shown by the main tenant as consent is not presumed.

Subletting as a circumvention practice

The most common type of abuse of the subletting practice is the subletting of apartments by tenants. The reason is that the market value of dwellings with regulated rents is often higher than the rent itself, especially in the cities. When a tenant moves out of his apartment, for example to live with his or her partner, he will

often sublet his apartment for a profit.

Subtenant becomes main tenant

When the relation between the main tenant and the landlord ends, the law provides a rule that allows the subtenant (of independent living space) to become main-tenant. He will have to notify the landlord that he wants to continue the tenancy. It is irrelevant whether the landlord has previously agreed to the situation. In practice this means that he has to start paying the rent to the landlord. If the rent is not refused by the landlord within six months, he will have to accept the new tenant.

- Does the contract bind the new owner in the case of sale of the premises?

The principle is that tenancy agreements are not terminated by sale. As of the moment of transfer, the new owner becomes, by law, the new landlord and has all the rights and obligations the previous owner had towards the tenant. After the transfer, the old owner can no longer be held liable to perform. At the most, he can be liable to compensate the damage caused by his actions. In addition, the new owner cannot base legal claims on breach of the contract by the tenant that took place before he became owner.

The acquiring party is only bound by those contractual provisions of the lease agreement that directly relate to the use of the leased property as granted by the landlord in exchange of the counter performance to be performed by the tenant. The connectedness is of relevance, not if he was aware of the existing duty. He will for example be bound to an option-to-buy of the tenant if this option has resulted in a higher rent (is part of the agreement), he is bound to a verbal agreement that allows the tenant to not pay the rent for a few months, he is bound to a co-optation rights of tenants. He is not bound to the agreement between tenant and landlord that the garden of the building (not part of the rented dwelling) may be used to stall bicycles.

- 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?

Utilities costs are costs and expenses associated with a service or performance of which the tenant takes advantage, mainly heating, electricity and gas. Common practice is that the tenant concludes a contract of supply with a utility company. But it does happen that the landlord concludes a contract and charges these costs to the tenant. In some apartment buildings have a central heating system for the whole block that deprives the tenant of the option to choose his own provider.

Which utilities may be charged from the tenant by the landlord? What is the standard practice?

The costs for utilities are covered in the civil code. The section refers to the Decision on Service costs of the Minister of Housing. This lists ten categories of service costs that can be charged from the tenant:

- heating, electricity, gas and water;
- movables (including furniture, heating installations, kitchen appliances);
- small repairs that fall under the responsibility of the tenant but are being carried

out by the landlord;

- costs related to garbage collection and transport;
 - costs for the caretakers;
 - administration costs for the specific services;
 - signal delivery for internet, radio and television;
 - electronic appliances (e.g. alarm; intercom);
 - insurances;
 - costs for the services for the common spaces such as a common rooms or staircases.
- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

Sewerage charges, pollution levy, waste collection levy, refuse collection charges , immovable property tax are not considered as costs for which the landlord has provided a service. These costs are directly charged to the landlord or user of the dwelling. The landlord may charge these cost separately to the tenant, if the tenant hasn't received assessment and paid the amount due.

- Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?

Yes, but only if specifically agreed in the contract and the landlord is not allowed to make a profit from these costs.

- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?

The landlord will usually require a security deposit at the beginning of the contract. An agreement concerning a security deposit is valid unless the amount is unreasonably high. Generally speaking a deposit of one month of rent is stipulated by the tenant. An amount of more than three months' rent is usually considered to be unreasonable and therefore null and void

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

The deposit may be paid into a separate blocked account. Alternatively the tenant may issue a bank guarantee. In practice, it is often just sent to the landlord and settled with the rent for the last month before the tenant moves out.

- Are additional guarantees or a personal guarantor usual and lawful?

These are lawful but not usual. The practice of a personal guarantee is mostly known in parent-student relations where a parent will personally guarantee the rent payments. Alternatively goods could be pledged, but this is not common practice.

- What kinds of expenses are covered by the guarantee/ the guarantor?

The deposit may be used for:

- repairing damages to the dwelling beyond normal wear and tear;
- setting off against the outstanding rent;
- restoring the landlord's personal property, such as keys or furniture, other than normal wear and tear. If the deposit hasn't been set off or used to pay the damage, the landlord must return the deposit (but not the interest).

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 defect is a situation or feature of the good, for which the tenant cannot be blamed and due to which the good cannot be of use to the tenant in a way that a tenant, when the contract was signed, could have expected from a good as such. For living space, the civil code determines that specific shortcomings can be listed as defects by Governmental Decree, this has resulted in a regulation (Decision on defects) of the Minister of Housing that was worked out by the Rental Commission in the Book of Defects. There are three categories of defects: A, B and C. When a defect falls within one of these categories, the legal consequence is that the rent can be reduced to 20% (A-defects), 30% (B-defects) or 40% (C-defects) of the so-called maximum reasonable rent for houses in the regulated price category. If, for example, the highest reasonable price for the house is € 500, the rental commission will lower it to € 150 when there are severe smells from the sewerage system.

For dwellings in the liberalised category, the lists of defects is also of relevance but the tenant will have to start a procedure at a regular court, instead of turning to the Rental Committee, and the percentage of rent-reduction is not as clear.

The general definition specifically excludes the situation in which third parties claim a right to the leased object, or are in practice disturbing the enjoyment of the good (e.g. by occupation of the dwelling). Mould and humidity are defects and can result in rent-reduction.

Noise can be a so-called C-defect (see above). Generally speaking, a defect exists when noise is the result of a condition in the dwelling that falls under the responsibility of the landlord, e.g. cracking sounds of the floor or stairs, a noisy technical installation, or a lack of isolation of the floors or walls. If the neighbours are causing noise (or any other kind of trouble) and are renting from the same landlord, the noise will be a defect and the landlord will have to take action towards his tenants reminding them of their duty to behave as good tenants. However, if the noise is caused by third parties (not renting from landlord), the noise will not qualify as a defect.

- 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)

If there is a defect of the dwelling the tenant has the duty to notify the landlord of the existence of the defect. If he fails to do so, he can be held responsible for the damages that are caused by his omission.

If the defect is not a small defect that he can repair himself, and the landlord does not take action upon the notification, the tenant has various options:

- If the dwelling is within the regulated regime, he can, 6 weeks after the notification, start a procedure at the Rental Committee and ask for a rent reduction. He has to start the procedure within 6 months.
 - The tenant can also start a procedure at district court to obtain a rent reduction pro rata of the infringement the defect. For a house in the regulated regime this would usually mean asking the court to apply the defect categories of the rental commission as mentioned above. The court is not required to apply the policy of the rental commission but has to take the list of defects of the *Decision on Defects* into account. For the tenant who does not rent under the regulated regime there is no general rule other than the pro rata reduction. He can start a procedure at a district court and ask for immediate action of the landlord.
 - He can repair the defect on behalf of the landlord (and on his costs).
 - In practice tenants will announce their plan to have the defect repaired to the landlord and then diminish the rent accordingly until he is reimbursed for the costs.
 - He can suspend his payment of the rent while waiting for the landlord to take action. However, tenants should be careful not to stop paying the rent in total and, preferably, reserve the payments in a specific account.
 - He can ask the court to (partially) terminate the agreement in accordance with the nature of the defect.
 - He can claim damages.
- Repairs of the dwelling
 - Which kinds of repairs is the landlord obliged to carry out?

The tenant can only be held responsible for small repairs. This rule cannot be set aside. If the tenant carries out other than small repairs this will have to be understood as in-kind payment of rent.

The Decision on small repairs of the Minister of Housing limits the small repairs that the tenant has to carry out or for which he can be charged.

- Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

Tenants have a statutory right to repair defects that have not been repaired by the landlord but fall under his responsibility. He can do so without court order, after he has given the landlord a (final) term to repair the defect. If the landlord then fails to undertake action, the tenant may have the defects repaired and settle the reasonable costs with the rent. If he chooses to do so without court-order, he risks a procedure of the landlord who may claim that there wasn't any defect to be repaired or that the costs made by the tenant were unreasonable high.

- Alterations of the dwelling
 - Is the tenant allowed to make other changes to the dwelling?
 - In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)
 - Affixing antennas and dishes
 - Repainting and drilling the walls (to hang pictures etc.)

Tenancy law discerns two categories: improvements and repairs. Here we discuss changes and improvements. The civil code includes a regulation on changes of leased objects that is semi-obligatory for tenants. The general rule is that a tenant, without consent, is allowed to make changes to the dwelling that can easily be removed. The law determines that the landlord has to consent to changes that do not result in a decrease in value and do not decrease the chance of the landlord to rent out the dwelling within 8 weeks. If the landlord does not consent, the tenant can start a court procedure in which the landlord has to include the persons that have a real right in the dwelling. The court can add conditions to his consent, including the right for the landlord to increase the rent.

The other general rule is that the tenant removes the improvements and changes that he legitimately made, but does not have to do so without a court order (or a specific agreement with the landlord). If the landlord profits from the changes, he might have a claim based on unjustified enrichment. This is not often the case and it is common practice that the tenant closes an agreement with the new tenant (if any) who will then pay for (or accept) the improvements and changes to the dwelling.

When a tenant is handicapped, the alterations he needs to use his house may fall under his legal right to add changes that are easily removable, or to his right to changes that are necessary for his enjoyment or for an adequate use of his dwelling.

Various cases concerning parabolic antennas have resulted in many nuances. The general rule is that a court will regard the provision that the right to change the façade can be excluded as a legal authorization of a third party (the landlord) to infringe the tenant's constitutional rights that is not unlimited and meets the requirement of proportionality and relativity. It will then weigh the landlord's interests against those of the tenant. Generally speaking, the court will ask: whether the parabolic antenna is disfiguring. This is for example not the case if it is not visible from the street. If so, there should be an explicit provision in the contract to prevent the instalment and even then there should be an alternative available for the tenant to gather the information he needs.

The general rule is that a tenant, without consent, is allowed to make changes to the dwelling that can easily be removed. This will include painting and drilling.

- Uses of the dwelling
 - Are the following uses allowed or prohibited?
 - keeping domestic animals
 - producing smells
 - receiving guests over night

- fixing pamphlets outside
- small-scale commercial activity

The landlord can include in the contract the interdiction to keep pets. This interdiction cannot be absolute.

Tenants have the right to produce smells, however not to the extent that these smells cause unreasonable nuisance for the neighbours.

The landlord can prevent a tenant from living with (too many) other people, receiving guests or keeping animals if they are causing (severe) nuisance. The landlord cannot prevent a tenant to share a household with his partner or family. He can not prevent a tenant to receive overnight guests.

The general rule is that a tenant has the right to the enjoyment of his dwelling. This includes the use of the window that he has leased. However, if the poster would cause severe nuisance to his neighbours, his right to enjoy his leased object and (depending on the content) his right to express his opinion would have to be weighed against the nuisance.

As a general rule, the tenant will have to use his dwelling in accordance with its destination. This will in most circumstances prevent him from starting a hotel or any other commercial activities in his dwelling, even when this is not specifically forbidden in his contract. However, not every commercial activity is a severe breach of the contract. Especially not, when it does not cause nuisance to the neighbours and does not result in a change of destination of the dwelling (e.g. renting out one room during specific holidays).

Many cases have dealt with illegal hemp plantations of tenants in their dwellings. The existence of such a plantation is in itself not a cause for rescission of the contract. Only if the plantation results in a change of destination of the dwelling (a plantation in one room vs virtually changing the whole dwelling into a plantation), if the plantation serves a commercial cause, if the tenant illegally taps electricity for the plantation, and if he causes nuisance to his neighbours, this gives cause for rescission..

3.2. Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

Dutch tenancy law qualifies the value of living space in an objective manner, meaning that the price depends on the characteristics of the object and not on the nature of the landlord. This system determines whether a dwelling falls in the regulated sector or the 'liberalized' sector, the latter meaning that landlords are free to set the price themselves.

As a result, most of the rents are regulated by the national government. The government applies a point system to determine the maximum price that is applicable to all rentals that fall within the regulated regime.

Within this system, there are four different categories:

- Independent living space;

- Dependent living space (such as rooms);
- Mobile homes and their stands;
- Service flats.

A dwelling qualified as independent living space that has more than 142 points falls in the liberalised category. However, contracts that were closed before or on 1 July 1994 fall within the regulated system as long as they were not closed for houses that were realised after or on 1 July 1989. All other houses that are governed by the section on tenancy law in the civil code also fall within the regulated system.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?

For regulated rents, the maximum increase-percentage is yearly set by the Minister of Housing. Automatic increase clauses (index-oriented) are allowed, but only if they do not exceed that maximum amount.

There are no general rules for liberalized rents , except for the rule that an increase of rent can only take place once per year. In addition, the rent itself can be unreasonable if there is a major difference between the rent and what is generally paid for comparable houses.

For dwellings that fall within the liberalized regime, indexation clauses are common practice.

Facilities and energy performance

If specific facilities have been added to the dwelling by the landlord, such as facilities for disabled people or facilities that increase the quality of the dwelling (e.g. isolation or other energy performance measures), the rent can be increased in accordance with the costs of those facilities.

This regulation does not include the repair of defects. However, if the landlord has repaired defects in the dwelling, he may increase the rent once one more time (2 times instead of 1 time per year) with the increase that he could not add because of the defect.

A case in point are isolation of outside walls and crawl space and the replacement of the heating kettle. The tenant can force the landlord to take these measures as long as he is willing to pay an increase of the rent.

- Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?

There is no maximum rent as such. However, regulated rents are determined by the point systems. Every point corresponds with an amount in euros. Therefore, every house in the regulated category has a maximum rent.

- What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?

The rent increase announcement has to be sent to the tenant two months in advance. The proposal should contain the present price, the percentage of increase, the date from which on the new price will be used, and the way in which the tenant can object to the increase. There is no fixed legal consequence when the landlord does not fulfil these requirements. However, when the tenant objects to the increase and the landlord starts a procedure at the Rental Committee, his claim may not be accepted by the commission because of formal defects.

If the tenant objects to the increase, he has to respond to the proposal in writing within 6 weeks. If he does so, the landlord can start a procedure at the rental commission. If the tenant fails to respond and does not pay the increase, the landlord has to send him a reminder-letter within 6 weeks (after the expiration of the first six weeks period) after which the tenant has to start a procedure at the Rental Committee. However, if the landlord has sent him a registered letter, he can start the procedure himself after 6 weeks.

If the tenant pays the rent and does not start a procedure at the Rental Commission he is assumed to have accepted the increase.

In 2013 a regime was introduced that allows landlords to increase the rent of their tenants based on their income. The income is measured by household. The percentage of increase is yearly set by the Minister of Housing.

Objection of tenant to rent-increase

Objections that a tenant can make to the increase are:

- the price has been lowered by the Rental Committee because of defects;
- his household income is lower than the income the landlord based his rent increase on;
- the increase has not been sent to him in accordance with the law.

For dwellings in the liberalized regime, there are no general rules setting a maximum rent increase or the way in which the tenant has to be notified of the increase.

The rule of one price increase per year does apply to dwellings that fall within the liberalized regime as well as the exception that an extra price increase is allowed only when the quality of the dwelling is improved by the landlord.

- Entering the premises and related issues
 - Under what conditions may the landlord enter the premises?

As a principle, the landlord cannot enter the premises without consent of the tenant. This follows from the constitution that provides individuals with the right to privacy and provides a specific prohibition to enter somebody's house without permission. To make sure the landlord has the right to rent out his house to a new tenant or to sell it after termination of the contract, the tenant has to allow him to show the premises to interested parties. This duty is specifically dealt with in the civil code.

- Is the landlord allowed to keep a set of keys to the rented apartment?

The landlord is not entitled to a set of keys

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

The landlord is not allowed to lock a tenant out of the premises himself. He will have to hire an usher to do so.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

He does not have a specific right to do so, but as a creditor he can ask the court for permission to do so.

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?

For the termination of contracts, the general rule is that the tenant can terminate the lease contract for a period that is equal to the period of the rent payment (but never longer than 3 months), which is usually 1 month. This rule cannot be set aside.

Dutch tenancy law accepts three grounds for termination of contracts:

- notice;
- rescission and termination by mutual agreement. A contract does not end when the period has expired: the tenant has to give notice.
- 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)?

If tenancy contracts are closed for a fixed period, the tenant will have to respect that period and cannot terminate the contract unless agreed otherwise. In (very) exceptional circumstances, general principles of contract law, such as unforeseen circumstances or rules of good faith, may lead to a different result.

Some other exceptional circumstances can result in the rescission of the contract. When a defect results in a situation that makes it impossible to live in the dwelling or that causes danger, the tenant can then terminate the contract immediately without court interference.

In addition, when a defect exists in the dwelling, the landlord is under no obligation to restore but that, on the other hand, makes it impossible to enjoy the fruits of the contract, the tenant (as well as the landlord) can terminate the lease. The termination may still result in a duty to pay for damages, based on the specific rules for defects or the general duties of breach of contract. Examples hereof are defects that fall under the tenant's liability or under his accountability

Another example is when the dwelling cannot be used due to an unforeseen government measure. These situations do only apply when it is undisputed that the dwelling cannot be used, otherwise the lease can only be terminated by a court or will be replaced by a partial termination of the contract that will result in a lower rent for the period of the lease.

- May the tenant leave before the end of the rental term if he or she finds a

suitable replacement tenant?

For the termination of contracts, the general rule is that the tenant can terminate the lease contract for a period that is equal to the period of the rent payment (but never longer than 3 months), which is usually 1 month. This rule cannot be set aside and he does not have to find a replacement tenant. However in the exceptional situation in which the tenant has bound himself to a fixed period, he does not have such right and will have to ask for cooperation of 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)?
 - Must the landlord resort to court?

Dutch tenancy agreements do not expire unless they are terminated by notice of the tenant or the landlord, whereby the landlord is bound to a limited number of legal grounds for notice.

For open-ended contracts the landlord has to respect one month for every year that the agreement has lasted to give notice with a minimum of 3 months and a maximum of 6 months in advance.

In case of time-limited contracts the landlord has to give notice at the moment that parties have agreed on.

There are some exceptions to these rules that concern specific categories:

- Student housing (campus contracts): the contract ends when the tenant is no longer registered as a student.
- Contracts that are of short term by nature of the agreement: the general rule of lease contracts applies which mean that they end on their terms.
- Dwellings that are listed to be demolished by the municipality.
- Dwellings that fall under the Vacancy Act: the period of notice is not shorter than 3 months. In addition, if the period to give notice is not being taken into account, the notice is treated as if it was given in the right manner.

Similar rules for all types of dwelling	
Eviction procedure	Separate ruling of court required; can only be carried out by a bailiff.
Protection from eviction	No general rules on protection; courts may grant a <i>term de grâce</i> to tenants
Effects of bankruptcy	Bankruptcy will provide a reason for termination of contract but termination (based on non-payment) may be prevented if decision on 'clearing of debt for tenant' is taken by court (or as a preliminary decision by mayor & aldermen). The tenant will then have to fulfil duties of contract from then on but the landlord cannot evict tenants because of previous breach.

A landlord can terminate an agreement if:

- A tenant does not behave as can be expected from a good tenant;
- If the rules for urgent self-use apply;
- If, in rare circumstances, a contract ends on its terms;

- If the object of the agreement (the dwelling) can no longer be used in the agreed manner.

Besides this, the local government can evict tenants if:

- They are causing severe nuisance (either related to drugs or criminal behaviour)
- It is dangerous to live in the house.

The sole legal basis for the eviction is that the tenant does not longer have a legal right to live in the dwelling. In court cases, landlords will usually ask the court to terminate the lease and to grant the right to evict the tenant as a landlord cannot evict a tenant without a court order. As a contract cannot easily be terminated, the court will weigh the tenant's interests against the landlord's interests in the termination-procedure.

If the court has granted the termination, it will usually also grant the eviction.

It will grant a *term de grâce* to the tenant, if it feels that to be reasonable.

Termination of contract without court interference

- Rescission based on of closing of the dwelling by the municipality

A specific situation exists when a municipality closes the dwelling because of violations of the Opium Act, or severe nuisance. In such a situation the landlord can terminate the contract without court interference. In the specific circumstance that the tenant is not responsible for the behaviour that caused the municipality to close the dwelling, the city may have a duty to provide an alternative living space because of a violation of the tenant's constitutional rights (Article 8 ECHR).

- Rescission based on of impossibility

The other exception to the requirement that a contract can only be terminated by one of the party's with a court order exists when the enjoyment of the good has become impossible due to a cause that the landlord does not have to repair, he and the tenant can terminate the contract.

- Are there any defences available for the tenant against an eviction?

The landlord can only terminate a lease contract in specific situations that are laid down in the Civil Code. The law distinguishes between the statutory grounds for notice, that apply specifically to dwellings and the general grounds for rescission of a lease contract by court.

The statutory grounds for termination are limited to 7 specific cases:

1) Bad behaviour of tenant

The tenant does not behave as can be expected from a good tenant.

2) Rent out and move back (diplomat- clause)

A tenant or landlord wants to move back in his apartment after the agreed fixed period of the contract (so-called 'diplomat-clause,').

3) Urgency

The landlord needs the dwelling for such an urgent reason for his own needs that his interest should prevail over that of tenants or sub-tenants. In this situation, he will have to provide an alternative for his tenant.

4) Refusal or reasonable offer

A tenant refuses to accept a reasonable offer for the same dwelling when that dwelling has been renovated or, in case of a dwelling that falls in the liberalized category, a reasonable offer for a rent-increase is refused by the tenant.

5) Realisation of land use plan

The landlord wants to realise the use for the dwelling, as determined by the municipal land use plan.

6) Dependent living space: interests of landlord outweigh those of tenant

The lease concerns a living space that is not independent but depends on other spaces in the dwelling where the landlord has his main residence, and he can reasonably argue that his interests for the termination of the contract outweigh the interests of the tenant to continue the lease.

7) Extra-judicial rescission; Enjoyment of good is impossible

The contract can be rescinded when the enjoyment of a leased good has become impossible because of a deficit that the lessor is not required to repair, the contract can be set aside by the lessee or the lessor without the obligation to ask the court to set aside the contract. This is the case when repair is either impossible or involves (high) financial investments that cannot be expected of the lessor.

Execution proceedings

The landlord has the right to terminate the lease in case of renovation works, when he wants to realise the new function of the building as mentioned in the zoning plan, and when he wants or needs to demolish the building in which the tenants are living and replace it with a new building. It must however be proven that the tenant cannot return to the renovated or new-constructed building.

In case of termination the landlord is required to pay at least a minimum payment for moving and refurbishing costs. The Minister of Housing yearly decides on a minimum amount for these costs in the Regulation on the minimum contribution for moving- and furnishing costs for renovation. In 2013, this minimum amount was set at € 5,658.

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?
 - Are there any defences available for the tenant in that case?

If the previous tenant refuses to hand over the dwelling to the new tenant, the landlord will have to start a legal procedure (eviction) to force the tenant to handover the dwelling.

For double-lease situations, the general rule is that the tenant that came first, has the right to the dwelling. This is based on an analogous interpretation of the rules for real rights. However, if the second tenant is already living in the dwelling and is paying rent, he may claim the protection that the law gives to tenants. In that case, the court will have to weigh the interests of the tenants. The landlord has to pay damages. Courts have also allowed landlords to offer a replacement dwelling to the tenant. If

the second tenant (that now lives in the apartment) acted in bad faith, the first tenant will be able to file a claim based on tort (misuse of the breach of a third party) and ask for in-kind damages (the dwelling).

- What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?

If the previous tenant refuses to hand over the dwelling to the new tenant, the landlord will have to start a legal procedure (eviction) to force the tenant to handover the dwelling.

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4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?

If the dwelling is returned in a state of good repair and the tenant is not behind on his rent, the deposit should be returned within 1 month of notice.

- What deductions can the landlord make from the security deposit?
 - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

The landlord will usually require a security deposit at the beginning of the contract. An agreement concerning a security deposit is valid unless the amount is unreasonably high. It can be used as a guarantee deposit to cover future claims of the landlord or even to set off against the outstanding rent.

The deposit may be used for:

- repairing damages to the dwelling beyond normal wear and tear;
- setting off against the outstanding rent;
- restoring the landlord's personal property, such as keys or furniture, other than normal wear and tear. If the deposit hasn't been set off or used to pay the damage, the landlord must return the deposit (but not the interest).

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
 - Are there specialized courts for adjudication of tenancy disputes?

Lower Court	Appeal	Type of cases
Section Kanton District Court, Subdistrict sector (Supreme Court	All cases in first appeal with the exception of the ones that fall under rent committee jurisdiction; appeals from rent committee cases
Rental Committee	District Court, Subdistrict sector	For regulated rents: Prices, defects, service costs, & conflicts between tenant-committees/ organizations and landlord

For regulated rents there is a specific, low-cost jurisdiction: the Rental Committee. This is an independent administrative body, established by the State Department of Internal Affairs. It is a national institution that takes seat in various cities across the country. It rules about 8,000 cases per year. These cases are generally about defects, service costs, the height of the rent (about 60% of the cases), the height of the yearly rent increase, so-called rent subsidy-declarations, and conflicts that stem from the *Tenants and Landlords (Consultation) Act*.

- Is an accelerated form of procedure used for the adjudication of tenancy cases?

Landlords often choose interim proceedings if they want to terminate a rental agreement. In cases of non-payment of rent, or bad tenant behaviour this option is available and often used. Tenants use this procedure in case of urgency, for example when landlords do not repair a defect that causes a dangerous situation.

- Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?

This is available, however, not compulsory and also not commonly used although this may change in the near future as some pilots have started

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?

Housing corporations often use a lottery system (see above) to distribute dwellings. In addition, tenants have to fulfill the requirements for a housing permit that are set by the municipality. These requirements will often concern economic or social binding with the specific city.

- Is any kind of insurance recommendable to a tenant?

It is advisable to insure private liability for damages and to insure the household property of the dwelling.

- Are legal aid services available in the area of tenancy law?

Yes, many cities have installed advice groups that are free of charge. In addition, access to the rental commission is cheap.

- To which organizations, institutions etc. may a tenant turn to have his/her rights protected? [please indicate addresses, email addresses and phone numbers]

Woonbond (interest organization for (prospective) tenants)

Nederlandse Woonbond

Nieuwe Achtergracht 17

1018 XV Amsterdam

www.woonbond.nl;

hotline: +31 (0) 205517755

Huurcommissie (Rental Commission)

Hotline: 1400/ +31 (0) 774656767

Huurcommissie: www.huurcommissie.nl

POLAND

Tenant's Rights Brochure

dr Grzegorz Panek

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1. Introductory information

- Introduction: The national rental market
 - Current supply and demand situation

Despite various government initiatives, the scarcity of housing units has remained a considerable problem in the 21st Century. Despite the increased investment activity of developers and Social Building Associations, in the last decade no drastic improvement could be observed. The roots of this situation can be traced to the scarcity of funds available for investment and insufficient spatial planning. In the period between 2003 and 2009, the number of newly built housing units was 950 thousand, while the number of households increased by about 1,100,000. This means the actual deficit of about 1,850,000. Taking into account the grey market of residential leases and premises occupied without any reported tenure, the deficit has reached the level of approximately 1.4 – 1.5 million units. Various sources provide differing data in this respect. In 2011, A. Szelałowska assessed the shortage at 1,162,000.

- Main current problems of the national rental market from the perspective of tenants

The most striking problem regarding the housing situation in Poland is scarcity of housing units. The number of units per 1000 inhabitants is the second lowest in Europe, following Albania. This problem and its scale have multiple grounds and require much time – as well as political attention – to be addressed properly. In 2008, the proportion of houses erected before 1989 to the overall number of residential houses amounted to 84.8%. Over the past 20 years, the housing stock has grown; however, the demand has not been satisfied to a sufficient degree.

Another problem is the relatively poor condition of private tenements, attributable to former regulation of rents which could not be freely raised even when they finally became negotiable. A survey carried out in 2010 in 21 Polish cities revealed that in most of the examined places, both when it comes to municipal stock and housing cooperatives, the level of rents and bills did not cover necessary replacement investments and renovation of the available resources. While cooperatives generally handle the situation without any major problems, municipalities must cope with their old stock. Large cities, where repairs and new constructions are more frequent, make an exception in this respect.

- Significance of different forms of rental tenure
 - Private renting

In the private rental market, there are a considerable number of "informal" lease contracts, not registered at tax offices. The reason for such omission is the intention to avoid tax. The actual volume of this phenomenon is rather obscure to Polish authorities. According to Eurostat data, the share of the private rental sector in the overall housing stock in 2013 was assessed at 4%.

- "Housing with a public task" (e.g. dwellings offered by housing associations, public bodies etc)

Public task is detectable in municipal tenancies. Pursuant to art. 4(2) of the Tenants Protection Act (TPA), municipalities are required to assure social and replacement units and cater to the housing needs of low income households on the terms provided by law. In light of the above, social premises make a part of the municipal housing stock destined for the poorest persons living in difficult conditions, in particular the ones evicted from other places, e.g. for irregular payment of rent. As opposed to the remaining municipal housing resources, tenancy contracts are in this case concluded for a definite period, and renewed only where the tenants continue to meet the criteria set by the municipality (most importantly in terms of income). According to the latest accessible data, at the end of 2007 municipalities held 57 thousand social housing units.

Since 1995, the so called Social Building Associations, operating in the form of commercial companies, make an alternative to municipal social housing. Their share in the market is small (0.7%); yet, they were quite active investors in the 2000s.

- Some general recommendations to foreigners on how to find a rental home (including any specificities with respect to the position of foreigners on the national rental market)

It seems advisable for a foreigner who does not speak Polish to ask a native speaker to come along to the viewing of a dwelling in order to avoid possible communication problems or misunderstandings. Often, it is convenient to use the assistance of a real estate agent whom the foreigner may contact even from abroad, before actually moving to Poland.

- Main problems and “traps” in tenancy law from the perspective of tenants
 - rentals by unauthorized landlords who only purport to be the owner;
 - rentals by a co-owner (majority of shares is required to decide about lease arrangements)
 - rentals by unauthorized agents
- *Important legal terms related to tenancy law*

Polish	English translation
abuzywne klauzule	abusive clauses
akt notarialny	notarial deed
bliska osoba	close relation
centralne ogrzewanie	central heating
część wspólna	common property
czynsz (wolny/regulowany)	rent (free/regulated)
Dochód	income
Faktura	invoice
Inflacja	inflation
instalacja elektryczna	electrical installations
instalacja gazowa	gas installations
instalacja wodno-kanalizacyjna	draining and sewage system
Kamienica	tenement
kara umowna	contractual penalty/liquidated damages

Kaucja	deposit
klauzula waloryzacyjna	valorization/indexation clause
Komornik	Bailiff
Konsument	consumer
koszt odtworzenia	replacement cost
koszty utrzymania lokalu	maintenance costs
księga wieczysta	land register
Locator	Tenant/occupier
najem okazjonalny	incidental lease
Najemca	tenant
naprawa	repair
odsetki narosłe/ustawowe	accrued/statutory interests
odszkodowanie	compensation/indemnification
okres wypowiedzenia	notice period
opłaty (eksploatacyjne)	fees/charges/bills
posiadacz samoistny/zależny	owner-like/ dependent possessor
roszczenie (osoby trzeciej)	(third party) claim
spółdzielnia mieszkaniowa	housing cooperative
szkoda	damage (loss)
ugoda (sądowa/mediacyjna)	(in-court/mediation) settlement
umowa (najmu/adhezyjna)	(lease/adhesion) contract
wartość (rynkowa/odtworzeniowa)	(market/replacement) value
wynajmujący	landlord
wypowiedzenie umowy	contract termination
wzorzec umowy	standard contract terms

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?

Under the Anti-Discrimination Act transposing the Directive 2000/78/EC and 2000/43/WE, protection against discrimination is afforded in the fields of: housing, education, social security and health care. The Act prescribes equal treatment based on gender, race, ethnic origins, nationality, religion, faith, believe, disability, age or sexual orientation. As regards lease in the municipal stock, municipal councils enact uniform criteria, referring predominantly to income. These factors may not involve elements contrary to the Anti-Discrimination Act. Landlords in the private stock are also bound by the Act. Short-term work contracts, as such, could be related to potential tenant's financial standing, and so, it may play a certain role in tenant selection.

- 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 ask about the full name, address, other contact data, such as telephone number or email address, current place of residence, date of birth, number of household members (however, any question about the intention to have children would not be allowed), profession, employer, earnings, proof of income, bank details, and possible consumer bankruptcy.

The landlord may not ask about marital status, sexual orientation, intention to have children or form a family, membership in political parties and associations, criminal record, or the so called Schufa rating (although in practice the last query would not be uncommon).

- 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)?

Such practices are not common in Poland. This matter has not been directly covered by any legal regulation.

- 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)?

Although the landlord may not ask the tenant-to-be about his or her criminal record, the landlord may check it directly at an Information Centre of the National Criminal Register. As far as financial capacities of the prospective tenant are concerned, a statement on the candidate's credit history may be requested from the Credit Information Bureau. The Credit Information Bureau S.A. was founded by banks and the Polish Bank Association. Its responsibilities comprise collection of data concerning credit history of bank and para-bank clients. The Bureau cooperates with all commercial and cooperative banking institutions in Poland. Such a database generally helps lenders to making decisions concerning potential loans; however, it is also accessible to potential landlords.

Information about notorious debtors is also provided by the National Debt Register, which operates via the Internet.

- 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?

The basic role of a real estate agent consists of providing necessary and useful information to persons willing to buy, sell, rent or let a property so that the latter could enter into a respective contract on most suitable terms. Apart from informing the parties, an agent arranges their transactions. For their services, agents charge commissions. Commission is generally dependent on completion of the transaction, which makes the agent strongly induced to achieve that end. It would be against the law to stipulate that agent remuneration will still be payable if the client manages to enter into a contract by him- or herself, without the agent's assistance. However, advance payments are also charged upon inception of preliminary contracts. As regards the value, commission for a tenancy contract usually equals one monthly rent instalment.

Although for many years the profession of real estate agents used to be regulated, last year, the legislator repealed the relevant provisions, leaving this type of agency entirely open to free market. Real estate agents no longer have to be licensed or have liability insurance in order to lawfully practice.

- Are there any accessible “blacklists” (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?

Currently, in Poland there are no legal blacklists of bad tenants or landlords in the strict sense of the word. The entities indicated in reference to possible checks on a person's financial status are the only legal sources of information about prospective tenants. The access to those databases is wide enough to enable verification of tenants-to-be. The access is qualified by formal or financial restrictions (the need to pay a fee in order to obtain full report from the National Debt Register).

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)?

Under a contract of lease, as defined in relation to all leases in art. 659 of the Polish Civil Code (PCC), a landlord commits to deliver a thing (a dwelling) for tenant's use for a specified or unspecified period, in exchange of which the tenant commits to pay the landlord the agreed rent. No written form is generally required. However, in the case of the so called incidental lease (fixed duration leases of up to 10 years available to natural person landlords in which the tenant protection regime has been restricted) not only is it necessary but the contract must be enclosed with the tenant's declaration, executed as notarial deed, that he or she has a place to go in case of eviction. If the special requirements set for incidental lease are not met, the agreement still holds, however, such contract should be qualified as general lease (with full tenant protection).

- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?

The necessary elements of the lease contract include specification of rent and the object of lease. Obviously, the parties have to be named. In the absence of any agreement on the term of lease, the contract is deemed to have been concluded for unspecified duration.

- Duration: open-ended vs. time limited contracts (if legal, under what conditions?)

Time limited contracts are generally admissible. This possibility has been excluded in the general municipal stock to the exclusion of social units, which make a portion of the municipal stock destined for households of the lowest incomes. Leases in social units are always concluded for a fixed term dependent on the municipality's housing policy. Social housing is meant to provide temporary assistance until a household's financial situation improves. In practice, however, social leases are successively

prolonged.

- Which indications regarding the rent payment must be contained in the contract?

The amount of rent or a manner of its determination must be determined. In the absence of such stipulation, the contract may be interpreted as loan for use, which is always gratuitous. In the absence of specification of intervals between rent instalments, default statutory terms apply, i.e. rent is payable on monthly basis.

- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

Distribution of responsibilities concerning repairs and outlays on the unit is subject to special statutory regulation. Pursuant to art. 662(1) PCC, the landlord should deliver the agreed dwelling to the tenant in a condition fit for the agreed use and keep it in such condition throughout the term of the contract. In accordance with art. 662(2) PCC, minor outlays connected with ordinary enjoyment of the dwelling are the burden of the tenant. Under art. 681 PCC, in turn, such minor outlays to be borne by the tenant occupying the unit include in particular: minor floor, door and window repairs, painting of walls, floors and the inner side of the entrance door, as well as minor repairs to installations and technical equipment ensuring lighting, heating, water supply and discharge.

The statutory distribution of responsibilities is mandatory in the public housing stock. At the same time, these rules are only default in relation to private rentals, where the parties are free to arrange their respective duties.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

As opposed to the exhaustive statutory list of tenant responsibilities relating to repairs and furnishings, a similar list referring to landlords is only exemplary. The landlord is in particular obliged to carry out:

a) repairs to and replacement of internal installations of running water, hot water supply and gas – without fittings and accessories – as well as repairs to and replacement of the internal sewage system, central heating together with radiators, electrical wiring, and diversity antenna,

b) replacement of heaters, window frames and door joinery, floors, flooring, carpets and plaster.

- 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)?

Although such inventory is always optional, it is definitely recommendable to prevent any future disputes.

- Any other usual contractual clauses of relevance to the tenant.

Deposit clause, valorization clause (indexation of rent), specific terms of termination, provisions concerning reimbursement of outlays made by 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.)?

The legislator has defined the term "household" in the Housing Benefits Act 2001 in which the notion is understood as a household run by a single occupier, the tenant's spouse and other persons who live with him permanently, sharing the common budget, whose rights to enjoy the premises derive from the direct tenant. Apart from spouses or cohabitants, this refers to children, both minor and major, other members of the tenant's family and individuals not related to the tenant but who share the home budget. The decisive factors are permanence of accommodation and contribution to common maintenance. In the end, however, it is the tenant, and not the landlord, who decides which persons from among this group should live in the leased unit.

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

A tenant is only entitled, rather than obliged, to occupy the dwelling. If, however, he or she fails to move in although the housing unit has been made accessible by the landlord in due course, the tenant is still obliged to pay the rent.

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

If the lease contract has been concluded during matrimony and the leased premises are to serve the housing needs of the spouses' family, the spouses become, by operation of law, co-tenants, even where only one of them signed the lease contract. In divorce cases, under art. 58(2) of the Family and Guardianship Code, it is the court's obligation to rule about the use of the housing unit jointly occupied by the ex-spouses for the period of further common occupancy. Should one of the spouses blatantly disenable common living by reprehensible conduct, the court may order eviction at the other spouse's request. On their joint motion, the court may also include in the divorce judgment a resolution concerning division of the lodging or its award to one of the spouses if the other one agrees to voluntarily move out, as long as such decision seems feasible.

The right of lease has a particular value, which has to be considered when the common marital property is divided.

No similar solutions have been provided for factual cohabitants or same-sex couples. In such cases, any changes are dependent on the settlement between the parties.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);

No changes are possible without permission of the landlord. In fact, another contract must be concluded with the subsequent tenant.

- death of tenant;

Provisions of succession law as such do not apply to lease of housing units, which means that lease of a housing unit may not be lawfully devised. The only possibility to succeed a deceased tenant follows from art. 691 PCC.

As regards the catalogue of persons capable of accession to the contract upon death of the previous tenant, these include the spouse of the deceased, his (and his spouse's) children, other persons entitled to alimony from the deceased, as well as his or her factual cohabitant (including same-sex couples). Under art. 691(2), out of the this group, only the ones who lived in the unit with the deceased tenant before his or her death may become (co-)tenants. In accordance with art. 691(4), persons who accede to the tenancy by operation of law may terminate it by notice at the period prescribed by statute even if the contract was concluded for specified duration. Termination by only some of the successors does not extinguish the tenancy. In such cases, the remaining beneficiaries hold the right jointly. In the absence of such individuals, the tenancy does not make a part of the inherited estate anyway. On such occasions, the lease terminates.

- bankruptcy of the landlord;

Bankruptcy of the landlord, or landlord succession, has not been listed among the lawful grounds for termination in the Tenants Protection Act. If the house should be sold in execution proceedings, the buyer automatically replaces the bankrupt debtor as landlord.

There are, however, special provisions in the field of bankruptcy law. It is important to note that in bankruptcy proceedings, leases as a rule do not expire (see art. 108 of the Law on Bankruptcy and Reorganisation (LOB)). However, the bankruptcy court may terminate any lease with three months' notice if its existence hinders the sale of the assets or if the payable rent differs from rents paid for similar premises (art. 109 LOB).

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

Every sublease requires the landlord's consent. In Poland, renting under a sublease does not generally lead to abuse of the tenant's rights, as the Tenants Protection Act affords the same protection to a tenant and subtenant. A sublease always expires upon termination of the principal lease relationship.

- Does the contract bind the new owner in the case of sale of the premises?

On general terms, a buyer becomes the new landlord by operation of law. Although the general regulation of leases allows on such occasions for early termination by the

new owner at a statutory period, such possibility is precluded in reference to residential tenancies.

- Costs and Utility Charges
 - What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?

The types of utilities supplied to a unit depend on the provisions of construction law which define conditions to be met by housing premises, as well as usages accepted in a given region, access of the property to particular supply lines and, finally, needs of the tenant himself.

The general rule is that there must be a possibility to connect the building with water supply, sewage and heating systems. It is deemed equivalent to access to heat networks if individual sources of heat are operative in the building. In the absence of the sewage system, the owner should assure that sewage be disposed of in septic tanks. In some cases, gas supply has been entirely replaced by electric energy. Most definitely, a housing unit must be connected to electricity, water supply and sewage disposal lines. Depending on local situation, it is possible to supply gas (connection to gas line) and heating (access to central heating rather than individual facilities).

As regards contracts with utility providers, both models are possible: a contract between the landlord and the provider or a direct contract between the tenant and the provider.

- Which utilities may be charged from the tenant by the landlord? What is the standard practice?

The landlord may not bother tenant with "charges independent of the landlord" if they are not mentioned in art. 2(1) item 8 TPA. The cited provision covers supply of energy, gas, water and disposal of sewage, solid and liquid waste. Bills independent of the landlord are charged in such cases along with rent; however, principles governing their increase have been relaxed. Notably, these charges are levied for utilities supplied directly to a unit, and not to common parts of the building.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

Waste collection expenses count as charges independent of the landlord which are added to rent. Costs of road repairs are not imposed on either landlords or tenants. Tenants are not encumbered with any local taxation.

- Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?

These may only be included directly in the rent charged by the landlord; however, the amount of rent must be reasonable. Possibilities of rent increase have been regulated in the TPA, which prevents arbitrariness of the landlord's decisions in matters crucial to tenants.

- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?

The amount of rent payable and its increase have been regulated in the TPA, which prevents arbitrariness of the landlord's decisions in matters of fundamental importance to tenants.

In general, the amount of deposit may not exceed the equivalent of twelve monthly rent instalments for a given unit, as specified on the date of contract conclusion. In respect of incidental leases, this amount may not overstep the equivalent of six monthly rent instalments for a unit. There is no lower limit to a deposit, however, in practice it will be a single monthly instalment. In theory, it is possible to fix the deposit at lower level than one monthly rent rate; yet, on such occasions it would be necessary to determine the percentage (fraction) of the monthly instalment to be deposited, e.g. 0.5 or 0.25.

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

Provisions of the TPA omit to envisage the duty to transfer the deposit to a bank account. Decision as to the method and place of payment has been left to the parties of the agreement – in practice, the parties to the lease contract. For the lack of respective contractual stipulations, the method of safekeeping the deposited sum depends on the discretion of the landlord. In the absence of any agreement to the contrary, the landlord is not bound to invest the deposited amount or pay any interest on capital while in possession of the money.

- Are additional guarantees or a personal guarantor usual and lawful?

The tenants' protection regime does not provide for any additional guarantees. Such guarantees, however, would be possible based on general freedom of contract. Most definitely, any additional/alternative securities are, however, precluded in the public stock.

- What kinds of expenses are covered by the guarantee/ the guarantor?

The expenses owed by a tenant under the lease of a dwelling secured by the deposit include the outstanding rent and other charges attached to the lease, as well as compensation for any damages to the unit inflicted by tenant's culpable conduct.

However, lease of a social or replacement unit cannot be contingent on advance of the deposit.

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)?

Neither provisions of the Tenants Protection Act nor the Polish Civil Code provide legal definition of a defect in a housing unit or, in yet broader terms, a defect in the object of lease. Instead, scholars and courts reach for the definitions prescribed for sale contracts. A physical defect of a thing (i.e. a dwelling) is a shortcoming which lessens its value or usefulness with regard to the thing's purpose agreed by the parties or following from the circumstances or its normal use, or deficiency in the thing's properties about which the seller had assured the buyer, or, finally, where the thing was surrendered to the buyer in incomplete condition.

Typical defects comprise: delivery of unit of floor area smaller than agreed, inordinate noise in the unit made by neighbours or coming from outside; absence of or inadequate heating; leakiness of window joinery causing breeze; mould or dampness of the unit's walls; defective sewage system or missing sewage outflow; nasty smell; malfunction or irregular parameters of installations situated in the unit; vibrations, emission of hazardous substances or waste; danger of collapse of the building or abruption of its part; inoperative elevator.

- 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)

As provided in art. 664(1) PCC, where the object of lease has defects which reduce its fitness for the agreed use, the tenant may claim proportional rent decrease for the duration of the defects. Additionally, in accordance with art. 664(2) PCC, where at the time of delivery to the tenant the dwelling was defective in a way which precluded its use as agreed by the parties, or if such defects emerged at later time and the landlord, although duly notified about that fact, failed to cure the defects in due time, or where defects are irremovable, the tenant may terminate the contract immediately. None of the entitlements mentioned above (either claim for rent reduction or right to terminate the contract) have been vested in the tenant if he knew about the defects at the time of entry into contract (art. 664(3) PCC).

- Repairs of the dwelling
 - Which kinds of repairs is the landlord obliged to carry out?

The landlord is obliged to carry out in particular:

1) maintenance in due condition, assurance of order and cleanliness to spaces and equipment in the building destined for common use of all occupiers, as well as the building's vicinity;

2) repairs to the building, its spaces and equipment referred to in item 1, restoration of previous condition if the building has been damaged, regardless of cause to the damage; however, the tenant has to indemnify losses inflicted by his or her culpable behaviour;

3) repairs to the unit involving maintenance or replacement of installations and elements of technical furnishings to the extent that they do not burden the tenant, in particular:

a) repairs to and replacement of internal installations of running water, hot water and gas supply – without fittings and accessories – as well as repairs to and replacement of the internal sewage system, central heating together with radiators, electrical wiring, diversity antenna,

b) replacement of heaters, window frames and door joinery, floors, flooring, carpets and plaster.

- Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

Under provisions on non-performance of contractual obligations, the tenant may claim to have the defects repaired at the expense of the landlord. If the landlord is unwilling to repair, judicial authorization is necessary.

- Alterations of the dwelling
 - Is the tenant allowed to make other changes to the dwelling?

The tenant may not make changes to the rented dwelling which would stand in conflict with the contract or the purpose of the dwelling without consent of the landlord. Paragraph (2) of the aforementioned article sets forth the consequences of enjoyment of the thing which transgresses contractual stipulations or ignores the thing's purpose. If the tenant's wrongful conduct proves persistent, i.e. he would not stop to enjoy the agreed object in a manner contrary to the above criteria, or where the tenant neglects the thing to an extent which threatens its loss or damage, the landlord may terminate the contract without notice.

As regards other improvements, they are admissible and generally unproblematic. Improvements as such can be defined as outlays on the rented dwelling which improve (as of the date of the dwelling's return) the value or utility of the object of lease. These are not to be confused with minor repairs and outlays related to maintenance which should be borne by tenant under art. 662(2) PCC. The discussed provision is applicable only to modifications upgrading the dwelling. Reimbursement for the outlays may be claimed during the period of lease. The tenant, on the other hand, is not in a position to set off his expenses against rent instalments, even when the landlord declares his will to preserve the modifications.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

There is no direct legal regulation of adaptations for disability within the context of tenancy arrangements. Such modifications seem to affect the use of the leased premises seriously enough to require landlord consent.

- Affixing antennas and dishes

Installing an antenna or dish is a frequent type of improvement. Generally, fitting and maintenance of such devices is not the landlord's responsibility.

- Repainting and drilling the walls (to hang pictures etc.)

Repainting and drilling the walls is generally allowed, unless changes to walls would oppose the purpose (use) of the dwelling

- Uses of the dwelling
 - Are the following uses allowed or prohibited?
 - keeping domestic animals

The question of domestic animals has not been regulated by law. In practice, it depends on the rules and regulations imposed by the landlord or specific stipulations in the contract. Domestic animals are so widespread that it is generally permissible to keep them unless otherwise restricted by the landlord.

- producing smells

This would generally make an inadmissible use of the dwelling. If such nuisance hindered enjoyment of units by other occupiers in the building, or if the quality of the premises decreased, termination by landlord at monthly notice would be possible under art 11(2) item 1 TPA.

- receiving guests overnight

Receiving guests overnight is generally permissible, unless such visits disturb domestic peace on regular basis.

- fixing pamphlets outside

This matter has not been directly regulated by law. The problem emerges only if it is not covered either by the contract or landlord's rules and regulations. Whether or not the tenant is entitled to fix a pamphlet in the window or at the front depends essentially on its content. Furthermore, the tenant's freedom of expression has to be weighed against the landlord's property right as well as against the other tenants' rights.

- small-scale commercial activity

This always requires consent of the lessor. Operation of a business in the rented premises without consent of the landlord would stand in conflict with the agreed use of the dwelling, which might lead to the contract's termination by landlord at one month's notice, given at the end of a calendar month.

3.2. Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

The system of rent control in Poland has been replaced by a model of restrictions on rent increase. Some forms of rent control have been preserved in the public and semi-public stock. The institution of regulated rent has been preserved in the stock of Social Building Associations where rates of rent for 1m² of usable floor area of a unit are set by the general meeting of the Social Building Association's shareholders so that the aggregate of rental incomes in the Association should allow to cover maintenance and repair costs relating to the stock, as well as refund of the credit drawn for construction. Paragraph (2) of the same article provides that rent calculated in accordance with the method laid down in paragraph (1) may on no account exceed in a single year the amount of 4% of replacement value of the rented unit.

The same basis of measurement (1m²) applies to principles of rent calculation in rentals belonging to the municipal stock. Again, it is the owner of the units (mayor within the limits set by resolution of the municipal council adopted under art. 21 TPA) that designates the rate of rent per one square meter, taking into account: location of the building, location of the unit within the building, the unit's or building's furnishing with technical equipment and installations and their condition, and the general technical standard of the building. The statutory list of criteria envisaged in art. 7(1) TPA does not cross out other factors increasing or decreasing the unit's value in use.

As regards the social housing within municipal resources, rent in such housing unit may not overstep 50% of the lowest rent in the remaining municipal stock.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:

- Are there restrictions on how many times the rent may be increased in a certain period?

According to art. 9(1b) TPA, increases of rent or other payments for use of the rented unit, except for charges independent of the landlord (for supply of utilities) may not be introduced more frequently than once in 6 months.

- Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?

Any increase of the annual value of rent rate beyond 3% of the replacement value of a unit may be effectuated only in justified cases set out in art. 8a(4a) TPA. These involve situations in which the owner cannot receive incomes from rent which would allow for proper maintenance of the premises along with additional return. Such return is also calculated meticulously, taking as the basis the landlord's expenses connected with the unit's construction, purchase and repairs. Pursuant to art. 8a(4b) item 2, profits reaped by the landlord should be reasonable. On tenant's demand, the landlord should present precise calculations substantiating legitimacy of such an increase. Tenants dissatisfied with an excessive increase have a cause of action. In such cases, it is the court that decides whether or not the questioned increase is justifiable.

The principles discussed above do not apply to modifications concerning charges which are not dependent on the landlord. This category comprises bills for electricity, gas, water, waste and effluent sewage disposal. As the services are provided to the benefit of a tenant, it is the tenant who should bear their cost. Nevertheless, in the event of their increase, the landlord is still obliged under art. 9(2) TPA to present a detailed breakdown of specific charges owed to third party providers.

- What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?

Rent increases should always be notified to a landlord in writing. A landlord inclined to increase rent should notify the tenant before the end of a calendar month and comply with the statutory or contractual notice period no shorter than 3 months (art. 8a(1-3)).

As pointed out above, tenants dissatisfied with an excessive increase have a cause of action which can be brought before a court (art. 8a(5) item 2 TPA). In such cases, it is the court that decides whether or not the questioned increase is justifiable. Alternatively, the tenant may refuse to accept the increase, which results in termination of the contract as a whole (art. 8a(5) item 1 TPA).

- Entering the premises and related issues
 - Under what conditions may the landlord enter the premises?

Although the lessor is usually the owner of the premises, the lessor forfeits the right to enjoy the unit as a result of the entry into the lease contract. He cannot stay in the rented premises. The lessor is authorized to enter the rented dwelling only in extraordinary situations, e.g. when it is necessary to make a repair for which the lessor is responsible. In case of a defect in the object of lease which causes or threatens loss, the lessee is obliged to provide access to the unit in accordance with art. 10 TPA. The lessor may also enter the premises to make an overview of its general condition and technical outfit, or carry out works encumbering the lessee if the latter omits to fulfil his or her obligations. On such occasions the date of entry should be negotiated between the parties (art. 10(3) TPA).

- Is the landlord allowed to keep a set of keys to the rented apartment?

The question of spare keys has not been expressly regulated. However, art. 690 PCC provides the lessee with owner-like protection against any third parties, including the landlord. This means that the lessee might sue the latter in the event of unjustified use of such hidden set of keys.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

That would be illegal and might expose the landlord to serious legal consequences. Each time the termination and execution procedures must be followed.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

The landlord cannot legally do so in a direct physical sense. In accordance with art. 670 PCC, to secure the rent and other renditions in which the lessee defaults for no longer than one year, the landlord has statutory pledge on the tenant's movables brought into the rented object unless the things are exempt from attachment. Statutory pledge refers to chattels, whether owned or co-owned by the lessee. The seizure must be effected by recourse to official executive proceedings.

Pursuant to art. 671 PCC, the statutory pledge is extinguished when the pledged things are removed from the rented object. The lessor may object to such removal and retain the chattels at his own risk until the overdue rent is paid and secured. By doing so, the lessee might become exposed to compensatory liability towards the lessor. If the pledged things are removed under an order issued by a state authority, the landlord still retains his statutory right of pledge if, within three days, he reports it to the authority that ordered the removal (art. 671(3) PCC).

4. Ending the tenancy

4.1. Termination by the tenant

- Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?

In pursuance of the general provision of art 673(1) PCC, where the period of lease is indeterminate, both lessor and lessee may terminate the contract by complying with the agreed notice period, or, in the absence of accord in this regard, in accordance with statutory periods. Art. 688 ordains that a lease may be terminated with three months' notice given at the end of a calendar month as long as the duration of lease is unspecified and rent is paid monthly. This provision is not applicable where the parties provided for other intervals between consecutive rent instalments. In such cases, one has to take recourse to art. 673(2), which also stipulates statutory notice periods depending on the intervals at which rent is payable. Where this term is longer than one month, termination is permissible with three months' notice given at the end of a calendar month. If it is shorter than one month, the notice period amounts to three days. Where rent is paid daily, notice is to be given one day in advance.

- 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)?

Generally, fixed term contracts may not be terminated before expiry of the agreed period. Obviously, the parties themselves may account for the possibility of termination in specific situations, including the vague, but popular, specification "for important reasons."

Otherwise, the tenant may terminate the contract immediately in the event of serious defects of the unit. Under art. 664 PCC, this may be the case where, at the time of delivery, the object of lease is defective in such a manner which precludes its agreed use, or where such defects appear later but the landlord fails to cure it due time despite prior notification by the tenant. Under art 682 PCC, immediate termination by tenant is possible if the unit's defects pose a danger to the health of the tenant's household members or employees. In the case of a health danger, the tenant may terminate the legal relationship even if the tenant knew about the defects at the time of entering into the contract.

- May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?

It would be possible only with a separate agreement with the landlord, dissolving the previous lease, for the tenant to leave before the end of the rental term if he or she finds a suitable replacement tenant.

4.2. Termination by the landlord

- Open ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?
 - Must the landlord resort to court?

The landlord does not have to resort to court. He or she is, however, restricted by a rather stringent tenant protection regime, as termination by landlord is admissible only in situations expressly indicated in the Tenants Protection Act. The landlord may terminate the legal relationship (art. 11(2) TPA) at monthly notice given at the end of a calendar month if the tenant:

- 1) continues to use the unit in a manner contrary to the agreement or the unit's purpose despite an earlier written admonition, neglects his or her obligations inflicting, in the same way, damage to the premises, damages equipment intended for common use of tenants residing in the same building, or transgresses blatantly or insistently against house rules and regulations in a way which impairs enjoyment of other apartments in the house;
- 2) defaults on payment of rent or other charges accrued for enjoyment of the unit for at least three full periods of payment in spite of having been admonished in writing about the landlord's intent to terminate the contract and given additional monthly term to pay the outstanding and current liabilities;
- 3) has let, sublet or transferred for non-gratuitous use the unit in whole or its part without written consent of the landlord; or
- 4) occupies the unit which has to be vacated because of the need to demolish or restore the building with the proviso of art. 10(4) TPA, which means that on such occasions the landlord must assure replacement premises, and that restoration may not take longer than a year.

By virtue of art. 19e TPA, the first three points on the list above do not apply to incidental lease. Instead, arts. 685 PPC (immediate termination justified by gross and persistently transgressions against domestic peace) and 687 PPC provide legal grounds for termination without notice. In the latter case termination is possible if the tenant delays with rent for at least two full periods of payment, however, a monthly deadline to clear the arrears must first be given.

On general terms, legitimate reasons for termination may also relate to the fact that the tenant's housing needs are already catered to in another way. Under art. 11(3) TPA, the landlord of a unit in which yearly rent is lower than 3% of its replacement value is free to terminate the lease:

- 1) at 6 months' notice if the tenant fails to occupy the unit for a period longer than twelve months;
- 2) at monthly notice at the end of a calendar month if the tenant has a legal title to enjoy other premises located in the same city, town or village, and the tenant may use that other lodging, which, in addition, must comply with all requirements provided for a replacement dwelling.

Pursuant to art. 11(4) TPA, the landlord may terminate the contract at six months' notice given at the end of a calendar month if the landlord wishes to live in the unit or pass it over to one of his or her close relations, and the tenant is authorized to use another unit which meets the minimal requirements of replacement premises. If the tenant is not in a position to use any alternative lodging, this period of termination is prolonged to 3 years under art. 11(5) TPA.

- Are there any defences available for the tenant against an eviction?

Direct objections do not produce any legal effects. Since the TPA regime defines strictly grounds for termination, the tenant who does not agree with the landlord's understanding of a statutory provision providing foundation for termination may always have recourse to court.

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?

This would also be limited to situations expressly prescribed in art. 11 of the Tenants Protection Act.

- Are there any defences available for the tenant in that case?

In the case of termination justified by the landlord's own housing needs under art. 11(5) TPA (where the tenant has no alternative place to go), art. 11(12) TPA reserves, with regard to tenants aged over 75 years, that termination may only be effective upon their death, unless there are persons obliged to provide them with alimony.

- What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?

The landlord would have to go through the eviction procedure, which generally requires prior resort to court. Judicial proceedings are avoided where the tenant voluntarily submitted to execution in the form of a notarial deed, that is, in the case of incidental lease.

4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?

The deposit is to be returned within one month from the date of vacating the unit or its purchase by an ordinary or occasional lessee, after the offset of dues owed to the lessor under the lease contract (art. 6(4) and art. 19a(5) TPA). As per art. 6(3) TPA, valorized deposit is returned in the amount of monthly rent payable on the date of such return multiplied by the coefficient (number of instalments) chosen when the deposit had been initially made.

- What deductions can the landlord make from the security deposit?
 - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

The landlord may deduct any debts owed under the tenancy which are mature and payable to the landlord at the date the unit is vacated. Ordinary wear and tear of the furniture does not count as damage. Other infringements to the unit, its fittings and furniture, may be considered, as long as the tenant's guilt can be evinced.

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
 - Are there specialized courts for adjudication of tenancy disputes?

The Court structure in tenancy cases does not stray from the general regulation. Under art. 1 of the System of Common Courts Law Act 2001, in Poland there are district courts, circuit courts and courts of appeal. There is also the Supreme Court, which carries out review functions, interprets legal provision so as to assure uniform

lines of jurisdiction. Although its case law is in no way officially binding on regular courts, SC interpretations are generally followed.

- Is an accelerated form of procedure used for the adjudication of tenancy cases?

In pursuance of art. 505¹ of the Polish Code of Civil Procedure, disputes concerning rents and fees payable by cooperative rights holders are, regardless of their value, resolved in a summary process. In principle, such mode of proceedings is to be more convenient to the plaintiff. However, a summary process is highly formalized and requires the plaintiff to file most of the pleadings, including petition, on official forms. Only in the rare cases, where the dispute value exceeds PLN 75,000, the summary procedure is omitted.

- Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?

All conceivable modes of amicable dealing are admissible. Below, attention is drawn to its two specific forms.

A prospective claimant may initiate judicial conciliation. This procedure is instituted by motion for conciliation filed in each case with a district court (regardless of the value in dispute) in whose area the respondent resides (court exercising general jurisdiction in litigation). The court acts in this proceeding as a body inducing the parties to settle the case by themselves. It does not resolve the dispute authoritatively. If the opponent turns out to be unwilling to settle, conciliation usually concludes with a ruling as to its costs. One crucial advantage of the motion for conciliation is the fact that it interrupts the limitation of claims to which it refers. As turns out in practice, however, this procedure is used exceptionally rarely in housing law disputes.

Secondly, the parties may resort to mediation. The most pronounced characteristic of mediation is its voluntary character. Mediation is carried out based on an agreement for mediation or a court ruling which refers the parties to mediation. In this agreement, the parties specify in particular the object of mediation, the mediator or the manner of his or her election. As a rule, mediation is commenced before the action is brought to court, but it is also admissible to refer the case to mediation in the course of pending proceedings.

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?

A candidate for a municipal unit must file an application with municipal authorities. The body competent to sign the contract on behalf of a municipality is the mayor. He or she must, however, observe the terms of selection of tenants enacted by the municipal council (usually based on income criteria). This procedure is followed both in reference to the general municipal housing stock and social units in the strict sense of the word.

As regards Social Building Associations, nowadays, it is practically impossible to obtain a new dwelling as their investments were brought to a halt due to governmental savings and discontinuance of subsidies from the National Housing Fund. An applicant would have to declare household incomes below average. This income should not exceed the basic quota of 1.3 times an average monthly salary in a given voivodeship (regional level self-government), announced before the conclusion of the contract, by more than 20% in a single-person household, 80% in a two-person household and 40% for each additional person. Prospective tenants may also be required to cover a part of the investment costs.

Housing benefits may be granted to: tenants, sub-tenants of housing units, holders of a tenancy cooperative right, owner-occupiers, persons with any other rightful tenure in a unit who bear expenses related to its enjoyment or even occupiers without a valid tenure waiting for a replacement or social unit. The application must be submitted to a mayor who acts by way of administrative decisions. The average monthly income per household member in the three months preceding the application may not exceed 175% of the lowest old age pension at the time of application for single-person households and 125% of the same indicator for multi-person households. The benefits are awarded for 6 months as of the beginning of the month following the application. Respective sums are remitted to the owners of the premises to partly discharge the dues of the entitled persons. Owner-occupiers receive the benefit directly.

- Is any kind of insurance recommendable to a tenant?

No insurance is required by law. It is frequent for a landlord to request the tenant to buy a liability insurance (against any third party loss, e.g. caused by water leaks).

- Are legal aid services available in the area of tenancy law?

In the Polish system of civil procedure, a party may apply for exemption from judicial costs and appointment of a court-assigned attorney. As revealed by legal practice, the procedure of exemption from judicial costs functions properly. Less affluent litigants are exempted from judicial costs in whole or in appropriate proportion. Such exemption does not cover costs of the proceedings incurred by the opponent. This means that where the party exempt from costs loses the case, the losing party is obliged to refund costs of the process to the adversary.

- To which organizations, institutions etc. may a tenant turn to have his or her rights protected?

Apart from the Ombudsman, generally preoccupied with civil rights and freedoms, there are various associations of tenants operating on the nationwide and local levels. Contact data of some of these organizations are given below.

Rzecznik Praw Obywatelskich (Ombudsman)
Warszawa, Aleja Solidarności 77, tel. (+ 48 22) 55 17 700
email: biurorzecznika@brpo.gov.pl

Komitet Obrony Lokatorów (Tenants Protection Committee)
Warszawa, ul. Targowa 22, tel. +48 693 713 567, +48 609 444 686
email: obronalokatorow@gmail.com

Polskie Zrzeszenie Lokatorów (Polish Union of Tenants)

Kraków, ul. ks. F. Blachnickiego 7A, tel/fax. + 48 (12) 422-65-47

Warszawskie Stowarzyszenie Lokatorów (Warsaw Association of Tenants)

Warszawa, ul. Kludyńny 28/38, tel. +48 790 823 850, + 48 601 365 690

Wielkopolskie Stowarzyszenie Lokatorów (Wielkopolska Association of Tenants)

Poznań, ul. Piaskowa 3/17, tel. +48 Tel. 501-097-760

email: wsl.stowarzyszenie@gmail.com

Stowarzyszenie Krakowska Grupa Inicjatywna Obrony Praw Lokatorów

(Association: Cracow Initiative Group for Tenants Protection)

Kraków, ul. Długa 9/ 8, tel. +48 12 421 08 53, +48 609 171 778

email: jagataj@vp.pl , grazyna@mally.pl

PORTUGAL

Tenant's Rights Brochure

Nelson Santos and Maria Olinda Garcia

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1. Introductory information

- **Introduction: The national rental market**

- Current supply and demand situation

Portuguese citizens are currently choosing to rent instead of buying a dwelling. According to the latest catalogue of studies of the Association of Professionals and Real Estate Companies of Portugal (APEMIP), covering the first half of 2013, the demand for rental surpassed the demand for buying houses in the districts of Lisbon and Oporto (52.5% and 51.4%, respectively).

These figures for renting demand do not mean that the offer is in proportion to the demand. According to the APEMIP, the weight of the rental housing supply in Portugal over 2013 was 7.26% in the first quarter and 7.55% during the third quarter. In conclusion, levels of supply remain far from the demand that already exists in the sector.

- Main current problems of the national rental market from the perspective of tenants:

- Difficulty in finding an affordable rental dwelling, mainly in the bigger cities
- Difficulty in paying the rent, due to the economic constraints families are facing and the high level of unemployment
- Difficulty in accessing a rent subsidy

- Significance of different forms of rental tenure

- Private renting:

About 97% of all rental dwellings are rented out on the private rental market, in which landlords are free to determine the initial amount of rent and the parties are free to decide about the subsequent increase in rent.

“Housing with a public task”:

Only about 3% of all rental dwellings are offered by public bodies, and only those with very low income are entitled to this kind of rental housing.

- General recommendations to foreigners on how to find a rental home

- It is advisable for a foreigner who does not speak Portuguese very well to ask a native speaker to come along to the viewing of a dwelling in order to avoid possible communication problems or misunderstandings.
 - Guest students should contact the international office or the student services of the university they will visit.
 - Foreigners who come to Portugal for work may ask their employer or colleagues how to find an apartment or whether the company even offers special dwellings for their workers.
 - It is advisable to ask for a document which proves that the landlord is the owner of the dwelling;
 - It is advisable to find a rental home from an estate agency, especially for foreigners.
- Main problems and “traps” in tenancy law from the perspective of tenants
- Some landlords tend to persuade tenants to pay less rent in exchange for not getting a payment receipt and not signing a contract, so that the landlord does not have to pay taxes over the received rent
 - Contract terms are frequently formulated to give the landlord an advantage; therefore, tenants need legal knowledge or legal advice in order to defend their rights

Important legal terms related to tenancy law

PORTUGUESE	TRANSLATION TO ENGLISH
Resolução do contrato	Termination of contract
Obras	Repairs
Vícios do bem locado	Defects of leased property
Renda	Rent
Caução	Security Deposit
Benfeitorias	Improvements
Sublocação	Sublease/Subletting
Contrato com prazo certo	Contract with fixed term
Contrato por duração indeterminada	Contract of open-ended duration
Despejo	Eviction
Encargos da coisa locada	Charges of the leased thing
Reparações ou outras despesas urgentes	Repairs or other urgent expenses
Caducidade	Expiry of the contract
Transmissão da posição contratual	Transmission of the contractual position

2. Looking for a place to live

2.1 Rights of the prospective tenant

- What bases for discrimination in the selection of tenants are allowed/prohibited? What about, for example, status as a foreigner, student, unmarried partner, or person with a short-term work contract?

According to the broad non-discrimination rule enshrined in the General Act of Equal Treatment, discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation is prohibited.

Foreign students can always resort to the international relations office of the host university and ask for help or tips on obtaining accommodations.

A person with a short-term work contract can have a similar solution. The employer can always help or even give accommodation (by contracting with a landlord or for a dwelling belonging to the employer).

- What kinds of questions by the landlord are allowed (e.g. on sexual orientation, intention to have children etc)? If a prohibited question is asked, does the tenant have the right to lie?

The landlord is allowed to ask any questions regarding the solvency of the tenant in order to assess if the tenant will be able to fulfil his or her obligations. If the landlord's questions are regarding the solvency of the tenant, the tenant must answer truthfully.

A landlord cannot ask questions about the tenant's sexual orientation since it could give rise to possible discrimination.

- Is a "reservation fee" usual and legal (i.e. money charged by the landlord to allow the prospective tenant to participate in the selection process)?

To ask for a "reservation fee" is not usual or legal.

- What kinds of checks on the personal and financial status of the tenant are usual and legal (e.g. the landlord requiring an independent credit report)?

The following checks on the personal and financial status of the potential tenant are usual:

- Demanding submission of a salary statement from the prospective tenant and/or copy of the annual tax form

- Contacting a lawyer in order to inspect lists of debtors maintained by the local courts or other credit agencies, since the landlord is not legally permitted to do so by himself or herself.

- What is the role of estate agents in assisting the tenant in the search for housing? Are there other bodies or institutions assisting the tenant in the search for housing?

In order to find a dwelling, the tenant may consult an estate agent who assists in the search, especially by proposing and executing viewings of dwellings corresponding to the tenants' needs.

If a tenancy contract is entered into as the result of negotiations carried out by the estate agent, the same may demand a fee for its services.

A tenant searching for social housing can be assisted by municipalities or search online (on websites created by the state or in partnership with the state), for dwellings available for citizens with social needs.

These can be found, among others, on:

- www.mercadosocialarrendamento.msss.pt
- <http://www4.seg-social.pt/venda-e-arrendamento-de-imoveis>
- https://www.portaldahabitacao.pt/pt/portal/mercado_social_arrendamento/mercado_social_arrendamento.html

A tenant who wants to find a dwelling on his own can search for housing advertisements in newspapers (dwellings are usually offered by the landlord himself) or the tenant may search on the following popular internet sites:

- <http://www.imovirtual.com/imoveis/arrendar/>
- <http://www.casa.iol.pt/pesquisar/tipo-apartamentos/local-porto/para-arrendamento/pagina-1/>
- <http://www.queroarrendar.com/>

- Are there any accessible “blacklists” (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?

There are no “blacklists”, or equivalent mechanisms, of bad landlords or bad tenants.

2.2. The rental agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?

Article 1069 Civil Code stipulates that a rental contract must be in written form in order to be valid.

The Tax Authorities must be informed by the landlord when a rental contract is signed. This obligation is imposed by Article 60 of the Stamp Taxation Code (C.I.S. - Código do Imposto de Selo).

There is a fee applied to this Stamp Taxation, and it must be paid by the end of the month following the start of the rental contract by the landlord or, if a sublease takes place, by the sublessor.

It is in the General Table of Stamp Taxation that the taxable values for this tax are planned, reporting, also, the applicable tax rates.

- This tax is paid on rents or on their conventional increase, in renting or sublease contracts.
 - In rental contracts with less than one month's duration, this tax is payable at the rate of 10%, on the amount of rent or the stipulated increase for the period of its duration.
-
- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?

Required content of the Renting Agreement

- the identity of the parties, including nationality, date of birth and marital status
- identification of the dwelling
- housing purpose

- existence of a licence for use, its number, date and issuer
- amount of rent
- date of signature

Possible content (when applicable)

- identification of areas for the private use of the tenant and those for common use to which he/she has access, and attachments rented with the principal object of the contract
 - the nature of the right of the landlord, whenever the contract is concluded on the basis of a temporary right or power to administer the goods of others
 - registration number with the land registry
 - regime of rent, or its update
 - the tenancy term
 - the existence of any horizontal property regulation
 - any other clauses permitted by law and intended by the parties, either directly or by reference to a regulatory annex
- Duration: open-ended vs. time-limited contracts (if legal, under what conditions?)

Tenancy contracts can be open-ended or time limited contracts.

If concluded for a limited time, the parties may agree that, after the first renewal, the contract has an open-ended duration, but if the parties do not agree on any term, the contract is to be considered a time-limited contract concluded for 2 years.

- Whenever the parties agree on a time-limited contract, it must be written in the contract; that period of time, however, cannot surpass 30 years, and any other duration longer than 30 years is to be considered reduced to that period.
 - Whenever the parties agree on an open-ended contract, the contract terminates by giving notice in advance
- Which indications regarding the rent payment must be contained in the contract?

The contract must indicate:

- the amount of rent;
- when, where and how the rent shall be paid.

Regarding this last item, usually, the tenant has to pay the rent in advance on a monthly basis. If the contract does not provide information on the due date, the rent is, according to tenancy law, to be paid on the first working day of the month immediately preceding that to which it relates. Finally, the contract must contain information on how the rent is to be paid (bank transfer, cash, etc.).

- Repairs, furnishings, and other usual content of importance to the tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

It is up to the landlord to maintain the rented property in a suitable condition, as well as to bear all the costs resulting from necessary maintenance works and repairs.

The tenant may only perform works and repairs when the contract expressly provides it or if the landlord agrees to it by writing. This requirement does not apply to cases of urgent repairs or other expenses; in this case the tenant may offset expenses related to urgent works and repairs against the obligation to pay the rent. In other words, the tenant has the right to not pay the rent in order to pay for those urgent repairs or expenses.

The tenant can also make improvements to the dwelling and possibly be compensated for them. Those improvements can be:

- a) Necessary improvements - those that aim to prevent the loss, destruction or deterioration of the dwelling (always being entitled to be compensated for them);
- b) Useful improvements - those that are not essential for the conservation of the dwelling, but which increase its value (at the end of the contract the tenant can take them with him/her, provided that this can be done without deteriorating the dwelling, if not, the tenant is entitled to be compensated for their value);
- c) Voluptuous improvements - those which are not indispensable to the preservation of the dwelling, nor do they increase its value, but serve only to please the tenant (at the end of the contract the tenant can take them with him/her, provided that this can be done without deteriorating the dwelling, if not, the tenant is not entitled to any compensation). These improvements can only be carried out with the written consent of the landlord.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

According to the building regulations, a dwelling must have at least one habitable room, one toilet, one bathtub or shower and a kitchen or a kitchenette, i.e. the technical requirements for the installation of a kitchen suffice. Apart from that, it depends on the tenancy agreement whether and which furnishings the landlord has to provide.

- Is the tenant advised to have an inventory made so as to avoid future liability for losses and deteriorations (especially in the case of a furnished dwelling)?

As part of the handover of the dwelling, the landlord usually makes a move-in checklist (and in the case of a furnished dwelling also an inventory list) which becomes part of the tenancy contract and documents (i.e. photos) the actual condition of the dwelling as well as existing damage. Based on these documents, the tenant is liable only for future modifications and deteriorations of the dwelling (and its furnishings) provided they exceed the wear and tear on the leased property from use in conformity with the contract.

- Any other usual contractual clauses of relevance to the tenant

Usual contractual clauses of relevance to the tenant are the following:

- clause on the provision of a security deposit;
- clause on the assignment of works, repairs and improvements;
- clause on the right of the landlord to inspect the dwelling;
- clause on the right/prohibition to sublease the dwelling;
- clause on the conservation of the dwelling.

- **Parties to the contract**

- Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?

Persons not mentioned in the contract but are allowed to live in the rented dwelling are categorized as follows:

- a) Those who live with the tenant in the same household (spouses, civil partners, relatives and persons for whom, by law or legal business that does not comply directly with housing, there is an obligation of cohabitation or maintenance payments) ;
- b) A maximum of 3 guests (people to whom the tenant provides housing and provide services related to the house, or provides maintenance payments, for consideration), unless there is a clause otherwise;
 - Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

The tenant is obligated to occupy the dwelling; it is, however, lawful to not use the dwelling:

- a) for a period that cannot exceed 1 year;
- b) in case of force majeure or disease;
- c) if the absence, not lasting for more than two years, is due to the discharge of professional or military duties (applicable to the tenants spouse or civil partner living with the tenant);
- d) if the use is maintained by those who, having the right to use the dwelling, did so for over a year;
- e) if the absence is due to the provision of ongoing support to disabled people with a degree of disability above 60%, including family.
 - Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

If agreed, the spouses may opt for the transfer of the contractual position, if only one of them signed the rental contract, or, if both signed it, only one keeps the contractual position as a tenant while the other one ceases to be a tenant. This agreement is entered into under amicable divorce or divorce without the consent of the other spouse.

In the absence of an agreement, the Court shall decide who will be the tenant, taking into consideration the needs of each spouse and the needs of the children and any other factors which might be relevant to a good decision on the matter.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);

In Portuguese law there are no specific laws regarding the situation where apartments are shared among students. They are treated as any other tenants; therefore, if an apartment is rented by several students, only with the consent of the landlord may there be a replacement of tenants.

- death of tenant;

In case of death of the tenant, the tenancy is continued with the surviving tenants provided that the contract has been entered into with more than one tenant.

If there is no other tenant, specific persons who maintained a joint household together with the deceased tenant at the time of death have a right of succession:

- a) Spouse
- b) Civil partner who lived with the tenant for over a year
- c) Person with whom the tenant lived in the same household for over a year.

If several persons are entitled to the transmission, the position of the tenant is transmitted, on equal terms, to the surviving spouse or civil partner who lived with the tenant for over a year, a close relative or, among these, the older or oldest among the remaining persons with whom they resided in the same household.

The right of succession shall not apply if, on the date of death of the tenant, the holder of that right has another house, owned or rented, in the area of the municipalities of Lisbon and Oporto and their adjoining area or, for the rest of the country, having a house, owned or rented, in the corresponding county.

- bankruptcy of the landlord;

If the landlord is bankrupt and the dwelling is sold through a compulsory auction, the new owner enters into existing tenancies and takes over all the rights and duties of the former landlord. If, however, the tenancy contract was signed less than 2 years before the bankruptcy of the landlord, the insolvency administrator, if it is proven that the tenancy contract was signed in prejudice of the insolvent assets, has the right to terminate the existing tenancy contract.

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

Subletting authorization must be given in writing. However, if the landlord comes to know about the subletting after it occurred, the landlord can always ratify it if he or she recognizes the subtenant as such.

The sublease expires with the termination, for any reason, of the tenancy contract, without prejudice to the responsibility of the sublessor with the subtenant, when he or she is liable for the subject of extinction.

If the landlord receives any rent from the subtenant and gives the subtenant a payment receipt after the termination of the tenancy contract, the subtenant is to be assumed to be a direct tenant.

Since a sublease contract does not cause a contractual relationship between the landlord and the subtenant and is in its existence dependent on the main tenancy, the subtenant does not enjoy legal protection in relation to the landlord. But the latter has to observe the provisions on the protection of tenants nevertheless in relation to the main tenant. Therefore, landlords usually do not offer a sublease contract instead of an ordinary one. If the landlord offers a tenant only a sublease contract although there is no main tenant, the contract is in any case regarded as an ordinary tenancy contract and consequently subject to the tenant protection rules, because the actual purpose of the contract is crucial and not its title.

- Does the contract bind the new owner in the case of sale of the premises?

If the dwelling is sold by the landlord, the acquirer of the residential space enters into existing tenancies and takes over all the rights and duties of a landlord. Therefore, the sale of the dwelling does not change the position of the tenant.

- Costs and Utility Charges

- What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?

The parties agree in writing regarding the utilities regime. In the absence of regulation, all utilities and their provision must be taken care of by the tenant. In the case of rental of a building unit, utilities related to the common parts of the building as well as the payment of services of common interest are to be borne by the landlord.

Utilities should be contracted on behalf of those who are responsible for their payment. If the tenant is responsible for a utility contracted on behalf of the landlord, the landlord presents, within a month, the proof of payment made. In this case, the obligation of the tenant matures at the end of the month following the notification by the landlord, and it must be fulfilled simultaneously with the subsequent rent.

- Which utilities may be charged from the tenant by the landlord? What is the standard practice?

The standard practice is that the tenant bears all charges regarding utilities. The parties can agree otherwise, but it is not a common practice. Even the shared parts of the building – lifts, gardens, caretakers, etc. – are all at the tenant's expense.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

No, the tenant is not responsible for taxes levied by local municipalities.

The taxes directly associated to tenancy are the Stamp Tax and Property Tax, both under the responsibility of the landlord. The Stamp Tax, as mentioned above is a tax calculated based on monthly rent received. The Property tax is due by whoever is the owner of the dwelling by 31 December of each year, and the payment must be made in April – or April and September if paid in two times.

- Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?

It is lawful to shift condominium costs, such as costs for house cleaning, disinfestations or for a caretaker, onto the tenant, as well as other costs concerning the administration, maintenance or enjoyment of the common parts of the condominium, provided the parties agreed on this and it is established in the contract.

- Deposits and additional guarantees

- What is the usual and lawful amount of a deposit?

It is common practice that the parties agree on a security deposit for the performance of the tenant's duties. The parties usually agree, in written form, on a deposit that cannot exceed the amount of 3 months' rent, payable upon signature of the contract.

Therefore, at the time of signing the contract, the tenant pays the first month of rent and an equal sum as deposit. This deposit is either returned to the tenant when the tenant decides to leave the dwelling, and if no damages were suffered by the dwelling, or, it is discounted in last month that the tenant occupies in the dwelling (e.g. Tenant notifies the landlord at the beginning of the month that at the end he will leave the dwelling, in that case, the deposit is used as the last months' rent).

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

The landlord can manage the deposit as he or she sees fit, provided the landlord has it when the time is due to return it to the tenant, if necessary.

- Are additional guarantees or a personal guarantor usual and lawful?

Additional guarantees or a personal guarantor are lawful. A surety as a personal guarantor is often required by the landlord if the prospective tenant has only low-income due to education or study. Then, the landlord usually requires that the parents of the tenant stand surety.

- What kinds of expenses are covered by the guarantee/ the guarantor?

The security deposit serves as a guarantee for all claims of the landlord arising from the tenancy. It is precisely not supposed to be an advance rent payment, so that the tenant is not entitled to stop paying the rent before the tenancy ends.

3. During the tenancy

3.1. Tenant's rights

- Defects and disturbances
 - Which defects and disturbances are legally relevant (e.g. mold and humidity in the dwelling; exposure to noise e.g. from a building site in front of the dwelling; noisy neighbours; occupation by third parties)?

Every defect that deprives the tenant of the ability make effective use of the dwelling or is harmful to health is legally relevant. For example, mould and humidity represent two of the defects found on a dwelling, along with cracked walls. Regarding exposure to noise, Portuguese law regulates the most common noise sources, such as civil works, construction of buildings, neighbours, etc. The law establishes a limit for noise, which can vary depending on the zone. For example, if there is a building site in front of the dwelling, the noise it can produce is limited and cannot continue past 20:00.

- What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)

Principally, all claims and rights of the tenant against the landlord due to defects of the dwelling require that the tenant did not know of the defect when entering into the tenancy contract or at the time of acceptance. If there is a defect in the dwelling which was not caused by negligence of the tenant and the contract is silent on who is responsible for which repairs, the repair of defects must be made by the landlord. This decision can come from the landlord or from the court. The rental contract may stipulate that the tenant is authorized to make repairs in the dwelling; In that case, the tenant makes the necessary repairs and then claims the costs or a rent reduction from the landlord. If, however, the repairs are urgent – such as if the ceiling is falling down because of heavy rain – the tenant, even if unauthorized, is permitted to make the necessary and urgent repairs and then claim the costs or a rent reduction from the landlord.

If, for some reason, the tenant suffers deprivation or a reduction in the enjoyment of the rented dwelling, the tenant is entitled to a rent reduction. In case of deprivation, even if temporarily, the tenant can terminate the contract.

- Repairs of the dwelling

- Which kinds of repairs is the landlord obliged to carry out?

It is up to the landlord to perform all maintenance works and repairs, ordinary or extraordinary, required by applicable laws or by order of the contract, unless otherwise agreed. The tenant may perform maintenance works and repairs only when the contract expressly so provides or if the landlord has given consent on that matter. This requirement does not apply to cases of urgent repairs or other expenses, in which case, as previously stated, the tenant may offset the expenses paid in relation to the work with the obligation to pay the rent.

- Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

The tenant has a statutory right to this effect in so far as the tenant is entitled to offset a claim for reimbursement of expenses against the landlord's claim for rent. A claim for reimbursement requires that the tenant had remedied a defect either because the landlord was in default in remedying the defect or because an immediate remedy was necessary to preserve or restore the state of the rented property.

- Alterations of the dwelling

- Is the tenant allowed to make other changes to the dwelling?

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

With regard to changes necessary in order to accommodate a handicapped person, the tenant may demand the approval of the landlord for structural changes or other installations required to make the use of the dwelling or access to it fit for the needs of the disabled. In case of approval, these changes will be seen as useful improvements (mentioned above), and all costs are borne by the tenant.

- Affixing antennas and dishes

In general, tenants are not entitled to affix a parabolic antenna without the permission of the landlord. The tenant has to inform the landlord, by registered letter, of his or her intention to affix an antenna or dish. The landlord can oppose this intention only if, within 30 days, the landlord affixes an antenna or dish of the same type. Although the landlord has to tolerate the installation of a parabolic antenna, he nevertheless still has the right:

1. to determine the place where the antenna shall be fixed
2. to be indemnified from all costs by the tenant.

- Repainting and drilling the walls (to hang pictures etc.)

Without the landlord's permission, the tenant is principally not allowed to carry out physical alterations affecting the structure of the residential building, even if these measures lead to an improvement on the condition of the dwelling. This includes e.g. the refurbishment of bathrooms, the installation of new heating systems as well as the renewal of floors.

It is lawful, for the tenant to perform minor deteriorations in the dwelling, when this is necessary to ensure the tenants comfort or convenience.

Those deteriorations, however, must be repaired by the tenant prior to the return of the building, unless otherwise stipulated.

- Uses of the dwelling

o Are the following uses allowed or prohibited?

- keeping domestic animals

It is generally accepted that keeping animals inside the dwelling belongs to the contractual use of the rented dwelling and is also protected by the fundamental right to free development in so far as it concerns non-disturbing pets, which are usually kept in a cage or an aquarium. Therefore, a general prohibition to keep pets of any

kind is ineffective. This applies also to a general prohibition of keeping disturbing animals like cats and dogs inside the dwelling. The decision whether or not to permit the keeping of animals must be made instead on a case-by-case basis. It depends especially on the species and number of animals, the size of the dwelling, special needs of the tenant as well as on the conduct of the landlord in comparable cases.

- producing smells

Tenants are subject to the same limitations imposed to owners/landlords regarding neighbourly relations. Thus, Portuguese law allows an owner of a building to oppose any emission of smoke, soot, fumes, odours, or any similar facts, from any neighbouring building, whenever such facts import substantial harm to the use of the property or are not resulting from normal use of the building from which they emanate.

- receiving guests over-night

The tenant is entitled to receive guests at any given time of the day, and they can stay in the dwelling for weeks. The landlords' authorization is not needed.

- fixing pamphlets outside

Whether or not the tenant is entitled to fix a pamphlet in the window or at the front of the house depends essentially on its content and presentation. Furthermore, the tenant's freedom of expression must be weighed against the landlord's property right as well as against the rights of the other tenants.

- small-scale commercial activity

Unless there is a provision to the contrary, the residential use of the dwelling includes the exercise of any domestic commercial activity, provided that it is taxed. The law defines domestic commercial activities as those performed in the dwelling where the tenant is living and which cannot have more than three salaried staff. So, in these cases, the landlord is obligated to permit the tenant to proceed with the activity.

3.2. Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

The parties agree on the amount of rent upon the signature of the rental contract. There are no restrictions on the amount of rent a landlord may charge.

○When is a rent increase legal? In particular:

- Are there restrictions on how many times the rent may be increased in a certain period?

The landlord can increase the rent, at a maximum, once a year. The first increase may be required one year after the effective date of the contract and the following, successively, one year after the previous increase.

- Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?

There is no cap or ceiling. The parties are free to establish the amount of rent to be paid.

○What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?

The parties agree, in writing, the possibility of a rent increase and its regime.

If nothing about this matter is established by the parties:

- a) Rent can be updated annually, according to the existing update coefficients;
- b) The first update may be required one year after the effective date of the contract and the following, successively, one year after the previous update;
- c) The landlord communicates in writing at least 30 days in advance, the coefficient update and new income resulting from it.

- Entering the premises and related issues

○ Under what conditions may the landlord enter the premises?

Allowing the landlord to enter the premises in order to examine the dwelling is one of the tenant's obligations. Therefore, as long as the landlord has a valid reason to enter the premises, the tenant is obligated to allow the landlord to enter.

Reasons which entitle the landlord to enter the dwelling are, for example, the implementation of maintenance or modernization measures, the reasonable suspicion of a breach of contract by the tenant, the intention to sell the dwelling and to show it to prospective buyers or tenants as well as the inspection in order to avert imminent dangers.

When the landlord declares an intention to sell the dwelling, during the 3 months prior to vacating the dwelling, the tenant must show the premises to any interested party, during the hours agreed with the landlord. Failing agreement, the hours are on weekdays from 17:30 to 19:30 and on Saturdays and Sundays from 15:00 to 19:00 hours.

- Is the landlord allowed to keep a set of keys to the rented apartment?

The landlord is allowed to keep a set of keys, unless otherwise established by the parties, although, it is common for a tenant to change the lock of the dwelling, keeping the old lock and keys to return them to the landlord upon the end of the contract or to return the lock to its previous condition. All costs (removing the lock and putting it back on) are the responsibility of the tenant.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

The landlord is not entitled to lock the tenant out of the rented dwelling, even if he could terminate the tenancy due to arrears of rent. If the landlord nevertheless replaces the lock, the tenant is not obliged to pay the rent for as long as he is not able to use the dwelling. Beyond that, the tenant may require possession to be restored. The landlord has to resort to judicial means in order to cease the arrears or evict the tenant.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

The landlord must always resort to court in order to get the tenant's personal property seized and sold. After this procedure, the landlord receives the corresponding rents due.

4. Ending the tenancy

4.1. Termination by the tenant

- Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?

After six months of the effective duration of the contract, the tenant may terminate it, regardless of any justification, upon notice to the landlord with prior notice never less than:

- a) 120 days in advance of the expected termination of the contract if, at the date of communication, it has a year or more of effective duration;
- b) 60 days in advance of the expected termination of the contract if, at the date of communication, it has up to one year of effective duration.

This termination becomes effective at the end of a month of the Gregorian calendar, counting from the notification. If, however, the tenant does not comply with this procedure, the termination will still apply, but the tenant is obligated to pay the rents corresponding to the period of notice that he or she failed to give.

- Under what circumstances may a tenant terminate a tenancy before the end of the rental term (e.g. unbearable neighbours; bad state of dwelling; moving for professional reasons)?

After a third of the term of the initial contract duration, the tenant may terminate it at any time, upon notice to the landlord with the following minimum advance notice:

- a) 120 days in advance of the expected term of the contract, if this term is equal to or exceeding one year;
- b) 60 days in advance of the expected term of the contract, if this term is less than one year.

The tenant may also terminate the tenancy contract due to breach of contract, when the severity or consequences of the same make it unviable for the tenant to maintain the tenancy contract. If the landlord does not perform the necessary works for which he or she is responsible and that omission compromises the habitability of the dwelling, this is considered a severe breach of the tenancy contract and is a legal reason for the tenant to terminate the contract before the end of the rental term.

- May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?

In the event that the tenant wants to move out prior to the expiry of the statutory notice period, for example due to a new job in another city, the tenant may terminate the contract after a third of the term of the initial contract duration, upon notice to the landlord with the following minimum advance notice:

- a) 120 days in advance of the expected term of the contract, if this term is equal to or exceeding one year;
- b) 60 days in advance of the expected term of the contract, if this term is less than one year.

4.2. Termination by the landlord

- Open-ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?

The landlord may terminate an open-ended contract:

- (i) whenever the landlord needs the dwelling for himself or herself or for his or her children to live in,
- (ii) for demolition or construction work of renovations or deep restoration requiring the eviction of the dwelling or,
- (iii) without any reason, by notice to the tenant two years in advance of the date it should terminate.

A landlord who wishes to terminate the contract due to reasons (i) and (ii), must notify the tenant at least six months in advance of the date the tenant has to vacate the dwelling and explicitly state, under penalty of ineffectiveness, the reasons for the termination. In cases as per (i) the landlord or the landlord's descendants must move into the dwelling within three months of the notification and for a period no less than two years; in cases as per (ii) specifically, the communication referred to must be accompanied, under penalty of ineffectiveness of the termination, by proof that the demolition, construction procedures or restoration procedures have initiated and because of them, the dwelling must be evacuated, or by a description of the urban operation in the dwelling, indicating that the urban operation is exempt from prior control and the reasons why the same makes it necessary to vacate the dwelling, in the case of urban operations free of prior control.

Terminating the contract invoking demolition, construction or restoration, the landlord is obligated by agreement and as an alternative, to pay compensation to the tenant corresponding to one year of rent, or guarantee the relocation of the tenant to a dwelling with the same conditions that the tenant had enjoyed in the previous dwelling (location, amount of rent and expenses).

- Must the landlord resort to court?

There is no need for the landlord to resort to court, provided the landlord communicates an intention to terminate the contract, by sending a registered letter to the tenant, with at least six months notice of the intended date of the termination and expressly stating, under penalty of ineffectiveness, the reasons for termination.

- Are there any defences available for the tenant against an eviction?

Whenever the landlord terminates the contract by invoking non-payment of rent, charges or expenses that run on behalf of the tenant, the termination has no effect if the tenant, within one month, pays whatever is due.

The landlord can use, against the tenant, a special procedure for eviction which must be presented at the National Rental Counter (BNA - *Balcão Nacional de Arrendamento*). The tenant is then notified by the BNA about the eviction procedure and has the right to oppose such eviction. When there is an opposition by the tenant, the BNA has to send the landlord's claim and the tenant's opposition to a judge and the process will run in a court and no longer by the BNA.

There can be several reasons for a tenant to oppose an eviction procedure, such as when the landlord has not given prior notice to the tenant about the claim to evict or when the landlord has no legal or justified reason to demand the tenant's eviction, etc.

Beyond that, the tenant has another chance to avoid or to delay eviction by filing another request. Accordingly, the court may reserve, prohibit or temporarily stay the measure of compulsory enforcement, provided that eviction would entail a hardship that violates principles of good morals.

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?

Whenever there is a breach of contract by the tenant, the landlord has a right to terminate a tenancy. Examples of breach of contract are as follows: Lack of rent payment, violation of hygiene rules, quietness rules, good neighbour rules, violation of condominium regulation, use of the dwelling contrary to law, etc.

- Are there any defences available for the tenant in that case?

In case of termination before the end of the tenancy period, the tenant may object and demand continuation of the tenancy. The same applies to the possibility to request extension of the period to vacate the dwelling during the court proceedings.

- What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?

When the tenant fails to vacate the dwelling when required and the extension of the tenancy does not apply, then the landlord has the right to evict the tenant.

For that, the landlord must initiate the eviction procedure in the BNA, and one of two situations can occur:

- (i) The tenant opposes the eviction and the court will settle this matter or,
- (ii) The tenant does not oppose the eviction and has 30 days to vacate the dwelling.

4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?

After termination of the tenancy, the landlord has to return the deposit, provided the landlord has no claims against the tenant. Otherwise, the deposit is used to compensate for those claims.

- What deductions can the landlord make from the security deposit?
 - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

If the property is not in perfect condition by the end of the tenancy, (as it was delivered at time of the contract) the deposit may be used to meet the costs of the repair works, and the remainder is returned to the tenant. Otherwise, the landlord has to return the total amount of the deposit to the tenant.

With regard to furnished dwellings, the landlord may only demand an addition to the rent in return for the furniture, but he is not entitled to make a deduction from the security deposit for damage due to the ordinary use of furniture. Such damage is already satisfied by the rent payment.

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
 - Are there specialized courts for adjudication of tenancy disputes?

The competency for litigation regarding private tenancy law belongs to the ordinary jurisdiction, i.e. it is enforced in civil courts. Within the civil jurisdiction, the local court is competent for conflicts arising out of residential tenancies independently of the amount in dispute. The place of jurisdiction is usually where the immovable property is situated.

- Is an accelerated form of procedure used for the adjudication of tenancy cases?

The National Rental Counter (BNA – *Balcão Nacional do Arrendamento*), which has competence over eviction procedures, made these procedures faster and relieved the courts of these matters, as long as the tenant does not oppose it. The landlord files an application emphasising an intention to evict the tenant and the reasons leading to it. If the tenant opposes this intention within 15 days of the notification of

the application for eviction, the BNA submits a copy to the applicant and presents the special eviction procedure for distribution in the court indicated by the landlord. If this happens, the eviction process continues in a civil court.

- Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?

With the exception of eviction procedures, the parties can resort to Justices of the Peace, which is a court where the procedure is simplified. Disputes that enter these courts can be resolved through mediation, conciliation or by sentence.

Mediation takes place only when the parties agree but differ with regard to details, in these situations they can solve the dispute in a friendly manner with the intervention of a mediator, which is an unbiased party and has no power of decision, and therefore does not impose any decision or judgment. As an impartial third party, the mediator guides the parties and helps them to establish the necessary communication so that they can find among themselves the basis of the agreement that will end the conflict. The parties are thus responsible for the decisions they make with the assistance of the mediator.

If mediation does not result in an agreement, the process follows its course and the Judge tries to reconcile. If conciliation is not reached, evidence will be produced and the court will hear the parties, and finally, the judge of the Justices of Peace will deliver a judgment.

Mediation can also take place in a private matter, instead of resorting to the Justices of Peace; the parties go directly to a mediator and try to resolve the dispute. The difference will be that if the mediation fails, the process stops there, and if they still want to resolve their dispute, they have to resort to court.

5. Additional information

- How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?

Social housing is intended for people with low income who do not meet the conditions for or who manifest difficulties in gaining access to the free housing market. They can apply for this type of housing by request, by going to their local authorities or on the site: <http://www.mercadosocialarrendamento.msss.pt/> .

Subsidized housing, on the other hand, involves monthly support to protect the economically less favoured tenants, especially the elderly. A person who rents a house is entitled to rent allowance if the tenancy contract was signed before 18

November 1990 and the rent update occurred before 12 November 2012 or if the tenant:

(i) is less than 65 years old and the household had, in the previous year, a Fixed Annual Gross Income lower than € 20,370.00 or

6.

(ii) is 65 years old or older and the tenant's household had, in the previous year, a Fixed Annual Gross Income lower than € 33,950.00

This can be requested by going to the Social Security services or local authorities.

- Is any kind of insurance recommendable to a tenant?

It is advisable that tenants conclude a household insurance contract covering the furnishing of the dwelling in case of damages caused, for example, by fire or flooding, but in general insurance does not cover the lack of rent payment.

- Are legal aid services available in the area of tenancy law?

To ensure fair and effective access to justice, economically disadvantaged parties who are unable to pay the costs of litigation can apply for legal aid (*Apoio Judiciário*). This legal aid is requested from the Social Security Services, which analyse the applicants' financial status and decide whether or not to grant the legal aid.

- To which organizations, institutions etc. may a tenant turn to have his or her rights protected?

There is no national tenants' association, but there are several local tenants' associations (e.g. *Associação dos Inquilinos Lisbonenses*, *Associação dos Inquilinos do Norte de Portugal*, etc.) that offer comprehensive legal advice and help with tenancy related disputes, provided the tenant is a member of the association.

The Institute for Housing and Urban Renewal (IHRU) has a help line (contact: 808100037) for tenants to clarify any doubts regarding tenancy.

Social Security services, as mentioned before, are responsible for giving legal aid services. Such services can be requested online through the site <http://www4.seg-social.pt/>.

ROMANIA

Tenant's Rights Brochure

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1. Introductory information

- Introduction: the national rental market

With its 20.12 million inhabitants dispersed in 7.4 million households (Census 2011),¹⁹⁵ Romania is the largest country of South East Europe. Its economy and population are strongly concentrated in Bucharest, the capital city, with two million inhabitants. Romania has a housing stock of 8.5 million dwellings, located in 5.1 million buildings. Bucharest has a housing stock of slightly above 920,000, with only 2% social rental dwellings.

With an owner occupation rate of 98.2%, Romania is a “super home-ownership state”: 98.2% of all conventional dwellings are privately-owned (97.5% in municipalities and cities and 99.1% in communes), followed by state property, which accounts for only 1.4% (2.1 % in municipalities and cities and 0.7% in communes).¹⁹⁶ Other forms of ownership are almost nonexistent, accounting for about 0.3% of the total number of conventional dwellings.

Table 1. Tenure structure*

Home ownership - Total				Public Rental		Other		Total	
		Out of which: Private rental**							
No.	%	No.	%	No.	%	No.	%	No.	%
8,301,476	98.2	1,000,000	11.8	122,538	1.4	16,928	0.4	8,450,942	100

* Source: N.I.S (2012)

**Expert estimate

Another source of information, for comparison, is EU – SILC data for 2012, according to which 96.6% of the Romanian families lives in owner occupied housing, 2.8% in social rental and “rent-free tenure” and around 0.8% in private rental.¹⁹⁷

Private rental housing has increased significantly after 1990, as a result of rent control elimination, privatization and restitution of public housing, mainly in larger cities. The share of private rental sector is widely considered underestimated due to tax avoidance by practically all housing market stakeholders. While it is difficult to estimate precisely the size of the private rental stock, it is clear that the various official national estimates in the range of 4 to 7 percent are significantly lower than the actual figures for urban areas. From a methodological point of view, the enumeration of rental properties is even more difficult within the Census, because a grey market exists in which rental properties are not reported to census officials. A frequent reason for this might be that landlords wish to avoid paying taxes. Starting

¹⁹⁵ National Institute of Statistics, <http://www.recensamantromania.ro/en/>

¹⁹⁶ In Romania, the commune is the lowest level of administrative division; it is the *rural* subdivision of a county. Urbanised areas, such as towns and cities within a county, are given the status of city or “municipality”.

¹⁹⁷ Eurostat (SILC) – Distribution of population by tenure status, type of household and income group, 2012

with the official tenure statistics available from the 2002 census and making adjustments for rental units that are “invisible” because they are vacant or part of the grey market, it is reasonable to assume that the share of the urban housing stock consisting of rental units is in the 11 to 15 percent range.

- Current supply and demand situation

Almost 67% of the existing housing stock was built after 1960 and many of these buildings suffer from poor thermal insulation and ongoing deterioration. The surface of the living area per capita is smaller than the EU average by ca. 17.5 m² per person. The issue of overcrowding can only be solved by new residential construction, but the rate of renewal of the housing stock has drastically decreased after 1990. Housing completions have increased considerably over the years, with a peak in 2008 with 67,000 units for the whole of Romania. This was 3.1 units per 1,000 inhabitants, while the EU average was 5.2 in the same year. Since then, housing completions have constantly decreased, to 49,000 units in 2010 (2.3 per 1,000 inhabitants) and to some 45,000 units in 2011. The vast majority of new construction is single family houses and condominiums, 57.7% being built in rural areas. More than 90% of new construction is realized by private persons or companies, with around one quarter of this by foreign companies.

New housing construction activities are quite visible in the suburbs of Bucharest, whereas the capital city itself has below average numbers of new homes, representing 1 new unit per 1,000 inhabitants.

The emergence of professional landlords is a relatively new and so far marginal phenomenon. The typical lessor is a so called “accidental landlord”: a private individual of above average income who has more living space than what their own housing needs require, or more than one housing unit, so the owner rents out the unused living quarters as a secondary source of income. The term of the contract is typically short – usually for 1 year.

The public rental sector is presently almost non-existent in Romania. More than 2.2 million units from the formerly public rental dwellings (27% of the total housing stock) have been privatized after transition. Residual social rental housing, decimated by the mass privatization and homeownership programs, cannot accommodate the newly created post-privatization households with lower incomes, let alone the young and mobile, to any meaningful degree. Occupancy of the social housing stock is dominated by the previously allocated tenants and thus lacks socio-economic targeting for the current dynamic situation. Also, the huge difference between the social and private rental rents effectively locks sitting tenants into their dwellings, preventing any significant adjustment, restructuring and reallocation within this stock.

Housing policy design and implementation capacities remain limited in Romania. This is demonstrated amply by the backlog in both private and public rental housing production and maintenance of the existing stock.

Main current problems of the national rental market from the perspective of tenants:

- Affordability problems, especially in urban centres where the prices are driven up by migration pressure;

- Tax evasion, a common practice on the Romanian rental housing market, that pushes private rentals into the shadow economy;
- Insecurity of tenancy period and lack of predictable contracts caused by non-existence of clear guidelines and rules to conflict resolution;
- The constant decrease of the public housing stock from the biggest cities that resulted in longer waiting lists;
- Significance of different forms of rental tenure.

The only clearly distinguished rental tenure forms in Romania are the private and public rental. Owner-occupation is currently the dominant tenure form and is considered to be cheaper than rental, especially with the present very limited access to affordable rental. According to the last 2011 Census, more than 98% of all conventional dwellings are privately owned, followed state property which accounts for only 1.4%.

Private renting

Private rental housing has increased significantly after 1990, as a result of rent control elimination, privatization and restitution of public housing, mainly in larger cities. The share of private rental sector is unanimously considered underestimated due to tax avoidance by the vast majority of landlords. According to official statistics the private rental sector covers 4-7% of the housing stock, which is clearly lower than the actual share of private renting in urban areas. Many rental dwellings are “invisible” for official statistics, as they are vacant or part of the grey market. According to expert estimates, it is reasonable to assume that the share of rental units is somewhere between 11-15% of the urban housing stock.

- “Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc.)

Currently, the share of public rental housing is among the lowest in EU, below 1.4% from the total housing stock: 2.1% is located in the biggest cities and only 0.7% in communes. The typical social landlords are local authorities that are managing both the allocation procedure and the maintenance issues. Social housing is regarded in Romania as housing for the poorest strata of the society, and over time it became a residual sector. Some of the social houses are built in segregated areas, on the margins of the cities, and are usually inhabited by the Roma.

- General recommendations to foreigners on how to find a rental home

Finding a rental property is not a complicated issue for foreigners, since they do not face linguistic problems because most of the urban landlords in Romania speak English. However, it is highly advisable for a foreigner to address a well-known brokerage agency with a sound track record.

- Main problems and “traps” in tenancy law from the perspective of tenants
 1. Affordability
 2. Tax evasion
 3. Tenure insecurity

4. Unpredictable tenant-landlord relations

- Important legal terms related to tenancy law

Romanian	English
Proprietar	Owner
Chirias	Lessee
Sub-inchiriere	Sub-tenancy
Comision de intermediere	Brokerage fee
Garantie	Security deposit
Cheltuieli comune	Common costs (shared costs in multifamily buildings, usually condominiums and cooperatives)
Chiria	Rent
Lucrari de intretinere	Maintenance works
Utilitati	Utilities
Contract pe termen determinat	Fixed-term contract

2. Looking for a place to live

2.1. Rights of the prospective tenant

- What bases for discrimination in the selection of tenants are allowed/prohibited? What about, for example, status as a foreigner, student, unmarried partner, or person with a short-term work contract?

According to the present legal framework, discrimination is defined as any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, belief, gender, sexual orientation, age, disability, contagious chronic disease, HIV infection, belonging to a disadvantaged category, and any other criteria that has the purpose or effect of restriction, prevention recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms and legal rights in the political, economic, social, cultural or any other field of public life.

The legislation states that the refusal to sell or lease a land or building for housing on a discriminatory basis against an individual or a group of persons is considered a contravention, unless the act falls under criminal law. The sanction for this contravention consists in a fine of 1,000 to 30,000 RON if discrimination is directed against an individual, or a fine of 2,000 RON to 100,000 RON if perpetrated against a group of people or a community. Therefore the private landlord, the State, or the municipalities can be held accountable in cases of breach of the principle of equal treatment. In this respect, Romanian law is perfectly harmonized with EU law.

- 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?

Formal regulation is very limited in this regard. Generally, the choice of a tenant is based on the person's financial situation. It is important that the tenant can afford to pay the rent and the other utilities. It is unusual that the landlord would ask something

about the person's sexual orientation. Although many Romanians are generally religious and do not agree to same sex couples, it is unlikely that such a question will be asked.

- 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)?

A "reservation fee" is only legal if both the prospective tenant and the landlord agree to it. It is unusual that the landlord would restrict the selection process by imposing a fee. On the other hand, real estate agents might charge fees for their services. Usually the brokerage companies' fees vary between 1-3% of the value of the housing transaction, or alternatively, the amount of a monthly rent.

- 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)?

Generally, the relation between the landlord and the tenant is based on mutual trust. There are some landlords who search for a specific potential tenants' type, namely: young couples, women, students, depending on their personal experiences and beliefs. However, there is no regulation that allows the landlord to ask a salary statement from the tenant or other information regarding his financial status, without his consent.

Private credit reference agencies keeping records on individuals are not present in Romania. The Credit Bureau is only accessible by banks and other financial institutions

- 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?

The profession of real estate broker is not yet regulated as such, but there are some provisions issued by the National Authority for Consumers Protection. Even though real estate brokers have a rather negative public image, they act as intermediaries in more than 90% of private housing transactions. Less than 1% assumes representation of a party involved in a transaction; most of them play an intermediary role, the fees depending on the value of the transaction. The agents can provide information to the clients regarding the market trends and prices, history of the building, demands of the owner/tenant and recommendation regarding general legal accepted provisions under the rental housing contracts.

Official information for the available social housing and application procedures can be obtained from the specialized department of any local authority. However, this information is not transparent, is difficult to access, is not user-friendly enough and is not publicly available.

- Are there any accessible "blacklists" (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?

There is no official source in Romania where information about either tenants or

landlords is centralized. The best way for a landlord to find a good tenant is through recommendations. Another unofficial way to find out information about a potential tenant or potential landlord is through the real estate agencies. Some agencies reserve their right to select their clients, and they also keep a database of the tenants who resorted to the real estate agency services in order to find a dwelling. This is, in turn, also a good way for the potential tenant to find out information about the potential landlord.

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)?

There is no legal requirement for a written form of the private rental contract, the consensus of the parties being fully sufficient to conclude it. However, the lack of a written form of the contract can generate several problems and potential disputes between landlord and tenant.

A written document is required for the fiscal registration and land book registration (the latter costs ca. 15 EUR). In addition, a written contract is useful for both parties in case a disagreement arises in relation to the rights and obligations under the housing rental contract. Romanian legislation does not foresee any fee for the conclusion of the lease contract. In case the parties choose to conclude a contract under authenticated form (in front of the public notary), they must cover the notary fees in amount of 0.3% from the rent owed for the entire term of the lease agreement.

Local authorities are mainly responsible for social housing administration, management of public services, and social issues. Municipalities are allowed to outsource social housing services to private or publicly owned management companies.

A public tenancy contract is usually for five years, with the possibility of prolongation or renewal of the contract on the basis of written proof of income. This should be signed by the mayor or an authorized representative. The law specifies the contract's provisions and conditions of cancellation. The law stipulates also the kinds of families and persons who are not eligible for being allocated a public housing unit, such as foreign nationals, or Romanian persons who own or formerly owned a house. Local authorities are entitled to detail and approve specific allocation criteria, according to local economic and social realities.

- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?

There are no mandatory minimum requirements for a tenancy contract. However, for a valid conclusion of a contract, the parties need only to agree on the most relevant terms, like the property address and the monthly rent amount; other aspects of the tenancy may be agreed in the contract, although it is not required for the contract's validity.

- Duration: open-ended vs. time limited contracts (if legal, under what conditions?)

The lease contract can be concluded without specifying the duration or length. However, a lease contract cannot exceed 49 years. This delimitation of the maximum leasing period is a novelty brought by the New Civil Code. Also, the termination of a lease can be a certain date or a future event whose time of occurrence is uncertain, such as tenant's death.

As for the other terms of the contract, lease duration is determined freely by the parties. However, in some cases, in order to protect the rights and interests of certain categories of persons, extensions of the lease term are possible (for example in public housing). In order to protect the tenant, Law 17/1994, Law 112/1995, Government Emergency Ordinance no. 40/1999, Government Emergency Ordinance no. 44/2009 and a number of other measures extended the effect of lease contracts if the tenant does not lose the right of use for the sole reason that the contract expired.

There is no legal minimum duration of the housing lease contract. In practice, however, the minimum term for which such contracts are concluded is one year.

- Which indications regarding the rent payment must be contained in the contract?

Although not required for the contract's validity, it is strongly recommended to establish the exact rent amount for a determined period (usually per month). The parties are free to agree in the method of payment, payment due dates, changes in the rent amount, rules for utilities payment etc.

The rent for dwellings that belong to the public or private property of the state or the State's administrative units, as well as for intervention housing and tied accommodation, is calculated on the basis of a monthly fee, depending on the rented area. The maximum rent level for the above mentioned dwellings (including the adjacent land) cannot exceed 15% of the monthly net income per family, when the monthly average net income per capita does not exceed the national average net salary.

The tenant has the obligation to inform the owner, within 30 days, of any change in the monthly net income per family, which may have as a consequence the increase of the rent. Not complying with this obligation may trigger termination of the contract.

It is worth mentioning that legislation forbids the termination of the lease contract or the eviction of the tenant on the grounds that the tenant does not agree with the increase of the rent.

- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

The New Civil Code states that the landlord must perform all required repairs in the rented space in order to maintain it suitable for use throughout all the lease period. The same legal text stipulates that locative repairs resulting from the normal use of

the dwelling are the responsibility of the tenant (the housing repairs).

After concluding the lease contract, if the landlord refuses to make the necessary repairs that he or she is obliged to do, and refuses to immediately take the proper measures in this respect – after the landlord had been previously informed regarding the necessity of making the repairs – the tenant might carry out the necessary repairs on the landlord's behalf. In this case, the landlord is obliged to pay the tenant the costs of the repairs. Apart from the principal costs of the repairs, the landlord is obliged to pay interest for the sums paid by the tenant from the date the expenses had been made. The interest rate is, in principle, the one established by the parties in the rental contract. If the parties did not determine the interest rate in their contract, the legal interest rate would be applicable. The legal interest rate is provided by the law, and in 2013 its level was 5%/year.

In case of emergency, the tenant may inform the landlord about the necessity of making the repairs even after the reparations are initiated, but the interest for the amount of money invested by the tenant only starts to accumulate after the landlord had been informed about the repairing process.

The landlord has to preserve and repair the rented space not only in the tenant's interest, but in his own interest. The obligation of making the necessary repairs extends also to the accessories of the leased space.

The landlord is responsible to make the necessary repairs to the common parts that are used by more than one tenant, if it cannot be proven that the damage has been caused by a particular tenant, by the members of his family or by the sub-lessees that have contracted with that particular tenant.

The New Civil Procedure Code regulates an efficient instrument that can be used in order to accomplish the execution of the required repairs. This consists in the judge's order (presidential ordinance), pronounced with the summoning of the parties. By this means, the tenant or the sub-lessee may be obliged to use a smaller area of the rented space or may even be obliged to the eviction of the space. These measures could be applied only if they are justified during the repairing process regarding the repairs provided by the law that are the responsibility of the landlord.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

The furnishing details are subject to free agreement between the tenant and the landlord. The landlord might, in some circumstances, be willing to change the furniture and negotiate the price covered if an agreement with the tenant cannot be reached otherwise.

Since private rental contracts are poorly regulated, there are many clauses that the landlord can include. This is usually dependent on the landlord's past experiences. If the landlord has little experience, the contract will be short and will only cover basics such as the deposit, repairs, animals, termination form etc. Again, it is usually possible to negotiate on certain clauses if the tenant appears reliable for the landlord.

- 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)?

It is recommendable to sign a protocol at the tenancy beginning and its termination. This document should contain an assessment of the condition of the rooms, equipment and furniture; also the registration of meters of the various utilities should be registered.

- Any other usual contractual clauses of relevance to the tenant

Other contractual clauses of relevance to the tenant may include a:

- clause on the landlord's right to access to the property in case of repair works and the rules to be followed;
- clause on the right of the landlord to inspect the dwelling;
- clause on the provision of the security deposit;
- clause on the responsibilities of the parties for the maintenance and utilities costs;
- clause on the prohibition of keeping domestic animals etc.

- 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.)?

According to the New Civil Code's regulations, in the absence of a prohibition clearly stipulated with respect to this matter, other people may also live together with the tenant. In this case, as long as they use the space that forms the object of the lease contract, they will also be held responsible for any of the obligations arising from the contract. Thus, a written consent of the landlord is not needed any more

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

In a private tenancy, the tenant is not obliged to use the rented property, and therefore it would be enough for the landlord to ensure that the dwelling is available to the tenant without the need of any particular formal actions to be performed. Once the dwelling is handed over, the tenant shall be obliged to pay rent regardless of whether the tenant actually uses the house.

In a public tenancy, non-occupancy for more than two months, without good reason, may be a ground for termination of the tenancy agreement, which is justified by the strong demand for social housing.

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

If a couple cannot continue to share the family dwelling due to irreconcilable disputes, the benefit of the lease contract can be assigned to one of the spouses. When assigning the lease, a number of things must be taken into consideration, in the following order: (1) the situation of minor children, (2) what and who triggered the divorce and (3) whether the former spouses have the possibility to acquire another

place to live. Assigning the benefit of the lease contract is made with the citation of the landlord and takes effect from the moment the court makes the final decision.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);

There are no specific provisions in the Romanian legislation for such particular cases. Subsequently, the general rules regarding the parties and the beneficiaries to the contract shall apply. This means that a new (student) tenant cannot lawfully move into a rented apartment without the landlord's consent.

- death of tenant;

According to the New Civil Code, the rental housing contract terminates within a period of 30 days following the death of the tenant. Descendants and ascendants of the tenant have the right to choose the continuation of the rental housing contract in a term of 30 days following the death of the tenant. This is possible only if their names appear in the contract and if they have lived with the tenant (cumulative conditions). In other words, even if the descendants and ascendants of the tenant live with the contracted tenant and their name appears in the contract, they do not automatically inherit the tenancy. They must choose within 30 days either to terminate or continue the contract. If they choose to continue, the parties have to name a lease contract signatory on behalf of the deceased tenant. If they do not reach an agreement within 30 days from the registration of the tenant's death, the appointment shall be made by the landlord.

Even though only one of the spouses is the holder of the contract or the contract had been concluded before marriage, each of the spouses has a personal right to housing, arisen from the rental contract. Should one of the spouses die, the surviving spouse will continue executing the lease contract, if the surviving spouse does not waive his or her right within the aforementioned 30 days term.

- bankruptcy of the landlord;

In case of the bankruptcy of the landlord,¹⁹⁸ the public auction conducted by a bailiff (for example for debts of the landlord) cancels all other rights over the real estate property. In the practice of bailiffs, this includes the rights of tenants as well. If the contract does not have a verifiable date and the lessee is in possession of the property, the contract shall be binding upon the transferee as a contract of lease with an indefinite term.

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

The New Civil Code states that the tenant may only sublet the dwelling with the written consent of the landlord. If the latter agrees and there is no contrary stipulation

¹⁹⁸ In Romanian law, the notion "bankruptcy" is not applicable if the landlord is natural person. If the landlord is a legal entity, the general rules are applicable.

in the contract, the subtenant shall be jointly liable with the tenant for the obligations towards the landlord stipulated under the rental housing contract.

As a protection measure for the landlord, in case of subletting, the landlord can sue both the main tenant and the sub-lessee (the landlord has a direct action against the sub-lessee) in order to obtain fulfilment of the obligations arising from the residential lease. The New Civil Code establishes joint liability of the transferee and of the sub-lessee with regard to tenant's obligations and to fulfilment of the obligations towards the landlord established by the lease contract. In practice, subletting is rarely used in the context of residential tenancy contracts.

Privately rented dwellings can be further sublet or partially sublet if the landlord agrees to it in writing. For the public rentals, the tenant should look up the rules in the relevant municipal/ministerial decree, according to the situation.

The rules of subletting and the protection enjoyed by the tenant are exactly the same as in the case of a normal lease.

- Does the contract bind the new owner in the case of sale of the premises?

The sale of the dwelling does not affect the tenancy relationship unless it is specified otherwise in the contract: A contract clause could state that the tenancy contract is terminated with the sale of the dwelling. Without such a clause, the dwelling may only be sold with the tenant.

- Costs and Utility Charges
 - What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?

The legislation does not contain any exhaustive rules regarding utilities. Only the New Civil Code stipulates that tenants are required to contribute to the costs of lighting, heating and cleaning of common parts and installations or other similar expenses. Therefore, the landlord and the tenant may agree freely on the distribution of the financial burdens related to utilities.

The utilities have constituted traditionally the subject of direct contracts between the service providers (for heating, water, electricity, garbage collection, gas, telephone, cable TV, etc.) and homeowners. Nowadays, utility companies use standard contracts for apartment buildings that have a registered association of owners¹⁹⁹. Therefore, the contracts for the utilities are usually concluded with the owner and are invoiced on behalf of the owner. Then, according to the provisions of the lease contract, the owner recovers them (the utilities) from the tenant(s).

¹⁹⁹ In Romania, the owners are obliged to administer the condominium. The simplest and most usual way to care for the common areas is the establishment of an association of owners (which is not mandatory). The latter has legal personality and it can conclude, on behalf of the owners, contracts with suppliers.

In practice, the usual utilities desired by the tenants are: electricity, gas for heating and cooking, water, waste collection. Even though some additional utilities are not necessary for a building to be and remain habitable, the tenants desire at least to have access to TV and telephone suppliers (and to conclude themselves the contracts).

- Which utilities may be charged from the tenant by the landlord? What is the standard practice?

Some companies (e.g. some Internet providers) agree to contract directly with the tenant, since there is no risk of significant loss in case of default. However, in the absence of contrary contractual provisions, the owner does not have an obligation to conclude a contract with service providers (for phone, Internet, cable TV, etc.) in order to make them available to the tenant. This is not part of the landlord's legal obligations, because telecommunication services are considered luxury utilities and not basic utilities. In Romanian legislation there are three types of expenses: necessary expenses (that are made in order to preserve the good), useful expenses (that are made in order to increase the value of the good) and luxury expenses (that are made only for the pleasure of the owner of the good). Or, the legal obligation of the landlord is to keep the property in good condition for use throughout the rental contract and the telecommunication services are usually included in the category of the luxury expenses, which are not the obligation of the landlord. However, in practice, even these extra utilities are provided by the landlord (and paid by the tenant), most often being sine qua non conditions of the rental contract.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

The waste collection usually is performed by the local authorities (or a company appointed by it). The owner of the real estate is obliged to pay the waste collection fee and the property tax. These are local taxes, determined through municipal decisions and collected by local authorities through the municipal administration. In the case of private rented properties, property tax and waste management fee remains the responsibility of the owner, unless otherwise agreed with the tenant.

- Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?

Parties can freely negotiate this issue and there is no legal prohibition on shifting the operational condominium costs (cleaning, common water, electricity consumption etc.) onto the tenant. However, the costs for substantial improvements or repairs shall be borne by the lessor.

- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?

The New Civil Code and the 1996 Housing Law do not contain any rules regarding the deposit amount in relation to tenancy contracts. However, Article 37 of GEO 40/1999 stipulates that the tenant must provide a deposit in order to guarantee the execution of his obligations. At the date of the conclusion of the housing lease contract, the parties have to agree on establishing a warranty deposit. The deposit cannot exceed the amount equal to the rent for three months, at the rate for the current year, if the rent is not paid in advance for a period of three months (art. 38 of the GEO 40/1999). If the rent is paid in advance for a period longer than three months, the deposit will no longer be provided.

Such guarantee is used in practice to pay the utility invoices at the end of the lease's term or may represent the last month of rent.

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

There are no specific rules in place for deposit management during the tenancy period. The deposit is reimbursed to tenants within 3 months from the date when the parties handed over the keys. If the deposit is not reimbursed, the whole deposited amount or the remained balance of it, after deducting the expenses stipulated in art. 40 of the Government Emergency Ordinance no. 40/1999, produces interests.

- Are additional guarantees or a personal guarantor usual and lawful?
- What kinds of expenses are covered by the guarantee/ the guarantor?

Additional guarantees or a personal guarantor are lawful however not usual practice in Romania.

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 neighbors; occupation by third parties)?

The basic definition of a “defect” is that it “renders the undisturbed use of the dwelling difficult or impossible”. As per the minimum requirements of a “convenient dwelling”, stipulated by Annex 1 of the Housing Law, a particular living space has to satisfy the user's requirement to cover all the essential needs – rest, cooking, education and hygiene – through its characteristics, facilities, and quality. The landlord needs to ensure these qualities at the handover of the dwelling and maintain them throughout the duration of the contract by carrying out repair work when necessary. The refusal of the landlord to comply with this obligation leads to the patrimonial liability, which can mean that either the landlord must offer compensation to the tenant or even the termination of the contract, since the dwelling does not satisfy the tenant's needs.

The law makes a distinction between hidden and surface defects, and it suggests that the landlord is responsible only for hidden defects. As far as surface defects are concerned, the tenant should take note of them upon taking over the dwelling.

The landlord guarantees only for the de jure disturbances (only if a third person claims a right over the dwelling) and not for the de facto disturbances (squatters etc). According to the regulations of the Civil Code, the tenant is liable to protect himself or herself against de facto disturbances, save for the disturbances that have started prior to the asset's handover procedure that impedes the tenant to take over the asset.

Based upon the specific circumstances of each case, exposure to noise might be deemed to represent a defect of the dwelling, but such cases are to be reviewed by the court depending on several circumstances, for instance if the tenant has been aware of such defects when entering the housing lease contract.

- 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)

If the landlord repairs the dwelling defects, hence eliminating all defects that might encumber or diminish the use of the dwelling, the provisions stipulated by art. 1791 of the Civil Code are not in effect anymore. The tenant may ask a court of justice to force the landlord to carry out the repair works in order to eliminate the defects and to keep the dwelling in good condition. At the same time, the tenant may carry out the repair works on behalf of the landlord, if the landlord does not take any action within a 30 day period once the tenant notified the landlord in writing about the problem.

Based on art. 1827 of the Civil Code, the tenant is entitled to terminate the contract if the defects continue to pose a danger to the health or physical integrity of the inhabitants after the repair works.

According to art. 1791 par. (2) of the Civil Code, the landlord can be held accountable for the torts inflicted upon the tenant by the existing defects, even if the landlord was unaware of such defects upon concluding the contract, since his main obligation is to ensure the undisturbed and proper use of the rented dwelling.

- Repairs of the dwelling
 - Which kinds of repairs is the landlord obliged to carry out?

Only the small repairs related to damage which is caused by conventional use shall be at the expense of the lessee. The repair of all other damages, if they are not caused through the lessee's fault, shall be at the expense of the lessor. If the property perishes completely or partially the extinguished obligation of the landlord due to impossibility of performance shall lead to cancellation of the lease ex jure.

- Does a tenant have the right to make repairs at his own expense and

then deduct the repair costs from the rent payment?

According to the Civil Code, the tenant is entitled to pay a lower rent if the landlord does not eliminate the defects within the shortest time span. This means that the hidden and surface defects that occurred during the period of the contract only diminished the tenant's possibility to properly use the dwelling. The seriousness of the defects is discussed in relation to the intermediate cause of the renting contract, which is can determine whether the fault encumbers or only diminishes the proper use of the dwelling.

The landlord does not have to offer recovery for damages to the tenant if the landlord can prove that he or she was not aware of the existence of any hidden defects and that, given the circumstances, he or she was not under the obligation to be aware of them.

- Alterations of the dwelling
 - Is the tenant allowed to make other changes to the dwelling?
 - In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)
 - Affixing antennas and dishes
 - Repainting and drilling the walls (to hang pictures etc.)

According to the New Civil Code, the tenant has the right to compensation – proved by justifying documents – for the necessary and useful renovations made to the dwelling if they have been made with the prior consent of the landlord. In order to secure compensation, the tenant benefits from a right of retention.

Judicial practice has recognized the tenant's right of compensation at the time of the termination of the rental contract, by any of the methods stipulated by the law, because until the respective moment the tenant is the one who uses the value added to the building.

If the claim according to which the tenant could pretend the value of the ameliorations which exceed the inhabiting expenses were valid, it would favour a wrongful financial increase for the tenant. In such a case, at the end of the lease contract, the value of the renovations would be inferior (by their physical and moral usage) to the ones that the tenant has taken advantage (without any direct profit in favour of the landlord).

Improvements performed without the prior consent of the landlord give the landlord the right to require the tenant to restore the dwelling to its original state; and it entitles the landlord to require compensation for any damage inflicted upon the dwelling by the tenant.

Until the termination of the rental contract, the tenant does not have any clear, actual or determined right of claim regarding the value of the improvements made, and thus the tenant cannot benefit from a right of retention in order to guarantee the claim.

The tenant can also claim the payment of the compensations from the new owner, if the dwelling has been renovated during the period of the lease contract, regardless of the moment when these expenses have been made.

Tenants living in a dwelling redeemed to their former owners according to Law no. 10/2001 also benefit from the right of compensation for the value added to the housing unit by means of necessary and useful renovations.

By renovations, we legally understand the necessary and useful expenses performed or carried out on the dwelling unit or the common spaces which increase the value of the property, and which are borne exclusively by the tenant. The value of the renovations is established by an expert, by deducting the degree of usage of the renovation in a direct ratio to their lifespan from the updated value of the expenses borne by the tenant.

If the improvements made by the tenant are luxury expenses (for the personal pleasure of the tenant, i.e. those which do not include the necessary and useful expenses) the landlord can ask the tenant to undo them at the termination of the rental contract. Alternatively, the landlord can choose to keep them by paying to the tenant their counter value, averaged at the market. The proof of the improvements is made by a specialized expert, and the court establishes the actual necessity and usefulness of the renovations, depending on other pieces of evidence provided.

- Uses of the dwelling
 - Are the following uses allowed or prohibited?
 - keeping domestic animals
 - producing smells
 - receiving guests over night
 - fixing pamphlets outside
 - small-scale commercial activity

The tenant is obliged to use the dwelling “prudently and diligently”, in compliance with the purpose stipulated in the contract.

This implies that the tenant will refrain from committing abuses in its use and that the tenant will respect the purpose for which the dwelling was rented. The abusive character of the tenant’s behaviour will have to be sanctioned restrictively.

If the profession of the tenant is mentioned within the contract, the consent of the landlord is needed for carrying out the profession (e.g. liberal arts, handcraft) in the dwelling. However, the dwelling cannot become the headquarters of a political party or the premises for commercial activity. Judicial practice has concluded that a change in the purpose of the inhabited space can be considered only when the dwelling is used for commercial purposes and not when the dwelling, rented under the provisions of the lease legislation, also represents the premises of a trading company (just a company seat, without carrying out real commercial activity). A company seat, as an identifying attribute thereof, is meant to localize it spatially, and to establish the

legal relationships of the company, and it can differ from the place where the company is carrying out its activity.

The abusive use of the dwelling entails the change of its shape and purpose without the consent of the landlord. The provisional works executed by the tenants or cohabitants for facilitating its use do not constitute a transformation of the structure of the dwelling, so the consent of the landlord is not needed for these works. The consent of the landlord in order to change the purpose or the structure of the dwelling is needed when their rights, i.e. the property rights or the inhabiting rights, would be affected by the transformations or the planned works.

The legal interdiction to carry out constructional alterations takes into consideration the protection of the landlord's property right. The propriety right cannot be disturbed by starting constructional works which are not circumscribed within the limits of the tenant's right of use stipulated in the rental contract.

The parties can freely agree about the tenant's right to keep animals in the rented dwelling.

The legal sanction for the breach of this contractual obligation of the tenant to respect the intended purpose of the dwelling space is the termination of the rental contract at the request of the landlord and the payment for the recovery of damages.

There are even special laws which ratify this interdiction. According to art. 13 of GEO 40/1999, tenants who change – without the prior consent of the owner – the function of nationalized buildings intended for the purpose of habitation, cannot benefit from the legal prorogation of the renting contract or the rightful renewal thereof, and they could be evicted at the request of the building's owner.

The termination of the contract can apply even in the case of a partial alteration of the functionality of the rented space.

The alteration of the purpose of the dwelling can be carried out only with the formal consent of the landlord, or under the provision of a contractual clause to this end. The extent to which the change of the aspect or the functionality of the dwelling, approved by the landlord, affects the aspect or the functionality of the common property, the consent of the flat owners' association is also required, as well as a favourable notice on the side of the owners or the renting contract holders of the dwellings neighbouring the space whose functionality is subject to altering.

3.2 Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

In the private rental market there is no legal rent control. The parties can agree on any rent level. At the same time, the rent amount must be serious (it must not be insignificant) and sincere (it must not be fictitious). Otherwise, the rental housing contract may be declared non-existent. Of course, the rent amount can be much higher or lower than the market value because the parties are free to agree any amount they want. It is a common practice in the market.

In principle, the amount of the monthly rent as well as its rules for changing and the method of payment must be stipulated in the contract. In this sense, the Civil Code stipulates that the closing up of the lease contract takes place as soon as the parties, by consensus, have agreed on the good and its price, i.e. the rent. The text is corroborated with article 1798 of the Civil Code. The latter stipulates that the lease contracts concluded in written form, that have been registered with the fiscal bodies, as well as the authenticated ones, represent enforceable titles for the rent payment at the term and by the method stipulated in the contract or, in the lack thereof, by the law.

By means of special norms, contractual freedom may be restricted regarding the rent amount, where such a measure can be justified by reasons related to social protection. These kinds of restrictions are applicable equally to the dwellings belonging to the public and private domain of the state²⁰⁰ or that of the administrative and territorial units and with respect to the special status dwellings (social houses, houses for employees on business premises, company houses, hostels for the employees of the trading companies, companies, national societies or autonomous administrations) and to the dwellings privately owned by natural or legal persons.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?
 - Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?

The parties are free to set any rent amount. By agreement of the parties, the rent may also increase or decrease from one year to another, can be renegotiated after a certain period of time, can be determined by a third party, expert, etc. Under the general practice of the housing lease contracts, in case of contracts concluded for a period of one year, the rent remains unchangeable during this period.

- What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?

In the public sector, the procedure is expressly regulated by GEO 40/1999 as shown above. In private rental housing, the situation is determined by the contractual

²⁰⁰The private domain of the state consists of movable and immovable assets which are not affected to a general interest or public service and therefore the rules of private law apply. On the other hand, the public domain includes: land under which public buildings are built, markets, communications paths, road networks and public parks, ports and airports, lands under forest, the river bed, lake/rivers basins, the Black Sea shores, including beaches, land for nature reserves and national parks, monuments, ensembles and archaeological sites, land or military or other assets which, by law, are in the public domain of the State or which, by their nature, serve a public interest. Land belonging to the public domain are inalienable and imprescriptible. They can not be placed in the civil circuit unless, under the law, are transferred to the public domain.

clauses. If there is a contractual provision which allows the landlord to increase the rent (on the basis of objective criteria), it must be carefully applied. Otherwise, the only solution is a judicial adaptation of the contracts on the grounds of hardship clause regulated under article 1271 of the New Civil Code.

In the public sector, the tenant can be passive (not respond to the notification) and refuse to pay the amount of the rent increase until the judicial claim is introduced. In front of the court the tenant can bring arguments regarding the groundlessness of the state/administrative unit/public institution request. However, if the court admits the grounds for rent increase, the only option the tenant has to oppose the increase is the termination of the contract.

In the private housing market, the opposition of the tenant can be expressed in the court: as an opposition to the judicial change of the rent or as a judicial claim against the rent increase on contractual grounds.

- Entering the premises and related issues
 - Under what conditions may the landlord enter the premises?

In principle, the landlord does not have the legal right to enter into the rented dwelling without the consent of the tenant. Moreover, this protection of the tenant's right to use the dwelling is underpinned by criminal law.

As an exception to the principle mentioned above, the tenant is obliged to allow the landlord to examine the dwelling or to allow the access of the potential buyers or future tenants. The landlord can check the dwelling in the presence of the tenant, between 7 am and 8 pm, after a written notification. This legal provision is backed (using the expression "reasonable intervals") by the New Civil Code.

- Is the landlord allowed to keep a set of keys to the rented apartment?

Romanian law does not forbid the landlord to keep a set of keys, which is common in practice.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

The landlord cannot lock a tenant out of the dwelling, because such an act of vigilantism is not legitimated by the Romanian law system.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

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?
- 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)?
- May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?

The tenant can terminate unilaterally the rental contract by legal notice, provided that a notice deadline of at least 60 days is met. Given the public order character of the rule, the clause by means of which the parties exclude the denunciation right of the tenant or by which they establish a notice deadline shorter than 60 days is taken as not stipulated. The tenant does not have to explain the reasons of his decision, but he cannot terminate the contract for the non-execution of the obligations by the landlord without a justification, in which case he can obtain termination of the contract.

The tenant can terminate, given the aforementioned terms, not only the initial contract, but also the amended contract or the one for which a legal prorogation has been established as in the last case, as maintained in the judicial practice, the prorogation is established in the best interest of the tenant, who can waive this right.

The tenant does not have to pay any compensation interest for discontinuing the tenancy before the deadline stipulated in the contract, but the tenant could be obliged to pay the rent by the end of the date of the notice deadline, even if the tenant leaves the dwelling before that date.

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)?

First of all, according to the Romanian Civil Code, a lease agreement cannot be concluded for an indefinite term. The maximum period of time for which a lease contract can be entered cannot exceed 49 years. Therefore, open-ended lease contracts may be attempted, but they are solely limited to the maximum number of years referred to above.

Second of all, in case a housing lease contract is concluded without a term or duration being explicitly mentioned in its content (which is mainly a theoretical hypothesis), then the Romanian Civil Code regulates that such lease agreement may be terminated by the landlord with a written notification which cannot be lower than:

- (i) 60 days in case the period of time for which the rent payment has been set-up is one month or higher;
- (ii) 15 days in case the period of time for which the rent payment has been set-up is under one month.

Concerning eviction, it is important to underline that should the landlord and tenant not reach a common agreement, eviction can be made only based upon a court decision.

- Must the landlord resort to court?

The right for the tenant to contest the landlord's termination notice cannot be banned or eliminated in the contract. Note should be made that, based upon the relevant regulations of the Romanian Civil Code in the field of open-ended lease contracts referred to hereinabove, the probability of a positive result of the tenant's challenge might be reasonably deemed as limited. In conclusion, the landlord is not under the obligation to resort to the court of law for the unilateral termination of the housing lease contract.

- Are there any defences available for the tenant against an eviction?

In the hypothesis presented above (*i.e.*, termination by the landlord of an open-ended housing lease agreement), in theory there should not be any issues about obtaining an eviction court decision. However, in case, by virtue of example exclusively, the tenant has performed certain improvement works to the premises, the landlord may be obliged to cover the relevant expenses prior to the surrender of the dwelling. The Romanian Civil Code specifically provides that the tenant's eviction procedure can be made based upon a court decision issued in this respect.

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?
 - Are there any defences available for the tenant in that case?
- 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?

As mentioned above, the Romanian Civil Code stipulates that in such hypothesis the tenant's eviction can only be made based upon a court decision or court order obtained by the landlord in this respect. In such case, the tenant is obliged to the payment to the rent agreed under the lease contract until the effective surrender of the dwelling and to the payment of any damages of any kind caused to the landlord until such date.

4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?

The timeframe and conditions of returning the tenant's security deposit are freely negotiable between the parties. The landlord is not entitled to keep the deposit for reasons that have not been agreed or without a justified and documented reason.

- What deductions can the landlord make from the security deposit?
 - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

Without proving and justifying that the tenant made damages to the dwelling, the landlord cannot refuse to return the deposit.

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?

The eviction of a tenant is to be carried out on the basis of a court order. The tenant must pay the rent stipulated in the contract until the tenant leaves the dwelling, as well as to repair all damages brought upon the landlord's property until then. As a way to protect the tenant and to guarantee the tenant's right of use, the eviction of the tenant can only be carried out through a court order, on the basis of the procedural dispositions of the common law.

The New Code of Civil Procedure, which applies from 15 February 2013, includes some legislative solutions meant to ensure a well-balanced safe-guarding of the rights and interests of the parties to the residential lease contract.

Art. 1039 of the New Code of Civil Procedure (NCCP) regulates the cases when the tenant or the occupant, after being notified according to the procedure stipulated under art. 1037-1038 of the New Code of Civil Procedure (through an officer of the court), willingly leaves the dwelling. Under these circumstances, the owner or landlord may resume possession of the dwelling, de jure, without needing any kind of legal eviction procedure.

Voluntary eviction, which translates into leaving the dwelling willingly, without drawing up a formal transfer protocol is very dangerous for the former tenant because, upon taking over the dwelling, the tenant did sign such a transfer protocol. In this case, it will be impossible for the tenant to prove that the dwelling was left in the exact same condition in which it was received.²⁰¹

If the tenant does not voluntarily leave the dwelling, the eviction may be carried out only by means of a court order. The eviction court order may be opposable and is effective to all parties who live together with the tenant, with or without a right to do so.

Furthermore, if the tenant or occupant who has been notified of the eviction refuses to leave the dwelling, or has given up the right to be notified and has lost, on any grounds, the right to use the dwelling, the landlord or the owner will ask the court to carry out, by means of a court order, the immediate eviction of the tenant or occupant at issue, on the basis of lack of right to keep using the dwelling.

²⁰¹ A.P. Dimitriu 'Corelatii. Explicatii'. in Gh. Piperea et al. Noul cod de procedura civila. Note. (Bucharest: Editura Ch Beck, 2013) 1001.

The law stipulates that the court may receive an eviction demand from a landlord or owner only if the tenant or the occupant of the dwelling has been notified of this, through an officer of the court, in a 30 days' time-frame. Under such circumstances, if a notice has not been sent to the tenant, the eviction process could be dismissed on grounds of having been prematurely requested.

The eviction is not prematurely requested if the tenant has given up in writing the right to be notified of the eviction. The landlord's right to immediately evict the tenant by means of a court order is, hence, acquiesced.

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?

The conditions of becoming tenant in a public dwelling are stipulated in ministerial orders, detailed at local level by the local authorities that are entitled to detail and approve specific allocation criteria, according to local economic and social realities. People that are living in the municipality for a number of years are favoured. The legal procedure privileges the mayor to nominate a special inter-departmental committee that analyses all submitted applications and prepares the final approval by the Local Council.

The most important and largest housing subsidy currently is the ANL program "Rental Housing for Young People". The local authorities assign the housing units built through the National Housing Agency taking into account the applications submitted. In order to get a housing unit, a prospective tenant must register a file with his application at the local authority.

Main criteria establishing the access to a housing unit:

1. The applicant for a housing unit, who may be assigned a rented housing unit for young people between 18 and 35 years of age on the date when the housing unit is assigned. The application for a housing unit is made only individually and in the applicant's own name. Supporting documents: legalized copy of the birth certificate and/or the identity card.
2. The applicant and the applicant's family members – spouse, children and/or other dependants – shall not privately own or did not privately own a housing unit and/or have not been assigned another renting housing unit for young people in the locality where they applied for a housing unit (as far as Bucharest is concerned, this restriction refers to the fact that the applicant should not privately own a housing unit in Bucharest, irrespective of the sector). Supporting documents: legalized representations (statements) of the applicant and, as the case may be, legalized representations of the applicant's spouse and of the other family members of the applicant, who are of age. NOTE: This restriction does not refer to housing units alienated as a result of a divorce (property adjustment) or abusively nationalized housing units which have not been subject to restitution in kind.

3. The applicant for a housing unit must carry on his or her activity in the locality where the housing unit is situated. In the case of the sectors in Bucharest and the Ilfov county communes situated within their proximity (around Bucharest), the area which this requirement refers to shall be determined by the local authorities with the approval of the Ministry of Construction, Transport and Tourism, for each of the housing sites, and it will be made public in compliance with Article 14, paragraph (1) of the Methodological Norms. Supporting documents: certificate issued by the institution the applicant works for (stating that the applicant is their employee) accompanied by a copy of the applicant's updated Work Record.
4. The allocation of the housing units is made within the limits of the available housing stock, taking into account both the vacant housing units from the existing housing stock and the housing units to be completed under sub-projects approved and included in the Program regarding the renting housing construction for young people.

- Is any kind of insurance recommendable to a tenant?

The main connections between the housing market and the insurance industry are made through the mortgage market, since banks requires mandatory property insurance for their mortgages. It is not usual for local insurance companies to develop and promote specific products for tenants. However, there are some insurers that offer products for protecting tenants' valuable goods.

- Are legal aid services available in the area of tenancy law?
- To which organizations, institutions etc. may a tenant turn to have his/her rights protected? [please indicate addresses, email addresses and phone numbers]

The main local body for consumers' rights protection is the National Authority for Consumers' Protection, which is coordinated by the Ministry of Economy, Trade and Business Environment. The authority coordinates and implements Government policy and strategy in the field of consumers' protection.

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SCOTLAND

Tenant's Rights Brochure

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1. Introductory information

- Introduction: The national rental market
 - Current supply and demand situation

During the latter part of the twentieth century the owner occupier sector became the dominant tenure form in Scotland. Indeed, by 2011, the Scottish housing situation was increasingly distinguishable by high, although gradually declining, rates of owner occupation 65% (EU average ca. 71%) and lower rates of renting 33% (EU average ca. 29%). Within the rental market the local authority rented sector has been in consistent decline (15%). At the same time there has been strong growth in the size of the housing association sector (8.3%) as well as resurgence in the private rented sector (10.9%).

The Scottish population in 2011 is roughly 5.3 million and growing. Between 2001 and 2011 the number of households in Scotland increased by 8% to reach almost 2.4 million. A 2012 Government review set out that the number of households is increasing due to smaller average household size with more people living alone and in smaller households. The Scottish Executive predicts a need for more than 20,000 new homes to be built each year to accommodate household growth across all tenure forms.

In 2011, households in Scotland had an average of 5.0 rooms, this was a slight increase since 2001 when it was 4.8 rooms per household. The number of rooms per household varied widely across Scotland, reflecting the differing types of housing prevalent in urban and rural areas. Scotland's housing situation continues to be characterised by the presence of high levels of flats or apartments (38%) and the low levels of detached housing units (21%).

In the first quarter of 2013, Citylet recorded that the average Scottish rent nationwide was £675 but that average monthly rents varied considerably from city to city with the highest rents in Aberdeen (£961) and Edinburgh (£817) and lower rents in Dundee (£572) and Glasgow (£613). With respect to affordability the Review of the Private Rented Sector (2009) identified the private rented sector as the least affordable rented tenure - with almost two fifths of tenants paying more than a quarter of their income in rent (EU average ca. 16.9%).

- Main current problems of the national rental market from the perspective of tenants

- gross under supply of public/social housing and associated long waiting times;
- strong demand for private rented accommodation;
- rising rents;
- lack of social sector security
- poor condition of rental properties;
- rent arrears;
- anti-social behaviour; and
- disputes about the return of deposits

- Significance of different forms of rental tenure

The rights of both landlord and tenant vary according to whether the tenant is renting in the private rental market or is renting housing with a public task i.e. renting from a local authority or registered social landlord.

- Private renting

Over a third of all rental dwellings are rented out on the private rental market and the tenancies to which they are subject are governed primarily by the Housing (Scotland) Act 1988. This Act introduced the Assured Tenancy with market rents and full security and the Short Assured Tenancy with market rents but very limited security; this new regime applies to new tenancies entered into on or after 2 January 1989. Over the subsequent twenty five years the short assured tenancy has come to dominate the private rented sector.

- “Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc)

Roughly two thirds of all rental dwellings are rented out to the rental tenures with a public task (local authorities and registered social landlords i.e. housing associations) and the tenancies to which they are subject are governed primarily by the Housing (Scotland) Act 2001. Under this Act local authority or registered social landlord may grant a tenant a Scottish secure tenancy with below market rents and full residential security or in certain cases, usually in the case of anti-social behaviour, the landlord may grant a short Scottish secure tenancy with below market rents but limited security. The normal means of access to this sector (housing with a public task) would be by registration on a housing waiting list, though the wait may be substantial given the under investment in social housing stock over the years, though it may be shortened considerably by scoring highly in the points allocation process. People judged to be unintentionally homeless will have priority in seeking permanent accommodation

2. Looking for a place to live

2.1. Rights of the prospective tenant

- Finding a tenancy

Many properties for rent in the private rented sector are advertised online via sites such as rightmove.co.uk or via the classifieds on local and regional newspapers. Interested parties may contact the advertising party, usually the landlord or letting agent (the landlord's representative) and arrange a viewing of the property. Generally, this will entail a guided viewing of the property by the landlord or letting agent where the tenant may ask questions and inspect the property. It is important that the tenant makes sure that the property is in good working order e.g. that there is no damp or inadequate ventilation etc. The rent and other most important matters are often negotiable. Where the tenant is happy with the property they may make an offer to the landlord or letting agent. In the event of an agreement the landlord will often require a security deposit, generally one month's rent, be paid. Throughout each party has various legal rights and obligations which govern key aspects of the relationship. In the event of a dispute, then regard must be had to tenancy law.

- What is the role of estate agents in assisting the tenant in the search for housing?

Estate agents provide a number of services in the Scottish residential sector ranging from providing basic advice and information through to agency and complete property management services. Amongst the main services provided are; a property appraisal service during which the letting agent will advise on the current rental value of the property as well as a range of insurance services for landlords. In addition, letting agents provide a means of marketing a rental property either through in store advertisement or via online mediums such as happylets.co.uk, rightmove.co.uk, citylets.co.uk, findaproperty.com and S1homes.com.

- What fees can be charged to the tenant?

It is an offence to charge or receive any premium or make any loan a condition of the grant, renewal or continuance of an assured tenancy. A 'premium' is 'any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge'. Ministers have power to make provision about charges that may be made in connection with the grant, renewal or continuance of a tenancy, including categories of sum which are not to be treated as a premium. Secondary legislation now clarifies the law in this area to the effect that such fees are illegal. New tenancy referencing schemes have been launched in Scotland whereby tenants pay for the background check while letting agents get a referral fee.

- What kinds of checks on the personal and financial status of the tenant are usual and legal (e.g. the landlord requiring an independent credit report)?

In some cases the landlord may simply ask the tenant for certain information, for instance a letter from his employer stating his current employment status or for a certificate from a credit agency stating his credit worthiness. While the prospective tenant is at liberty to refuse the request, negative inferences would most likely be drawn from such a refusal. However, providing the landlord with such information involves time and expense burdens for the tenant and often it is the case that the landlord or estate agent will prefer to use a dedicated tenant referencing service. The private rented market across the UK has developed a sophisticated tenant referencing industry with a number of operators across Scotland offering swift tenant referencing services. While the procedure for following out the checks may in the most part be lawful, in particular the tenant must first provide consent for the check; there have been instances in which illegal fees have been charged to the tenant in order to carry out such checks.

- 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?

Anti-discrimination provisions apply to landlords in both the private and social rented sectors. When a landlord is letting accommodation he must ensure that no person or group of persons is treated less favourably than any other person or group of persons because of their race, colour, ethnic or national origin, sex, disability or sexual orientation. The landlord should not discriminate against a tenant or prospective tenant because of their entitlement to Housing or other Benefits and should not advertise vacant properties in a manner that could be described as discriminatory. When dealing with persons with a disability a landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants.

2.2. The rental agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary, is registration necessary, etc)

The basic legal requirements for a valid conclusion of a tenancy contract in Scotland vary according to the length of the tenancy entered into. A short term tenancy may be created orally with very limited formal requirements, contractual creation being based on offer and acceptance. This includes a yearly tenancy, even one which rolls over so as to last many years, and any periodic tenancy with a period of less than a year. The same is true of other occupation rights. In the case of a lease for one year or less which complies with statutory requirements but has been created orally, a party may be prevented from withdrawing from the agreement where the other party has done something in reliance of the contract and would be materially affected by such a withdrawal. Where a lease is for more than one year then it should be in writing, and should be signed by both landlord and tenant. Finally every landlord in the private

rented sector must register with their local authority and in order to secure registration the landlord must pass a fit and proper person test

- What is the mandatory content of a contract?

In all tenancies, whether private or social, there must be a lease of a separate dwelling, which includes flats as well as separate buildings, to an individual who occupies the dwelling as his principal home. Where an occupancy agreement has been created without a requirement of rent then it is most likely this will be a licence and not a lease and this will mean that the occupier will not be able to avail of tenancy rights.

- Duration: open-ended vs. time limited contracts (if legal, under what conditions?)

In general practice the term of the lease should be stated however failure to state a term is not fatal and instead the law will imply a term of one year in cases where no term has been set out. The private rented sector is dominated by the short assured tenancy. The tenancy is a short assured tenancy if the initial term is for at least six months and the landlord serves a notice before the grant warning the tenant of his limited security. This tenancy will be governed by contractual rules for its duration. At the term date, the 'ish', the parties may contract for a new tenancy or a new tenancy may be implied from the payment and acceptance of rent (that is by tacit relocation), and in either case this new tenancy will continue to be a short assured tenancy. The landlord will have an automatic right to possession of the property when the current contractual arrangement comes to an end, that is either at the end of the initial grant or when any express or implied relocation ends.

Scotland has long had a single housing tenure throughout the social sector, the Scottish Secure Tenancy, which is common whatever the nature of the landlord. Social landlords are expected to grant Scottish secure tenancies in normal circumstances. The basis is an initial fixed period followed by a tacit relocation on a periodic basis, which may be weekly, fortnightly, four weekly or calendar monthly. However, the tenant has security of tenure so the landlord is prevented from simply terminating the relocation by notice; it will be necessary for the landlord to seek a court order for repossession, and this will only be granted on proof of a ground for possession.

- How are rents set?

In a short assured tenancy the rent is a matter for free market negotiation, but if housing benefit is used to cover any of the rent payment, there will be limits on the rent level accepted for benefit claims. The landlord can increase the rent payable under a short assured tenancy most easily by granting a series of short contractual terms, thus reserving the possibility of increasing the rent at the next contractual renewal. Rents in the social sector are 'reasonable' rents which are expected to be more affordable than in the assured sector. The initial rent is stated by the landlord, often plus a service charge. Increases are by four weeks' notice before the start of any rental period after consultation with the body of tenants.

In both cases the rent will be governed by the terms of the contract and usually in residential rented accommodation rent will be due monthly on the date on which the parties entered the agreement. It is usual in the private sector for rent to be demanded in advance, and with a deposit of up to two months. The model of the Scottish Secure Tenancy refers to rent payable in advance or in arrears; but housing benefit is paid in arrears and 70% of tenants in the social sector are in receipt of benefit which suggests that it is only realistic to ask for rent in arrears. Should the tenant fail to pay the rent in time this will be a breach of the tenancy agreement. In an assured tenancy where there is consistent delayed payment the landlord may seek to terminate the tenancy and seek an order of possession on this ground and this is also a ground of possession in a Scottish Secure Tenancy.

- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

The landlord is primarily responsible for maintenance and repairs of the dwelling and cannot shift the costs for most kinds of repairs onto the tenant except where the tenant is responsible for damage done to the property which is beyond normal wear and tear.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

It is open to the landlord and tenant to agree whether or not the dwelling will be fully furnished or not. However, generally the landlord will provide furnishings and/or major appliances.

- 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)?

It is highly advisable that the tenant have an inventory made so as to avoid future liability for losses and deteriorations. Furthermore, where possible the tenant should take photos to record the condition of the dwelling upon moving in.

- 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.)?

In the private sector, this is a matter of contractual negotiation between landlord and tenant. Today it is generally assumed that a tenant may live with a spouse, civil partner or cohabitee (of whatever gender), but it is usual for a couple to take a tenancy as joint tenants to make occupation rights clear. It is usual also for children to live with their parents and for the tenant to share with other family members, but this should be negotiated with the landlord. Family courts have powers to direct the residence of children, but only after landlords have been heard. Rights of family members may be limited as a result of previous antisocial behaviour. In the social sector this is again a matter for the tenancy agreement, but the Model states that:

You are entitled to have members of your family occupying the house with you, as long as this does not lead to overcrowding.

Family members will have been identified during the allocation process. Tenants should tell their landlord who is in occupation, and landlords may require tenants to disclose this information.

Occupancy of the apartment will be limited to a certain number of people. The limit will usually be set by the overcrowding rules and possibly the terms of any House in Multiple Occupation licence.

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

In a lease the tenant is under an obligation to enter into possession of the dwelling on the date of entry. This will either be the date of the lease or a different date stated in it. Once in possession the tenant is required to remain in possession for the rest of the lease. A tenant may be held liable in damages for any damage caused to the property by his absence. In the case where there is a prolonged absence by the tenant the landlord may be able to escape the contract by rescission or he may elect to take action to compel the tenant to take possession by virtue of an order of specific implement.

This principle is emphasised in particular in the social sector. Occupation of properties keeps them in good condition, particularly in the Scottish weather, and a tenant is required to occupy property as his principal home. Failure to occupy property would be a ground for repossession, but in fact it is not necessary to go through a court repossession since there are specific provisions dealing with abandonment. A social landlord can give notice that the property appears to have been abandoned which places the onus on the tenant to challenge the notice or to give notice of their intention of occupy the property

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

In the past tenancies in the private rented and social rented sector were granted to the husband and the housing rights of women were quite limited in Scotland. In the event of a relationship breakdown the spouse who was neither owner nor tenant had no right to remain in the property. The Matrimonial Homes (Family Protection) (Scotland) Act 1981 introduced protections for parties without formal property rights. These "occupancy rights" allowed the party without formal property rights not to be summarily evicted and not to have to endure intolerable conduct because of their decision to remain in the property. Under this Act the non-entitled spouse may make an application to have the tenancy transferred in an action for separation. In the event that a person occupies a dwelling as tenant or joint tenant then they may rely on their tenancy rights to remain in the dwelling and they may not be lawfully evicted by force. Where a tenant seeks the other to vacate the property they must seek an

exclusion order. The landlord must be notified of applications and has an opportunity to object.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord)

This is covered by the discussion of joint tenants immediately above; the default position is that one joint tenant can give notice to terminate the tenancy on the spot (but not before) and this will end the tenancy of all the others. If this is not desired, the lease agreement must include a contrary provision.

- death of tenant;

Residential tenancies are subject to sectoral schemes for succession to tenancies. In the private sector where the tenant is a post-1988 tenant with a fully assured tenancy, succession can occur to a sole tenant's

spouse or civil partner, or

cohabitant living with the tenant as man and wife (though regardless of gender).

Succession can only occur to someone who was also occupying the house as his or her principal home immediately prior to the death of the tenant. In these circumstances the surviving partner will retain possession of the house under a statutory assured tenancy.

Succession rights to social tenancies are set out in the Housing (Scotland) Act 2001 and apply to the death of a tenant of a local authority or registered social landlord. Upon the death of a tenant the tenancy will pass to a qualified person, unless the survivor killed the tenant. The Act also provides for a further succession on the death of the first successor. However, upon the death of the second successor the tenancy is terminated except where a joint tenant continues to use the house as that person's only or principal home.

The definition of a qualified person is broad and includes in order of priority:

a tenant's spouse or civil partner,

a cohabitee (regardless of gender),

a member of the tenant's family, and

a carer.

Where several people with equal property claims qualify, they must agree who is to take, or otherwise the landlord can determine the successor.

- bankruptcy of the landlord;

This is more likely to be an issue in a business lease rather than a residential one. While bankruptcy of the tenant does not automatically terminate the tenancy, its

occurrence may well precipitate a termination. Upon bankruptcy the tenancy will pass to the tenant's trustee in bankruptcy, who has the option to adopt the lease. Should the trustee adopt the lease then he will assume the responsibilities which the bankrupt tenant had under the lease. In the event that the trustee chooses not to adopt the lease and there is vacant possession then the landlord may claim damages for any loss, provided that he has not exercised his right of irritancy. In the case of assured tenancies, protected tenancies and Scottish Secure Tenancies the lease will not vest automatically in the trustee instead the trustee will be required to serve a notice on the tenant before any transfer can take place.

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

In order for the creation of a sub tenancy in the private rented or social rented sectors consent from the landlord is an essential requirement.

When a lease is assigned, the landlord is unchanged, so the status of the tenancy (e.g. as an assured or Scottish secure tenancy) would be unchanged also. If a social tenancy is sublet, then the subtenancy cannot be a Scottish secure tenancy, since the head tenant is not a local authority or registered social landlord, and will be prevented from being a regulated or assured tenancy by virtue of s 32(7) of the Housing (Scotland) Act 2001. If a private sector tenancy is sublet with the landlord's consent, then the sublet will normally qualify as an assured tenancy

So far as a private sector tenancy is concerned, a tenant holding under an assured tenancy is not permitted to assign the tenancy or sublet or part with possession of the whole or any part of the house without the consent of the landlord. This is subject to the terms of the tenancy either allowing or restricting transactions; to allow free assignment would be very unusual. No premium may be charged.

In the social sector, a tenant holding under a Scottish Secure tenancy is not permitted to assign the tenancy or sublet or part with possession of the whole or any part of the house without the written consent of the landlord. In the case of assignment, the dwelling must have been the purported assignee's principal home in the six months prior to the application for landlord consent to the assignment. Where the landlord is a registered social landlord then the assignee or subtenant must be a member of the association at the time of the transfer. An authorised sub-tenant is a qualifying occupier who is entitled to receive notice of, and defend, an action raised for possession. A Scottish secure tenant is entitled to exchange his home for another property also held subject to a Scottish secure tenancy if he is able to find a suitable match and obtain the consent of both landlords.

- Does the contract bind the new owner in the case of sale of the premises?

Again the private and social sectors must be distinguished. However, throughout, it must be remembered that a tenancy is proprietary in character and it will therefore

bind a purchaser; a short tenancy does not need to be entered on the Land Register since it will be an overriding interest.

Where there is a change of the landlord through inheritance, sale or public auction the impact on the position of the tenant will vary. In the first instance the successor is bound by the terms of lease and as such they cannot terminate the tenancy without a good reason. In the case of inheritance, the successor may wish to keep the tenant and therefore the position of the tenant would be unaffected, however the successor may elect to sell the dwelling and they may seek to bring about termination of the tenancy (see section on termination). Where the landlord sells the property either privately or through public auction, they may elect to terminate the tenancy prior to sale. This would be common practice as in general a property with vacant possession will fetch a higher price and the provisions concerning termination of assured tenancy facilitate such action (see section on termination). When selling the property the landlord may need to access the property in order to show estate agents, surveyors and prospective buyers around the property. In doing so the landlord must give the tenant reasonable notice (24 hours) and the access must be reasonable (within suitable hours). Should the landlord sell the property without terminating the lease then the new owner will not be able to terminate the lease without good reason and may not increase the rent without following the statutory procedure (see section on rent increase).

In the public sector, the powers of disposal of a social landlord are strictly limited (apart from sales to the sitting tenant under the Right to Buy) and will require the consent of the Housing Regulator. Recent years have seen mass stock transfers from local authorities to housing associations. Tenants must be consulted before their landlord is changed.

- Costs and Utility Charges
 - What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities? Which utilities may be charged from the tenant by the landlord? What is the standard practice?

Parties are free to apportion responsibility for arranging for utilities in the tenancy agreement however generally speaking the landlord will usually assume responsibility for connecting certain utilities, particularly water supply, electricity, heating etc. However, generally the tenant will take over responsibility for making payments in respect of utilities encountered during the term of the tenancy. For instance with regard to electricity, common practice would be for the landlord to ensure that the property is connected to the national grid before letting and upon letting the tenant would take over responsibility for paying for the electricity for the duration of their lease.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

Council tax is the responsibility of the tenant, but may be collected by the landlord; full time students are exempt but must claim this exemption from the local authority.

- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?

There are no provisions in the social sector about premiums or deposits, and most social landlords do not ask for a deposit. In the private sector a distinction needs to be drawn between premiums and deposits. Premiums are prohibited, and this includes requirements for advance payment of rent. However it is permissible to take a deposit of up to two months to cover rent payments, damage, cleaning bills and unpaid utility bills and indeed a security deposit is normally required of a private sector tenant at the commencement of a tenancy. It is important to agree an inventory of goods at the property and a note of any defects.

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

The landlord/agent who has received the tenancy deposit must turn over the deposit to an independent third party operating a deposit protection scheme. The vast majority of private rented tenants are regulated by the three deposit protection schemes:

- Letting Protection Service Scotland;
- Safe deposits Scotland; and
- My deposits Scotland.

When transferring the deposit to a deposit protection scheme the landlord must provide the tenant with relevant information concerning the scheme including the amount of the deposit, relevant dates, address of the property concerned, a statement from the landlord setting out that they are registered as well as the terms under which the deposit may be kept at the end of the tenancy. Should the landlord fail to register a deposit then the tenant can apply to the sheriff court which can order the landlord to pay the tenant up to three times the amount of the deposit. The function of the deposit is to provide security for the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or the discharge of any of the occupant's liabilities which so arise. The usual amount of the deposit in Scotland is equivalent to one month's rent however the landlord or letting agent may require a deposit equivalent to two months' rent. At the end of the tenancy the landlord must apply to the tenancy deposit scheme for repayment of the deposit. Where the landlord seeks to make deductions from the deposit, he must include details of those deductions and state the amount of deposit to be returned in the application. The tenant is then contacted by the tenancy deposit scheme and given the opportunity to agree or disagree with the amount of the deposit to be returned. Where the tenant confirms the amount to be returned is correct he will receive the deposit within five working days. In the situation that the tenant does not agree with the amount of the deposit to be returned he may apply to the dispute resolution process. This involves an independent adjudicator making a decision based upon the evidence submitted during the dispute resolution process.

Should either party be unhappy with the decision of the adjudicator they may apply for a review after which the decision will be final.

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)?

The landlord is under a duty to provide subjects which are in a tenanted or habitable condition. They must also be maintained in this condition, but no duty arises until the tenant has brought a defect to the landlord's attention. Should the landlord fail to carry out repairs after notification then this will amount to a breach of the landlord's obligation. For a defect of the dwelling to result in a material breach of the contract, entitling the tenant to rescind, it must be one which reduces the condition of the property in such a way as to make it substantially unsuitable.

Traditionally a defect would be associated with the physical or structural condition of the dwelling. Noise from a building site or from noisy neighbours may constitute a nuisance for which the appropriate remedy would be an order for interdict, or action for damages. Once the tenant has taken possession of the dwelling and damage has been caused to the dwelling by a third party or parties, the landlord is not liable for the repairs and it will fall to the tenant to make good the damage caused, in this respect they may take action against the third party. Where the dwelling is not occupied by a tenant and a third party has caused damage to the dwelling then the landlord will be in the best position to take action against the party responsible.

- What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)

A breach which is not so serious as to amount to a material breach may result in the award of damages or will allow the tenant to retain his rent.

Specific implement and interdict (enforcement orders): Where a party has failed to carry out some action required under the contract then the court may award specific implement to ensure performance of the act. In the private rented sector the Private Rented Housing Panel, where called upon, may make enforcement orders to ensure that repairs are carried out.

Rescission: this is the right of a party to exit a contract completely. Given the drastic nature of this remedy it is only available in limited circumstance. The other party's actions must be sufficiently serious to constitute a material breach of the contract so

where the landlord fails to hand over possession of the subjects there must be a substantial failure rather than a mere a delay. Delays of 20 and 35 days in giving entry have been held to be sufficiently material to allow rescission by the tenant.

Frustration: where the landlord is unable to hand over possession of the dwelling because of some event which has made this impossible the contract will be frustrated.

Damages: this monetary remedy is designed to place the wronged party in the position they would have been had the wrong not taken place. Damages may be claimed, along with other remedies, by a party where a breach of contract has occurred.

Retention of rent and abatement: The practice of withholding rent where the landlord is in breach arises from the principle of mutuality in contracts. Where the landlord is in breach of the tenancy agreement then the tenant has a right to withhold. However, for retention of rent to be permissible the breach must be more than merely trivial, though it need not be sufficiently serious to justify rescission.

- Repairs of the dwelling
 - Which kinds of repairs is the landlord obliged to carry out?

Different legal standards of repair apply to the private rented and social rented sectors. In the private rented sector the landlord must ensure that the dwelling meets the repairing standard at all times throughout the tenancy.

In order to meet the repairing standard the house must be wind and watertight and in all respects reasonably fit for human habitation, the structure and exterior of the house (including drains, gutter and external pipes) must be in a reasonable state of repair and in proper working order. Any installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order. This also applies to any fixtures and fittings and appliances provided by the landlord under the tenancy. In addition, any furnishings provided by the landlord under the tenancy must be capable of being used safely for the purpose for which they are designed and finally the dwelling must be provided with fire alarms. Once the landlord becomes aware of a defect in the dwelling which requires repair or maintenance work he is under a duty to act within a reasonable time. Essentially this means that the time in which the landlord should carry out the repairs depends on the nature of the defect in question with more material defects requiring prompt attention.

When carrying out repairs the landlord will be responsible for any damage caused and he must make good any damage caused while carrying out any work. It is possible for a landlord to avoid the repairing obligation in certain situations. In particular where the defect requiring maintenance work is down to the fault of the tenant the landlord will not be under a duty to carry out repairs. Furthermore, the landlord will not be liable for failure to carry out maintenance or repairs where the only reason for that failure was the tenant's refusal to grant access rights.

Where disputes arise concerning the repairing standard in the private rented sector the tenant may apply to Private Rented Housing Panel which is responsible for enforcement of repair and maintenance obligations in the private rented sector.

While the repairing standard does not apply to the social landlords they are bound by other standards i.e. the tolerable standard. To meet the tolerable standard the landlord must ensure that the dwelling is wind and watertight and in all other respects reasonable fit for human habitation and the landlord must ensure that the dwelling be kept in this condition throughout the tenancy. Additionally, the landlord must ensure that the dwelling does not fall below the standard set out in the building regulations due to disrepair or sanitary defect etc. While the local authority, in their capacity as landlord, will be concerned with maintenance and repair of their own housing stock, they also are under a wider public duty to ensure that all rented housing in their operational area meets the minimum legal standard i.e. the tolerable standard, are not overcrowded, and are not substandard. In carrying out this task the local authority have powers of inspection as well as the power to enable those properties be repaired, closed and demolished. Local authorities and RSLs are required to meet the Scottish Housing Quality Standard by 2015. In order to meet this standard the dwelling must meet the tolerable standard, be free from serious disrepair, be energy efficient, be provided with modern facilities and services and be healthy safe and secure. The Scottish Housing Regulator is responsible for monitoring social landlords' performance towards meeting the Scottish Housing Quality Standard.

- Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

Certain small urgent repairs, so called qualifying repairs, which might affect a tenant's health, safety or security, have to be done quickly. Where the landlord is unable to carry out such repairs within the time limit then the tenant may be entitled to carry out the repairs and charge them to the landlord.

- Alterations of the dwelling
 - Is the tenant allowed to make other changes to the dwelling?

Assured tenancies

The extent to which the tenant is allowed to make improvements or changes to the dwelling depends primarily on the lease agreement as parties are free to include terms governing alterations of the dwelling and indeed the modern residential lease will usually contain a term restricting the tenant from carrying out improvements or alterations of the dwelling without the landlords prior consent. It is important that an assured tenancy should include this term. Should the agreement remain silent in this area then the issue will depend on the nature of the improvement or change and following this whether the landlord consents to the alterations. In particular the tenant will not be allowed to make such major changes that the possession is inverted, that is that the nature of the tenancy is changed unilaterally. Where the tenant makes material structural alterations of the dwelling without the landlord's approval he runs the risk of incurring liability for breach of contract and may be required to return the

dwelling to its original condition. However where the changes are trivial or periodical then the tenant will not incur liability for breach. Scottish Secure tenancy

Under the Housing (Scotland) Act 2001, a Scottish secure tenant is not permitted to carry out work in relation to the house without the written consent of the landlord, which must not be unreasonably withheld. Work is defined as alteration, improvement or enlargement of the house or of any fittings or fixtures, the addition of new fittings or fixtures, the erection of a garage, shed or other structure. If the tenant wishes to carry out work on the dwelling there is a detailed statutory framework which the tenant must adhere. The tenant must make a written application to the landlord for the landlord's consent, giving details of the proposed work and the landlord has one month to either consent to the work, consent but impose conditions or refuse the request. Should the landlord fail to reply within the time period he will be taken to consent to the work. This reply must contain any conditions imposed or where consent is refused, it must contain reasons for the refusal. In deciding whether to impose conditions the landlord must have regard to the age and condition of the house as well as the cost of complying with the condition. A tenant may appeal a refusal or condition to the court by way of summary appeal.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

When dealing with persons with a disability a landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants.

- Uses of the dwelling
 - Are the following uses allowed or prohibited?
 - keeping domestic animals
 - producing smells
 - receiving guests over-night
 - fixing pamphlets outside
 - small-scale commercial activity

The tenant is under a common law duty to use the property only for the purpose for which it was let. Otherwise the tenant will invert the possession as set out above, and the tenant may be forced to reverse any structural inversions. The lease will generally contain a clause prohibiting use of the dwelling which could result in a nuisance; this could relate keeping animals, odours, receiving guests etc. It is illegal for landlords and letting agents to discriminate against a tenant if they are disabled. This means that the landlord must not treat the tenant less favourably than a non-disabled person because of their disability. With regard to keeping animals this means that the landlord is not allowed to refuse to let the tenant keep a guide dog or other assistance dog under a 'no pets' rule, Using or allowing the house to be used for immoral or illegal purposes is a ground for recovery of possession in assured tenancies and Scottish secure tenancies and therefore the landlord may rely on this as a ground to terminating the tenancy where the dwelling has been used for illegal or immoral purposes.

3.2. Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

The system of rent regulation depends on the type of tenancy at issue with distinct systems applying to assured tenancies, regulated tenancies, Scottish secure tenancies and other tenancies.

Private rental market

Since deregulation of the late 1980s market rents have prevailed in the private rented sector in Scotland. A market rent is understood to mean the amount which the house in question might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy. While parties are free to include a term governing rent increases in the lease, the operation of this term must not result in an above market rent.

Rent increases in 'houses with public task'

Scottish Secure tenancies

With regard to housing with a public task, local authority rents and Registered Social Landlords rents are lower than the market rate. Local authorities have discretion over the amount of rent to charge to their tenants and there are no external limitations on what landlords can charge tenants.

- Rent and the implementation of rent increases
 - When is a rent increase legal?

Assured tenancy

A landlord is not free to increase unilaterally the rent during the fixed term of an assured tenancy. This is so unless the agreement contains a procedure for rent review during the fixed term. Otherwise when any fixed term ends, the landlord can give the tenant a written notice of the proposed increase or, alternatively, a written notice to change the terms of the tenancy including the rent charged. The length of the notice given before the rent increase takes effect must be at least one rental period. Therefore, if rent is paid monthly, the tenant must receive at least one month's notice before the rent goes up. In an assured tenancy the tenant does not have the option to have the rent considered during the term of the tenancy. There is nothing in law to prevent the inclusion in a tenancy agreement clauses relating to rent increase mechanisms. Where no such provision is present then the rent cannot be unilaterally increased and in this situation should the landlord wish to increase the rent he will usually have to terminate the contractual tenancy and utilise the statutory mechanism for increases in a statutory assured tenancies. The Private Rented Housing Committee will only regulate the fixing of market rents in a statutory assured tenancy, which has come into operation at the end of the term when the landlord

serves notice terminating the tenancy. Then the landlord may seek an increase in rent and the tenant has the opportunity to refer the increase to the Committee.

Short assured tenants

Where the tenant has a short assured tenancy, the rent is fixed contractually during the initial fixed term, but the landlord can increase the rent when they renew the tenancy agreement. In theory rents can be referred to the Private Rented Housing Committee but it can be difficult to challenge the increase when the landlord can evict a tenant quite easily.

Other types of tenants

Landlords of all other types of tenants do not have to follow specific procedures to increase the rent, so rent can be increased at any time after a contractual agreement has ended.

Scottish secure tenancy

Under a Scottish secure tenancy the local authority or RSL has the right to increase the rent, but that body must give the tenant at least four weeks' notice before doing so. In addition, they must consult with the tenant in a meaningful way, which takes into account the views of the tenant, before increasing the rent.

- Entering the premises and related issues
 - Under what conditions may the landlord enter the premises?

The landlord has a right of reasonable access which he may rely upon to enter the dwelling in order to inspect the condition of the dwelling, to carry out repairs or to show prospective tenants around. In order to avail of rights of access the landlord must give the tenants at least 24 hours' notice and access must be limited to reasonable times of the day. Where the tenant refuses the landlord reasonable access then the landlord may not be liable for the repairs.

- Is the landlord allowed to keep a set of keys to the rented apartment?

It would not be unusual for the landlord or representative of the landlord to retain a set of keys to the rented dwelling in order to inspect the dwelling, carry out repairs or to show prospective tenants around. However, the landlord does not have a general right of access, rather, as set out above, the landlord has a right of reasonable access. This in turn is largely dependent on the landlord giving the tenant sufficient notice. Should the landlord attempt to exercise excessive access of the dwelling this could constitute an unfair exclusion of the landlord's common law duty to maintain the tenant in full possession and not to derogate from his grant, and as McAllister notes the inclusion of a term to this effect in the lease may be considered to be an unfair contract term.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

A landlord is not permitted to lock a tenant out of the rented dwelling. In the event that the landlord has given notice to quit but the tenant has refused to leave the landlord can only remove the tenant with a court action, during which the tenant will be allowed to lodge a defence. The competent court in this regard is the Sheriff Court and the action for recovery of heritable property will take the form of a summary cause. It is only when the Sheriff Court grants a decree of removing will the landlord be able to proceed with an eviction. Should the landlord try to evict the tenant without a court order, he may be liable to the tenant in damages. All occupiers of residential property are protected against unlawful eviction. It is a criminal offence for a landlord to do 'acts calculated to interfere with the peace and comfort of the residential occupier or members of his household'. The tenant, on application to the court, could get a non-harassment order against the landlord or they could get a court order which will force the landlord to let the tenant back into the dwelling along. It is open to the tenant to claim damages for illegal eviction or for harassment. A particularly high level of damages may be awarded under provisions introduced in 1988 and designed to penalise landlords who yielded to the temptation to evict a Rent Act tenant to relet on a more lucrative assured tenancy basis, that is to threaten force to persuade a tenant to move from a fair rent to a market rent.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

The landlord does not have a right to take or seize a tenant's personal property in the rented dwelling.

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?

Where the tenant wishes to terminate the tenancy he must give the landlord valid notice to quit. Any notice of termination for tenancies of houses let for rent or other valuable consideration, whether by landlord or tenant, must be in writing and must be served not less than 4 weeks before the date on which it is to take effect. This minimum notice period applies to all residential tenancies regardless of whether the tenancy is an assured tenancy, a regulated tenancy or a Scottish secure tenancy. Otherwise, the length of notice required from a tenant depends on the kind of tenancy that they have and the agreement reached between the parties. In the private sector, the tenancy agreement will usually specify how much notice is required and in most cases this will be one month. A tenant with an assured tenancy or a short assured tenancy with a fixed term of more than 3 months must give the landlord at least 40 days' notice.

Where the tenancy is a fixed term tenancy the tenant may leave on the expiration date (the "ish"), but notice is required to the landlord as otherwise the tenancy will be renewed automatically via the process of tacit relocation. He is not allowed to terminate the tenancy unilaterally prior to the expiry date (the "ish") and any such action may cause the tenant to be liable in damages to the landlord and the tenant may be required to continue to pay rent for the duration of the term. The parties are at liberty to include a provision for early termination, a "break clause" for the benefit of the tenant in which case care is needed to comply with the terms of the notice; however, this is more typical of commercial rather than residential leases.

- 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)?

Parties are free to include an early termination or break clause. In the event that parties fail to include an early termination clause, they remain free to come to a mutual agreement which allows for termination prior to expiry of the term provided that a valid notice period is given. Where the tenancy is a fixed term tenancy the tenant is not allowed to terminate unilaterally the tenancy and any such action may cause the tenant to be liable in damages to the landlord and he may be required to continue to pay rent for the duration of the term. However, the tenant may terminate the tenancy where the landlord has breached his obligations. Where the tenant wishes to leave the tenancy upon expiry of the term, he must give notice to the landlord of at least 28 days. In the event that the tenant is seeking to bring about a termination due a breach of obligation by the landlord, the tenant must first notify the landlord of the failure in writing and give the landlord the opportunity to remedy the failure in a reasonable time. The landlord does not have a right to compensation where an early termination has been brought about in a manner which complies with

the statutory notice requirements. It is only when the tenant deviates from the required procedure that a landlord may claim compensation.

- May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?

Tenancies in the residential sector would rarely provide for the tenant to propose a replacement tenant for one who leaves but there is nothing to prevent a tenant finding a replacement he wants to assign to. This might be appropriate where a flat is taken by a group of students to avoid the problem that a notice by one joint tenant would end the tenancy of all the others. However, such clauses are rare and in general the landlord will find a replacement tenant without the previous tenant's assistance.

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)?
- Are there any defences available for the tenant against an eviction?
- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?
- Are there any defences available for the tenant in that case?
- What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?

The effect of a notice of termination depends very much on the sectoral allocation of the tenancy, the key division being between short assured tenancies and tenancies with full security - fully assured tenancies in the private sector and Scottish secure tenancies in the social sector. There is also a residual category of tenancies falling outside security regimes.

Short assured tenancy

A short assured tenancy requires a fixed contractual grant for a term of six months or more. The landlord will be able to terminate the tenancy at the end of the fixed term subject to three basic requirements. One is that the contractual term of the tenant has reached its end. Second, any contractual regrant or tacit relocation must have ended. When the fixed period ends, the lease may state how it will continue (for example subject to monthly renewal) or it may be subject to tacit relocation (for example a tenancy for a year might roll over for another year), so the landlord will need to give sufficient notice to terminate these contractual rights. Third, the landlord must give a statutory notice, which must be of two months duration and to expire on or after the end. At the expiration of the notice the landlord may raise a possession action in the Sheriff Court and the Sheriff must make an order for possession. This ends the tenancy. The landlord can also terminate a short assured tenancy during any contractual period using most of the misconduct grounds for possession against an assured tenant, provided the tenancy allows this. The most common ground would be for rent arrears.

As noted above the landlord can terminate a short assured tenancy during any contractual period using most of the misconduct grounds for possession against an assured tenant, provided the tenancy allows this. Some of the grounds are mandatory grounds for recovery of possession.

In total there are seventeen grounds of possession of which all the grounds 2 and 8 - 17 are discretionary grounds and 1-7 are mandatory. Of these the mandatory ground 8 and the discretionary grounds 11-16 are based on the misconduct of the tenant. Where the landlord can establish that any of the grounds for possession from 1 to 8 exists then the sheriff must give back possession to the landlord. As such these grounds are termed mandatory grounds of possession. Where grounds 1 – 5 are raised the tenant must have been given written notice setting out that possession might be required under the ground at issue, this is the 'usual notice requirement' however with grounds 1 and 2 the sheriff has discretion to dispense with the notice requirement where it is reasonable to do so. Amongst the mandatory grounds of possession are where occupancy required by landlord, mortgage default, redevelopment etc. In the case of discretionary grounds the Sheriff is not to grant an order for possession unless he considers it reasonable to do so. In this manner the sheriff has discretion to delay an order of possession or to adjourn proceedings etc.

The tenant must be given notice of the proceedings for possession and this notice must state the relevant ground as well as giving any relevant information. In relation to grounds 1,2,5,6,7,9 and 17 two months notice is required and in all other cases the period of notice is two weeks. The Sheriff also has power to dispense with notice in some situations. Therefore when a landlord is seeking to terminate a contractual tenancy he must serve two notices, a notice to quit which will bring the term of the lease to an end and will prevent tacit relocation and a second notice informing the tenant of the landlord's intention to raise proceedings for recovery of possession. Where a sub-tenancy is in operation then termination by the head landlord of the tenancy will cause the sub-tenant to take the place of the head tenant.

Scottish secure tenancy

A Scottish secure tenancy can only be terminated in a limited number of circumstances. These include termination by agreement, termination following abandonment, where the landlord obtains a court order for recovery of possession or if the tenancy is converted to a short Scottish secure tenancy. When seeking to terminate the tenancy the landlord must give the tenant written notice setting out the ground of termination as well as the date from which the landlord may bring proceedings for recovery of possession. A minimum notice period of four weeks is required and the date set in the notice cannot be earlier than the date on which the tenancy would have been brought to an end by a notice to quit had it not been a Scottish secure tenancy. In addition, the landlord is required to serve notice on any qualifying occupier. Before serving this notice the landlord is required to make such inquiries as may be necessary to establish so far as is reasonably practicable whether there are any qualifying occupiers of the house and, if so, their identities.

Where a qualifying occupier applies to the court to be 'sisted' as a party to proceedings for recovery of possession, the court must grant the application. A notice will cease to have effect if it is not used within six months or if the landlord has withdrawn it before then.

Special provisions apply to action on the basis of rent arrears, the commonest action raised. There is considerable case law about how sheriffs should exercise their discretion. Changes were made in August 2012. Where a suspended possession order is made on the basis of rent arrears the tenancy ends only if possession is obtained and the order should include a period of time for which the order has effect. The landlord must follow a pre-action procedure before raising the action: the tenant should be given full information and advice and must attempt to agree a plan for future payments. Proceedings should not be raised while the tenant is applying for housing benefit or taking other reasonable steps to clear arrears. The landlord must confirm compliance before raising proceedings.

Just as with the short assured tenancy there are a number of statutory grounds of possession, some of which are discretionary and others mandatory. Under grounds 1-7 and ground 15 the court has power to adjourn proceedings with or without imposing conditions as to the payment of outstanding rent or otherwise.

McAllister characterizes grounds 1 – 7 as conduct grounds which are employed when the tenant is at fault. When such grounds are raised there is no requirement that other accommodation will be available to the tenant but the court must be satisfied that it is reasonable to make the order. In this sense the Sheriff has discretion to refuse to grant an order for possession even where the ground of termination exists should the Court consider that the landlord did not act reasonably.

Throughout this stage the onus is on the landlord to show that the ground in question exists and also that it is reasonable for the tenant to be evicted even if the tenant does not defend. McAllister characterizes grounds 8 – 15 as management grounds as they may arise regardless of the actions of the tenant nevertheless there remains a good reason for him to move out. In all cases, before granting an order for possession the court must be satisfied that suitable alternative accommodation is available to the tenant. With respect to ground 15, it is necessary for the court to be satisfied that it is reasonable to make an order for possession and also that suitable alternative accommodation is available elsewhere.

4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?
- What deductions can the landlord make from the security deposit?
 - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

At the end of the tenancy the landlord must apply to the tenancy deposit scheme for repayment of the deposit. Where the landlord seeks to make deductions from the deposit, he must include details of those deductions and state the amount of deposit to be returned in the application. The tenant is then contacted by the tenancy deposit scheme and given the opportunity to agree or disagree with the amount of the deposit to be returned. Where the tenant confirms the amount to be returned is correct he will receive the deposit within five working days. In the situation that the tenant does not agree with the amount of the deposit to be returned he may apply to the dispute resolution process. This involves an independent adjudicator making a decision based upon the evidence submitted during the dispute resolution process. Should either party be unhappy with the decision of the adjudicator they may apply for a review after which the decision will be final.

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
 - Are there specialized courts for adjudication of tenancy disputes?

Jurisdiction over tenancy law disputes is determined by the nature of the tenancy and also the nature of the dispute however in all cases the Scottish Courts may be called upon to determine the issue. The general civil court system comprises the Court of Session and the Sheriff Court. The Court of Session is the supreme civil court in Scotland, based in Edinburgh. The Court of Session is both a court at first instance for initial consideration of cases and the court of appeal for most civil matters. It is only at the Court of Session that judicial review of decisions by administrative authorities can be heard. The Sheriff Court is the local court and there are 49 sheriff courts across Scotland which deal with the majority of civil cases, including eviction cases etc. Certain matters have been taken out of the hands of the civil courts and devolved to specialist tenancy bodies, of which the Private Rented Housing Panel is the prime example. The Panel provide mediation services to tenants of the private rented sector in cases relating to the landlord's repairing obligations and also certain disputes concerning the setting of rent. In the social and public rented sector the courts remain the primary dispute resolution mechanism however the Scottish Housing Regulator plays a role in ensuring landlords abide by their legal obligations.

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?

The normal means of access to this sector (housing with a public task) would be by registration on a housing waiting list, though the wait may be substantial given the under investment in social housing stock over the years, though it may be shortened considerably by scoring highly in the points allocation process. People judged to be unintentionally homeless will have priority in seeking permanent accommodation. Some housing associations may also advertise the availability of accommodation.

When a person reaches the top of the waiting list, an offer of accommodation will be made by a social landlord. The scope for negotiation is limited to the extent that it is permitted to reject offers and the extent to which the accommodation offered is unsuitable.

- Are legal aid services available in the area of tenancy law?

. A scheme of civil legal assistance is available to support persons obtaining legal advice or taking their case to court. This support may completely cover the legal costs or the applicant may have to make a contribution towards it. This support is available for claims concerning housing matters such as rent or mortgage arrears, repairs and eviction. There are two forms of support available; advice and assistance and civil legal aid. Under the former, financial assistance is provided and advice from a solicitor on any matter of Scots law, civil or criminal. In order to avail himself of this support an applicant must demonstrate a financial need which will be ascertained from the income and capital status of the applicant. Where the applicant or his partner is in receipt of income support, or Income-based jobseeker's allowance or Income-related employment and support allowance he will qualify for advice and assistance on the income threshold but he must then qualify on capital in order to receive assistance.

In addition to advice and assistance there is civil legal aid. This is a financial support for meeting legal costs including preparation work, the hearing and funding for advocates and experts if needed. A solicitor cannot represent an applicant in court under legal aid for cases relating to small claims of less than £3,000, unless the claim involves personal, injury and some actions relating to bankruptcy. In order to receive legal aid the applicant must qualify financially, have a legal basis for their case (called "probable cause") and it must be reasonable to use public funds to support the case. Depending on their financial status a party may have their legal costs met entirely or they will be required to make a contribution. Where the applicant or their partner is in receipt of income support, or Income-based jobseeker's allowance or Income-related employment and support allowance they will qualify for advice and assistance on the income threshold but they must then qualify on capital in order to receive assistance.

- To which organizations, institutions etc. may a tenant turn to have his/her rights protected?

There are a wide range of tenant's associations and tenant information and support services across Scotland including the following;

- Tenants Information Services provide advice, training and support services to tenants, communities and landlords.
- Tenant Participation Advisory Service Scotland is the national tenant and landlord participation advisory service for Scotland which promotes good practice in tenant participation throughout Scotland for both tenants and landlords.

- Shelter Scotland is a housing and homelessness charity which provides information, advice and support services to households experiencing housing difficulties ranging from poor quality housing to homelessness.

SERBIA

Tenant's Rights Brochure

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1. Introductory information

- Introduction: The national rental market
 - Current supply and demand situation

Serbia, a typical post-transition country, has a high share of homeownership (98.3%) and an irrelevant portion of public housing (1.7%). The Statistical Office of the Republic of Serbia (Zavod za Statistiku Republike Srbije – hereinafter SORS) identified sixteen various types of tenure. Neither homeownership nor rental tenure follow the usual patterns, since housing scarcity, increased by inflows of refugees and IDPs, have led to various housing arrangements. For example, homeowners' units are often shared with tenants, sub-tenants or relatives. The same goes for rental units. According to Census 2011, there are 3,243,587 dwellings. Not all 98.3% of the privately owned dwellings are owner occupied. Owner occupied dwellings account for 87.5% of the stock (or 2,121,484 units). All of 1.7% of publicly owned dwellings are rented. Market rented dwellings encompass 5% of the stock²⁰², while 5.7% of the stock is used by relatives of the owner²⁰³.

The main problems of the rental sector in Serbia are the affordability and quality of the market rentals and the insufficient supply of the non-profit rentals. There is no public authority or a similar body, which would control the quality of the market rentals, as well as the level of the rents. As far as non-profit rentals are concerned, certain progress has been made in the last few years in order to increase the supply of these units. Since the Social Housing Act (*Zakon o Socijalnom Stanovanju*) went into force, there have been several programs, the primary concern of which was to construct new non-profit units, both for purchase and renting. However, the number of the newly constructed non-profit rental units is significantly lower than the units for sale (the ratio of units for renting versus units for sale is 1:3). There is a larger supply of market rentals in cities and larger towns, such as Belgrade (the capitol), Niš, and Kragujevac, due to better employment and schooling possibilities.

It is difficult to state the average rent price in Serbia, since there is no official monitoring. In addition, there is a great difference between the capitol and other smaller municipalities. In general, prices range from 100-150 EUR per month for studio apartments to 200-350 EUR per month for larger apartments (without running costs). Rent price for non-profit dwellings is accordingly lower. It ranges from ca. 15 EUR per month to 55 EUR per month, excluding running costs. The price usually depends on the municipality and the size of the dwelling.

The average monthly running costs (irrespective of the tenure type) amount to around 70 EUR.

The average area of the dwelling in Serbia is 72.3 m² with 25.2 m² per inhabitant. Majority of dwellings is comprised of two rooms (34.6%), followed by three-room dwellings (27.9%). One-room dwellings encompass 15.3% of the stock. Four-room dwellings represent 12.3%, while larger (five and more room dwellings), encompass 9.5% of the stock.

²⁰² This is a mere approximation, since it is difficult to obtain a real number due to the inexistence of an official record.

²⁰³ This percentage encompasses also the informal market rental sector.

Provision of basic amenities is good, especially in urban areas. Certain rural areas may still lack proper water supply and sewage system.

The dwellings are inhabited mostly by two-member households (25.1%). Single-member households inhabit 21.8% of the dwelling stock. Three-member households inhabit 19% of the dwelling stock, while four-member households are found in 18.2% of the stock. Worrying is the fact that the portion of the single-member households is increasing (in 2002 there were 18.1% of such households).

In addition, the population of Serbia is getting older according to the projections by the SORS. The portion of elderly (older than sixty-five years) is likely to increase 25.2% from the current 17.3%, while the portion of young (younger than fifteen years) is likely to decrease from the current 14.4% to 11.7%.

- Main current problems of the national rental market from the perspective of tenants:
 - - Affordability and quality of market rentals: higher quality market rentals are accordingly more expensive and unattainable for large portion of citizens.
 - Absence of written contracts in the market rental sector.
 - Insignificant number of non-profit rentals – only in several towns across Serbia.
 - Unawareness of the tenants and landlords of their rights and obligations from the tenancy relationship.
 - Only few associations of tenants, situated in Belgrade (the capitol) and Novi Sad. There are no other similar organizations, which would provide for support and advice to tenants and landlords.
 - No subsidies or other housing benefits for tenants.
 - Significance of different forms of rental tenure

The rental tenure in Serbia represents a less significant tenure type compared to the owner-occupancy, predominately due to the high ownership rate. The non-profit sector is extremely small, while the market rental sector is mostly performed through the informal market.

- Private renting

The market sector is more important in the larger municipalities, where universities, administrative offices and branches of multinational companies are situated. In addition, the numerous IDPs and refugees found their shelter there.

Landlords in this sector are usually private persons, with the number of legal persons under private law (the so-called commercial landlords) being very small.

The contracts in this sector are left to the autonomy of parties regarding majority of contractual provisions. Most importantly, the rents are negotiated between the parties based on numerous criteria (location, equipment, etc.). Although the 1992 Housing Act (*Zakon o Stanovanju*) ought to regulate relations in this sector as well, over the course of time, its provisions ceased to produce any relevant effect. Therefore, provisions on leases in general, contained in the 1978 Obligation Relations Act (*Zakon o Obligacionim Odnosima*), govern this sector.

Important to note is that written contracts are rarely concluded. There is also no registry of these contracts.

- “Housing with a public task” (e.g. dwellings offered by housing associations, public bodies, etc.)

Housing with a public task is offered by the municipal and non-profit housing organizations. However, these organizations are not present in every municipality, due to the lack of financing. As a result, housing with a public task is unevenly dispersed across Serbia.

The units in this sector are intended for individuals in serious financial and social distress. The applicants must fulfil several criteria in order to be awarded with one of the units (for instance, permanent residence for a certain period of time in the municipality of application, income and property census, number of family members and children, etc.). In addition, the applicants must be Serbian citizens.

The rent in this sector is set in accordance with the executive acts of the owners. Therefore, the rent is not unilaterally set for the entire sector.

Contracts are usually set as limited in time, with the possibility of the prolongation afterwards. In certain municipalities (e.g. Belgrade and Smederevo), social renters do not pay the running costs of the residence.

There is also a program intended mostly for IDPs and refugees (although the local socially underprivileged households are entitled to apply) – the Social Housing in the Supportive Environment. The primary goal of the program is to offer these individuals an adequate residence and relocate them from the collective centres. Several units are usually set in one building and offered to the respective number of households. One of the units is intended for a younger household, which acts as a housekeeper and assists other households (usually elderly persons and persons with physical disabilities) with their chores. However, the number of such building is very small. In total, there are around 940 such buildings across Serbia.

- General recommendations to foreigners on how to find a rental home

Finding a market rental dwelling in Serbia can be done by browsing through the specialized web pages with rental ads²⁰⁴ or visiting one of the real estate agencies. The former may be a more time-consuming procedure. In numerous cases the ads on these web pages are posted by the real estate agencies and not only the landlords; therefore the final result is the same as going to the agency directly. Foreigners (as well as all other prospective tenants) must be careful when choosing the real estate agency, since there have been several cases, in which prospective tenants were cheated by the swindler agents. For instance, the agent demanded an advance payment of the commission, but provided the clients with an apartment, which was not for renting. The agent then vanished, leaving the clients without the money and the apartment.

Market landlords more often than not do not discriminate against the foreigners. However, they may demand rent to be paid in advance, as a form of security. Non-profit dwellings, on the other hand, cannot be awarded to non-Serbian citizens.

- Main problems and “traps” in tenancy law from the perspective of tenants

²⁰⁴ For instance: www.srbija-nekretnine.org, www.kuca.rs, www.nekretnine-srbija.info.

Prospective tenants must pay attention to several issues when negotiating a contract. In the stage of looking for the dwelling, the tenants must carefully choose the real estate agency, as described above. Once they find a prospective landlord, they must always first ask whether the landlord is prepared to conclude a written contract and allow the tenants to register address of the dwelling as their residence. They must also double-check the conditions of the dwelling and the furniture (if provided). The record on the conditions must be included in the contract. In addition, the tenants must be particularly careful to clarify all the details regarding the tenure, especially if the contract was not prepared by a professional (i.e. lawyer), but the landlord himself. This includes clarification of the payment of running costs (who is to pay what part of the costs), their obligations regarding the maintenance of the dwelling and repairs thereof, receiving guests, smoking, keeping animals, etc. It is also useful to agree with the landlord on some kind of a receipt for payments, if the rent is not paid on the bank account of the landlord.

It must be stressed that the court settlement of the disputes should be a measure of last resort due to the high expenses and long procedures, so it is better to clarify all the issues beforehand.

“Important legal terms related to tenancy law”

Serbian	Translation to English
<i>aneks ugovora o zakupu stana</i>	an annex to a tenancy contract
<i>bitni elementi ugovora o zakupu stana</i>	essential elements of tenancy contract
<i>bliži članovi porodice</i>	closer family members
<i>depozit</i>	security
<i>dodatak</i>	subsidy
<i>državina</i>	possession
<i>zakup na neodređeno vreme</i>	open ended tenancy
<i>zakup na određeno vreme</i>	limited in time tenancy
<i>zakupac</i>	tenant
<i>zakupodavac</i>	landlord
<i>zaštićeni zakupci</i>	protected tenants
<i>zelenaška zakupnina</i>	usurious rent
<i>iseljenje</i>	eviction

<i>korisnik</i>	user
<i>krivični razlozi za otkaz</i>	culpable reasons
<i>materijalni nedostatak</i>	material defect
<i>nekrivični razlozi za otkaz</i>	non-culpable reasons for termination
<i>neparnični postupak</i>	non-contentious procedure
<i>neprofitna zakupnina</i>	non-profit rent
<i>obavljanje poslovne delatnosti</i>	pursuing commercial activity
<i>održavanje</i>	maintenance
<i>opomena</i>	admonition
<i>opravdani razlozi</i>	compelling reasons
<i>otkaz</i>	termination
<i>otkazni rok</i>	notice period
<i>podzakup</i>	subtenancy
<i>popravka</i>	repair
<i>pravni nedostaci</i>	legal defect
<i>predaja stana</i>	handing over of premises
<i>produžavanje zakupa na određeno vreme</i>	prolongation of limited in time tenancy
<i>raskid</i>	mutual termination
<i>saglasnost zakupodajalca</i>	landlord's consent
<i>službeni stan za zakup</i>	employment based rental dwelling
<i>spor</i>	dispute
<i>stan za neprofitni zakup</i>	non-profit rental dwelling
<i>stanarsko pravo</i>	housing right
<i>tekući troškovi</i>	operating costs; running costs

<i>tržišni stan za zakup</i>	market rental dwelling
<i>tužba na iseljenje</i>	eviction claim
<i>tužba na ispražnjenje</i>	action for vacating premises
<i>ugovor o zakupu stana</i>	tenancy contract
<i>šteta</i>	damage

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?

Discrimination in the selection of tenants must be observed with regard to the landlord – whether he is a market or non-profit (public) landlord. A landlord in the public sector (municipal housing funds) must not discriminate against prospective tenants unless the basis for discrimination is given in the legislation. For instance, non-profit dwellings are intended only for Serbian citizens, thus discrimination regarding citizenship is allowed. In addition, positive discrimination is allowed in this sector (for instance, determining as eligible only applicants with children enrolled in the primary schooling or giving priority to single-parents). However, discrimination based on the religion or religious belief, gender and disability are not allowed.

Market (non-commercial) landlords select tenants according to their own preferences and without restrictions.

- 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?

Market landlords are usually free to ask any type of question, whereas tenants have the right not to be honest when answering. However, there may be other legal consequences thereof, such as invalidity of the contract or liability for damages.

Public landlords (non-profit landlords) are allowed to ask different questions in order to establish whether the applicant (prospective tenant) fulfils criteria for being awarded with such a dwelling. In addition, they may request from applicants to enclose different evidence regarding their material and family status when applying for non-profit housing. The needed documents are enlisted in the relevant legislation (e.g. regulation issued by the Government and local municipal authorities regarding allocation of these dwellings). Thus, documentation stated in the relevant legislation is not regarded as inappropriate. Tenants have the right not to answer honestly. However, such actions may lead to the termination of the contract. For instance, if the applicant alleges income below the threshold, when in fact it is not, this may constitute a reason for termination, since the tenant does not fulfil the criteria for

these dwellings.

- 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)?

A reservation fee is unusual in both the market and non-profit sector. Some swindler real estate agents have requested an advance commission. However, this is not lawful. The agents are only entitled to the commission as agreed upon with the brokerage contract and after the contract is concluded.

- 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)?

Checks on the personal and financial status of the tenant are different depending on the type of the rental relation. Market landlords may demand any type of checks on the personal and financial status of the tenant. There is no legal obligation for them to do so, nor is there a provision preventing them from asking for the documents. However, some of them do so in order to be sure that the tenant will be able to pay the rent.

On the other hand, public landlords in non-profit sector have a right to demand from the tenant (as well as tenant’s household members of legal age) to enclose different documents, among which are also certificates of income and dependent members, a certificate of received net salaries, statement on the pecuniary circumstances, etc. All of these certificates are stated in the public tender.

- 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?

The role of the agents is usually to present the prospective tenants with appropriate dwellings, in accordance with tenants’ demand. Agents also show the selected dwellings to the tenant at his request. Other services depend on the parties’ preferences. In some cases, agents assist with the preparation of the tenancy contract.

Apart from the estate agents, there are no other bodies or institutions assisting tenants in searching for housing.

- Are there any accessible “blacklists” (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?

There are no formal mechanisms or lists for determining a bad or a good tenant or landlord.

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)?

Non-profit rental agreements (tenancy contracts) must be concluded in writing. There is no such requirement for the market rental contracts. Nevertheless, parties are advised to conclude written contracts in order to provide for the higher legal certainty of both parties. An oral agreement is also valid in front of the Court, if the party, claiming that the rental relation existed, may prove this. For instance, the proof may be the record of all the paid rents.

There are no other formal requirements regarding the market rentals. As far as non-profit rentals are concerned, the tenants must be selected in a special procedure.

The registry of tenancy contracts has not been established. The only obligation of registration is the registration of the contract with the Tax Office (*Poreska Uprava*), for which there is no fee imposed.

- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?

The mandatory content of non-profit contracts is non-exhaustively enumerated in Article 7 of the 1992 Housing Act.

Mandatory data and information are:

- information on the parties,
- date and location of the conclusion,
- information on the dwelling,
- reasons and notices for termination,
- mutual obligations,
- maintenance of the dwelling and the building,
- the rent price,
- the manner of paying and the scope of running costs,
- the period of tenancy,
- and the individuals residing in the dwelling (i.e. users).

Important to stress is that the contract, in which the period of rental is not defined, is considered as open-ended term contract. Furthermore, notice of increase of the rent must be communicated to the tenant at least one month before the intended increase. The record on the condition in which the dwelling is upon handing over is also signed by both parties and enclosed with the contract.

The mandatory content of the market rental contracts is not strictly determined with the 1978 Obligation Relations Act, but it follows from the general provisions. It includes:

- the information on the parties and the dwelling,
- the payment of the rent,
- maintenance of the dwelling,
- agreement on the scope of the use of the dwelling and the sublease,
- reasons on termination.

- Duration: open-ended vs. time limited contracts (if legal, under what conditions?)

Duration of the contract is an important feature of contracts. If the period for which the contract is concluded is not stated in the contract, it is deemed that the contract is open-ended. Both types of contracts are possible in both the market sector and the non-profit sector. However, in non-profit sector, the dwelling is usually awarded for

the period in which the household is in severe social and financial distress, with the possibility of prolongation. In the market sector, limited in time contracts are more common, also with the possibility of prolongation.

- Which indications regarding the rent payment must be contained in the contract?

All tenancy contracts must necessarily contain the level of rent and its scope (for example, does it include only the rent or also the running costs). Market rent is usually paid monthly, unless otherwise agreed between the parties (for instance, that the tenant is to pay for several months or a year in advance). The non-profit rent is paid monthly, until the fifteenth of the present month, unless otherwise determined in the contract.

If the non-profit landlord wishes to increase the rent, he must notify the tenant thereof, at least one month prior to the increase. This rule is not necessarily contained in the contract, but it follows from the legislation.

- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

It is legal for the landlord to shift the costs for certain kinds of repairs, since there are no strict rules regarding repairs and furnishing of dwellings in neither market nor non-profit rentals. Provisions of the 1992 Housing Act regulate only the maintenance and repairs of the housing buildings and apartments and not the repairs of non-profit dwellings.

Therefore, the general provisions on repairs from the 1978 Obligation Relations Act apply to the repairs of individual units. The landlord, in general, is obliged to maintain the dwelling in proper condition for the entire period of the tenancy and is obliged to undertake necessary repairs. If the landlord fails to conduct the necessary maintenance work, the tenant is entitled to undertake them, while the landlord is obliged to reimburse any costs that emerged. For instance, the landlord is obliged to repair or replace the plumbing, which is old and worn-out.

However, the costs of small repairs, caused by the regular use of the dwelling or caused by the tenant or other person present in the dwelling with tenant's permission, as well as the other running costs, are borne by the tenant. For instance, if the tenant's child destroys one of the cupboards with the scissors, the tenant is responsible to repair it.

The tenant's has the responsibility to inform the landlord of any needed repair during the period of tenancy, as soon as possible, unless the landlord is already aware of it. In addition, the tenant is obliged to inform the landlord of any unexpected hazard which could threaten the dwelling during the period of tenancy, so as to allow him to react in due manner. Otherwise, the tenant is not entitled to the reimbursement of the damage to which he was exposed, while he is obliged to reimburse the damages to the landlord. For instance, if there was a flood in the neighbour's apartment and there is a possibility of damage also in the tenant's dwelling, he must inform the landlord in order to take measures and prevent serious damage.

As far as maintenance of the housing buildings and other common parts, the owners of the housing buildings, apartments and other individual parts of multi-buildings in general are to provide for the maintenance of the buildings with all the installations,

equipment and appliances, as well as the apartments and the special parts of the buildings. The main guiding principle is that the costs of repairs are borne by condominium owners according to their ownership share and not according to their actual use of the asset that needs the repair (whether it is an elevator, roof, common area). The main goal of the maintenance is to allow safe use of the building and apartments (the so-called investment maintenance). This maintenance is in the public interest. The owners are also responsible for other undertakings: painting, cleaning of the stair halls, entrances and common areas, repairs and changes of common lighting, as well as other works for providing the maintenance of the building for its proper use (the so-called current maintenance). This means that the landlords (both non-profit and market) are responsible for this type of repairs. They cannot shift these costs to the tenants, unless otherwise agreed in the contract.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

Furnishings in both types of rentals are usually provided by the landlord. The most necessary furniture, such as kitchen and toilet furniture and closets, are always provided. Some landlords provide also the entire furniture (also beds, tables, chairs, appliances). The equipment of the furniture is usually reflected in the higher rent price of market rentals.

- 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)?

In the non-profit sector, making an inventory (the record on the condition of the dwelling upon handing over) is mandatory. However, also the market tenants are advised to make the inventory at the very beginning of the tenancy, in order to avoid possible misunderstandings with the landlord afterwards.

- Any other usual contractual clauses of relevance to the tenant

There are no other contractual clauses of relevance to 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.)?

Unless mentioned in the non-profit contract, persons other than the tenant cannot move into the apartment. Tenants in non-profit rentals are legally obliged to provide the list of individuals who are to use the dwelling with them, being family members or not. Otherwise, this may constitute a reason for termination of the contract.

For market rentals, the 1978 Obligation Relations Act does not contain a rule which would oblige the tenant to inform the landlord on who else is to use the dwelling. However, in order to avoid misunderstandings, it is better to include also the list of such individuals.

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

The obligation to live in a dwelling is not contained in the legislation. However, such obligation may be deduced from the general provisions of the 1978 Obligation Relation Act, especially regarding non-profit rentals. For instance, tenants are obliged to notify the landlord of any threat to the dwelling. Otherwise, they are liable for damages. Unless they are residing in the dwelling, they will not be able to act accordingly. Furthermore, tenants are to use the dwelling in accordance with their purpose. Purpose of the dwellings is to be occupied. Otherwise, the housing (non-profit) stock is inappropriately used.

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

There are no special provisions in the 1992 Housing Act or the 1978 Obligation Relation Act on the divorce, separation of the non-marital partners or same-sex partners²⁰⁵. This matter is arranged in the divorce or separation procedure.

The only possibility is in the case of domestic violence. The court may order the violent partner to move out of the joint dwelling, irrespective of his ownership or tenancy right. However, it is not explicitly stipulated that the change of the parties in this case is obligatory.

- death of tenant;

Change of parties after the death of the tenant is legal in both non-profit and market rentals. The members of the non-profit tenant's family household may continue to use the dwelling. This right is given only to those members residing in the dwelling with the prior to the death of the deceased. The new tenancy contract is concluded with the member of the family household who is determined by all the members consensually. If there is no other member of the family household left, the new contract may be concluded with individual who is no longer the member of the family household or the individual, but who was a member of the family household of the previous tenant, if he continued to reside in the dwelling (for instance, a brother, a sister, etc.). The following individuals are deemed as family household members of the tenant: his marital spouse, children (born during the course of the marriage or outside, adoptees or stepchildren), parents of the tenant or his spouse, as well as individuals that the tenant is legally obliged to support. These individuals have a right to conclude the new contract within sixty days following the death of the tenant; otherwise, the contract is terminated. As for the market rental relations, the contract is continued with the deceased tenant's heirs, unless other arrangement is reached in the contract.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);

²⁰⁵ Same-sex partners are not legally recognized in Serbia.

No strict rules regarding replacing a student who moved out are present in the legislation. As such, replacing the student who moved out is a matter of agreement between the parties. Some landlords prefer to find the new student on their own, while others leave this to other users.

- bankruptcy of the landlord

Bankruptcy of the landlord in general does not lead to the change of the tenant's position. If the dwelling is sold, tenant is entitled to terminate the contract, if he does not approve of the new landlord. The new landlord (buyer of the dwelling) enters into the obligations and rights of the previous landlord and is bind by the previous contract, however only, if the tenancy contract was concluded and the dwelling handed over to the tenant before the order on the enforcement.

If there was a mortgage on the dwelling and the dwelling is to be sold in the enforcement procedure (in an out-of-court procedure), the solution may be different. The tenant must agree with the conclusion of such mortgage. The reason for this is that he is obliged to empty the premises and hand them over to the new owner in fifteen days following the sale.

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

Subletting is not directly prohibited with the legislation regarding the non-profit rentals. However, it is prohibited to conclude the subletting contract without the consent from the landlord. Otherwise, the landlord is entitled to terminate the contract.

The landlord (the main tenant) and the sub-tenant must conclude a sub-lease contract in writing. The landlord (the main tenant) must register the contract with the competent Tax Office. Almost the same provisions apply to the subletting as to the regular tenancy contracts. The peculiarity is that the subletting contract is terminated instantly with the termination of the original tenancy contract, regardless of the fact that the subletting contract was concluded for a longer period of time or as open-ended. The argument is that the sub-lease is based upon the original lease, and once the original lease is terminated, all the sub-leases deriving from the former (main) tenant – sub-lessor – must be terminated as well.

In market rentals, subletting is allowed, unless otherwise agreed in the contract and unless it may harm the landlord (for instance, if the dwelling might suffer greater wear and tear than economically acceptable for the landlord). If it is necessary to obtain the permission from the landlord, he could refuse to give it only due to some justified reason. The tenant guarantees to the landlord that the sub-tenant will use the dwelling in accordance with the tenancy contract. If the permission was not obtained, but was needed according to the law or on the contractual bases, such contract provides no legal effects and the landlord is entitled to terminate the tenancy contract. The landlord is entitled to demand payment of any tenancy related debt owed by the sub-tenant to the tenant directly from the sub-tenant. Nevertheless, there is no direct legal relation between the owner and the sub-tenant. The same rules regarding rights and obligations of tenant and landlord apply also to relation between tenant and sub-tenant, unless otherwise agreed. Subletting is necessarily terminated with the termination of the tenancy contract. Thus, the sublet contract is a

separate contract from the tenancy contract, but the existence of subletting depends on the existence of the tenancy relation.

- Does the contract bind the new owner in the case of sale of the premises?

The position of a tenant in non-profit rentals is not affected by a respective change of the landlord. The new landlord enters into the legal position of the former party and is entitled to all rights and obligations.

The similar applies if the dwelling is transferred to the new landlord after the start of the market rental contract. If the contract between the original landlord and the tenant does not stipulate the period of the lease, nor is the period set by a statute, the new landlord cannot terminate the lease prior to the termination of the statutory period of notice.

However, if the dwelling was not handed over to the tenant before the conclusion of the sale contract, the new owner is not obliged to hand over the dwelling to the tenant, unless he was aware of the tenancy contract upon the conclusion of the sale contract. In this case, the tenant has the right to reimbursement from the previous landlord. In addition, the law determines the joint and several liability of the previous landlord (the seller) for any obligations imposed on the new owner (the buyer) in respect to the tenant. In any case, the tenant is entitled to terminate the tenancy contract, respecting the statutory period of notice, if he does not approve of the new landlord.

- 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?

Utilities are not specifically regulated in reference to the tenancy relations. Usually the rental dwellings (both market and non-profit) are already equipped with the necessary utilities, thus the tenant does not need to conclude his own contracts. If the contracts are concluded for a longer period of time (which is rare in practice), the landlord and tenant may agree that the utility bills are addressed to the tenant. However, the tenant is the addressee for the bills of utilities, which he introduced in the apartment (for instance, for internet, telephone, cable, if these were not provided beforehand).

There are no specific rules as to the arrears with the payment of bills (for instance, special rules that could apply in such situations). Supplying companies are not interested in the user of the dwelling and relations thereof.

- Which utilities may be charged from the tenant by the landlord? What is the standard practice?

Neither of the statutes regulates the scope of other costs to be paid by the tenant. Non-profit tenants with open-ended contracts pay separately the rent and the running costs (for the water supply, electricity, telephone, licence fee for radio and television). Certain tenants in non-profit rentals (for instance, tenants in the Social Housing in Supportive Environment) pay only the running costs of apartments, while they are freed from paying the rent.

The tenants in market rentals are to cover the costs in the scope agreed upon with the landlord. This refers to the costs not included in the rent price. Such costs usually include individual running costs. If nothing is stated in the contract, the agreed amount covers only the rent, while running costs are paid separately. The tenant and landlord in market rentals may agree that the tenant is to pay a lump sum (a kind of compensation for the use of the dwelling), covering both rent price and running costs. Accordingly, the tenant has no other costs, unless otherwise agreed. However, payment of the lump sum is very rare, since the actual consumption may be a lot higher than the lump sum.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

Tenants in both market and non-profit rentals are levied with the waste collection. In Serbia this is not paid as a tax, but as a regular monthly bill (as part of the running costs). Road repair is not paid as a municipal tax. Such payment is imposed on the drivers.

Tenants (both market and non-profit) pay the Property Tax only if the rental contract is concluded for the period longer than one year or as an open ended. It is paid irrespective of the Property Tax by the landlord.

In practice, there are no contracts for market rentals concluded for period longer than one year or open ended contracts. Rather, chain contracts are concluded.

- Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?

It is lawful to shift the condominium costs onto the tenant. These costs are also part of the running costs. They include, for instance, housekeeping costs and costs of small repairs in the common areas. Such costs are usually paid to the manager of the building.

- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?

Legislation does not limit the amount of the deposit. It is usually agreed between the parties in market rentals. Usual amount of a deposit (security) ranges from one to two monthly rents (although it can be also higher for more luxurious dwellings). There are no deposits in the non-profit rentals.

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

There are no special rules on managing the deposit. Therefore, different agreements are possible between the parties. Usually, the amount of the deposit is set off with the last rent or certain repairs, if needed.

- Are additional guarantees or a personal guarantor usual and lawful? What kinds of expenses are covered by the guarantee/ the guarantor?

Additional guarantees or a personal guarantor are not usual, although they are not unlawful. Provisions on the guarantees are contained in the 1978 Obligation Relations Act (Articles 997 and further). Guarantor's obligation cannot be greater than the obligation of the tenant. If it is agreed that his obligation is greater, the value of the obligation is reduced to the amount of the tenant's debt.

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 precise definition of defects and disturbances is not available in the legislation. Legally relevant defects and disturbances can be deduced from the general provisions on the material and legal defects of the dwelling. The landlord must protect the tenant from certain defects and disturbances and provide him the normal use of the dwelling.

Landlord is responsible to protect the tenant from the non-obvious defects, such as smell from the shafts. He is liable for defects if he claimed that the dwelling is free of defects. Irrelevant is the fact that the tenant could have been aware of the defects or that the defects are obvious, since the landlord guaranteed that the dwelling is without any defect whatsoever.

The parties may agree that the landlord is not liable for certain material defects. However, such contractual provision is deemed null and void if; the landlord knew of the defects and intentionally withheld this, the defect is such that it prevents the use of the dwelling, or the landlord exploited a dominant position. For instance, the landlord is liable for repairing the leaking window, even though the parties agreed that tenant is to bear all the cost connected to the repairs of the dwelling, if the landlord knew about the broken window but did not tell the tenant.

Exposure to noise (either by the neighbors or a building site) is relevant only if the landlord expressly asserted that the location is quiet. Otherwise, tenants are entitled to file the prohibition injunction against the person causing the noise. Mould and humidity are material defects, for which the landlord is responsible.

Occupation by the third parties is also a defect. Landlord is obliged to protect the tenant from such disturbances. The tenant is entitled to a legal protection of possession for disturbances from the third parties in the same extent as the landlord (he has this right against every third party).

However, the landlord is not liable for defects and disturbances caused by the tenant himself. For instance, if the tenant is responsible for the humidity in the dwelling (if he rarely aerates the dwelling), the landlord is not liable to eliminate the deficiency.

- 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)

- Tenant's primary obligation is to notify the landlord on the defect or the disturbance (material or legal) for which the landlord is liable to address without unnecessary delay, unless the landlord is already aware of it. Otherwise, the tenant loses the right to the reimbursement of damage incurred because of the defect or disturbance, unless the landlord was aware of the defect or the disturbance. In addition, the tenant must reimburse the damages sustained by the landlord.
- In general, the rights of the tenant, when the dwelling is exposed to a certain defect, depend on the scope of the defect. If the defect is not repairable, the tenant can either terminate the contract or demand a decrease of the rent price. For instance, if there is a flood in the common area (not caused by the tenant, but rather due to the poor maintenance of the piping by the landlord) and there is now damp in the dwelling as well, the tenant may either terminate the contract or demand reduction of the rent. If it is possible to remove the defect without any major constraints for the tenant, the tenant is entitled to demand either removal of the defect within a set deadline or decrease of the rent price. For instance, if there was a flood, not caused by the tenant, but rather due to the poor maintenance of the piping by the landlord, and the parquet floor in the dwelling was destroyed. If the landlord fails to remove the defect within the set deadline, the tenant may terminate the contract or demand a decrease of the rent price. The length of the additional period is not determined, but it depends on the particular circumstances in each case. Therefore, the tenant may terminate the contract only if the landlord fails to remove the defect. These provisions apply also for the cases when the dwelling does not have a certain characteristic, which it was supposed to have according to the contract or its normal use, as well as if it loses such characteristic during the lease. Another example may be the leaking roof. If the roof is leaking due to a misplaced tile and the dwelling's walls are damp, the tenant is to first notify the landlord thereof. The tenant must provide the landlord with a deadline, before which time the roof should be repaired. If the landlord repairs the roof within the deadline, the tenant is entitled only to the lower rent. If the landlord fails to meet the deadline, the tenant may terminate the contract in addition to the lower rent. However, if the defect of the roof is such that it is beyond repair, the tenant has a right to terminate the contract as soon as he becomes aware of this fact.
- The tenant may also repair the dwelling on his own. However, he cannot unilaterally reduce the rent, but is obliged to demand such reduction from the court (unless parties agree to set-off the costs of the repair and the rent).
- The tenant is not entitled to any reimbursement from third parties and may only file possessory claims against third parties. Any reimbursement of damage must be claimed from the landlord.

- Repairs of the dwelling

- Which kinds of repairs is the landlord obliged to carry out?

The landlord must repair any defect that was not caused by the tenant or due to his negligence, so that the normal use of the dwelling is possible. However, in market rentals, the parties may also agree otherwise. If the tenant or the individual for whom he is responsible inflicts certain damage, the landlord is not responsible for the repair. The parties may agree that the landlord repairs also such damage, however,

at the tenant's expense. For instance, landlord must repair or replace piping, if it is old and dilapidated. However, if the tenant was neglectful with the maintenance of the piping, the landlord is not responsible for the repair.

- Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

The explicit right of the tenant to make repairs at his own expense and then deduct the repair costs from the rent payment does not follow from the legislation. However, such right may be agreed upon between the parties in market rentals.

- Alterations of the dwelling
 - Is the tenant allowed to make other changes to the dwelling?
 - In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)
 - Affixing antennas and dishes
 - Repainting and drilling the walls (to hang pictures etc.)

Tenants in both market and non-profit sector may alter and improve the dwelling, its equipment and devices only with the written consent of the landlord, unless the parties agreed otherwise in the contract (which is rare). Tenant is allowed to make only such improvements on the dwelling without the landlord's authorization which can afterwards be removed without damaging the dwelling. The landlord is not obliged to compensate their value, although he may, if he opts to do so.

For instance, for putting in the new tiles the tenant should obtain the consent of the landlord, since such works demand damaging the floor of the dwelling. In addition, after the removal of the tiles, it would be difficult to restore the original state of the floor. If the tenant installs a removable air conditioning system (for which he does not need the landlord's consent, since it may be removed without the damage) the landlord may opt to reimburse the costs of the installation instead of forcing the tenant to remove it.

According to the case law, the landlord may not oppose the works by the tenant which are necessary for improving the living conditions in the dwelling and are in accordance with modern housing standards (for instance, installation of central heating). Building an elevator or ensuring access for wheelchairs would probably also met the above criteria, if the tenant or one of the users has a disability. Fixing antennas has not been raised as an issue and would probably be allowed. Repainting and drilling the walls is the matter of agreement between the parties.

Tenants must be aware that performing the improvements and changes without the landlord's consent may constitute a culpable reason for the termination of the tenancy contract (since it may be deemed as use contrary to the purpose of the contract).

- Uses of the dwelling
 - Are the following uses allowed or prohibited?
 - keeping domestic animals

Keeping domestic animals is not explicitly regulated. It is the matter of agreement between the landlord and the tenant. Also, in certain cases, this may be the matter of the internal house rules of the multi-unit building or public law regulation. For instance, some municipalities do not allow certain breeds of animals (e.g. pit bull terrier) to be kept in the municipality or its part.

- producing smells

The rules of neighbourly law apply to tenants as well. Therefore, tenants must refrain from inflicting disturbances to other residents. This refers to producing smells and other immisions (noise, garbage, etc.).

- receiving guests overnight

Receiving guests overnight is in general allowed, unless there is a different agreement between the parties.

- fixing pamphlets outside

Fixing pamphlets outside is not explicitly regulated. It depends on the agreement between the landlord and the tenant. As with keeping the domestic animals, this may be a matter of the internal house rules of the multi-unit building or the public law regulation.

- small-scale commercial activity

In general, dwellings are to be used for residence. As an exception, only a part of an apartment may be used for pursuing a commercial activity – however, only in such a manner so that the building and residents are not exposed to jeopardy. In addition, the building must not suffer any damage thereof, while the other residents of the building must not be disturbed in their peaceful use of the building. An example of commercial activity is law practice.

However, the landlord is entitled to terminate the non-profit tenancy contract if the tenant uses the dwelling for pursuing a commercial activity without his consent. As far as market rentals are concerned, the landlord may terminate the contract if the dwelling is used contrary to the contract or the purpose of the contract, without the notice period. Therefore, tenants are advised to obtain consent before they decide on conducting the commercial activity.

3.2. Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

Rent control is exercised only in the non-profit sector. The manner of calculations is set in the regulatory act enacted by the competent Minister. The rent price is determined two times a year for a six-month period (January-June and July-December). It depends on the area of the dwelling, quality of the dwelling and the building in which the dwelling is situated. The relevant regulatory act is the Directions on the Manner of Determining the Rent (*Uputstvo o Načinu Utvrđivanja Zakupnine*),

prepared by the Minister of Construction and Urbanism (*Ministarstvo Građevinarstva i Urbanizma*).

The rent for market rentals is not subject to any control. It is a result of the negotiation between the parties, depending on the location, size and equipment of the dwelling.

- Rent and the implementation of rent increases

Rent increase in the market sector depends solely on the agreement between the parties. Rent increase in the non-profit sector may be exercised only if the relevant legislation is amended or different values of dwellings are set.

- When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?

There are no 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 charged lawfully?

A cap or ceiling determining the maximum rent that may be charged lawfully is not present.

Landlords in non-profit rentals are bound by the rent as determined with the valid legislation on the non-profit rents.

- What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?

An increase of market rents has to be agreed by the parties. No particular procedure is prescribed, unless the parties agree otherwise in the tenancy contract.

Increase of non-profit rents must be communicated to the parties one month prior to the intended increase. This provision has no practical value, since the rents are increased based on the change of the relevant regulation.

- Entering the premises and related issues
 - Under what conditions may the landlord enter the premises?

The conditions under which the landlord may enter the premises are not regulated by any of the relevant statutes. This issue must be agreed between the parties and stated in the contract.

- Is the landlord allowed to keep a set of keys to the rented apartment?

A landlord is in general not prohibited from keeping a set of spare keys of the rented dwelling, although the parties may agree otherwise in the tenancy contract.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

If the tenancy contract is still in force (i.e. the landlord has not notified the tenant on the breach, giving him the deadline to rectify the situation), the landlord may not lawfully lock the tenant out (even though this is a standing practice of some landlords in market rentals). Such intrusion would be deemed as a disturbance of possession. Therefore, the tenant has a possessory protection also against the landlord.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

A landlord does not have a right to seize the tenant's (movable) property in case of rent arrears or other breach of the contract. The reason for this is that he does not have possession of the movables. However, the landlord and the tenant may establish a contractual lien, pursuant to Articles 966 and further of the 1978 Obligation Relations Act. After the debt is matured, the landlord may demand from the Court that the movables are sold at the public auction or according to their current price, if the movables have a market or stock value.

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?

Tenants in non-profit rentals (irrespective of the period of tenancy) must give notice at least thirty days prior to the intended moving out of the dwelling. The notice must be given in a written form. If the notice period is shorter than thirty days, the tenant must cover the rent price also for the following month. The tenant is not obliged to state any reasons for the termination of the contract. In order for the termination to be legally effective and valid, only general provisions on the declaration of will are applied (not given under threat, free from errors, etc.).

Tenants in market rentals are entitled to terminate an open-ended contract with an eight-day notice period, without stating the reasons thereof. However, the notice must not be given at an inconvenient time²⁰⁶. No particular form is needed. The eight-day notice period is not mandatory, thus enabling the parties to agree upon different length of the notice period.

- 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)?

²⁰⁶This legal standard is not defined in the statute.

The legislation on non-profit rentals does not regulate this matter. The only provision in this regards is that if the notice period is shorter than thirty days, the tenant must cover the rent price also for the following month. The tenant is not obliged to state any reasons for the termination of the contract.

Market rentals cannot be terminated before the agreed period of time. The exceptions are the following two situations. All tenants are entitled to terminate the contract, if the dwelling is hazardous in terms of health. In this case, the tenant is not obliged to comply with any notice period, not even if he knew of the hazardous condition when concluding the contract. In addition, he cannot waive this right. The termination given under these conditions (not complying with any notice period) is meant as a sanction for the landlord, since he failed to fulfil his contractual obligation (providing such dwelling, which is in a proper condition for use). Furthermore, tenants may terminate the contract with the agreed notice period, if the landlord is changed (due to the inheritance, sale in the bankruptcy procedure, etc.).

- May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?

In general, there is no obligation for the tenant to find a suitable replacement tenant. However, the parties in market rentals may agree on this matter in the contract. Such replacement would not be allowed in the non-profit rentals, since the non-profit tenants must fulfill certain criteria in order to be awarded with the non-profit dwelling.

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 applicable legislation does not differentiate between open ended and limited in time contracts regarding the termination by the landlord. However, there is a difference between the culpable and non-culpable reasons for termination of tenancy contracts, as well as different types of rental contracts. Landlords may not terminate non-profit tenancy contracts unless one or more reasons (stipulated in Article 10(1) of the 1992 Housing Act) are present. These are:

1. pursuing commercial activity in the dwelling,
2. subleasing the dwelling or allowing persons, not stated in the contract, to use the dwelling without the consent of the landlord;
3. not paying the rent for at least three months in a row or four months throughout the year;
4. inflicting damages to the dwelling, common areas, installations or other equipment in the building;
5. using the dwelling in such a manner, which impedes the peaceful residence of others.

These are all deemed as culpable (extraordinary) reasons for notice. The notice is to be given in a written form with a ninety-day notice period.

In market rentals, parties are to agree on the reasons for termination of open-ended contracts and the notice period. Otherwise, landlord is entitled to terminate the contract without stating any reason thereof. The notice period in this case is eight

days.

- Must the landlord resort to court?

If there is no dispute between the parties regarding the termination of the tenancy (i.e. if the tenant complies with the notice period), the landlord is not obliged to resort to the court.

- Are there any defences available for the tenant against an eviction?

The only recognized defence for the tenant in the non-profit rentals refers to the period of notice. If the landlord gives notice and the notice period is to expire within the period December through February, the notice period is prolonged for additional thirty days. There are no such provisions in reference to market rentals.

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?

Landlords in non-profit rentals may terminate a tenancy before the end of the rental term due to the same reasons and with the same notice period as in the case of open-ended contracts described above.

For market rentals, the provisions of the 1978 Obligation Relations Act allow the premature termination of the limited in time contracts by the landlord only due to certain special reasons. Such reason is the usage, which is contrary to the contract. If the tenant uses the dwelling contrary to the contract or the purpose of the dwelling or he neglects it, the landlord may terminate the contract without any notice period. The conditions are that the landlord had previously warned the tenant of the breach (but the breach continued) and that there is a possibility of great damages for the landlord. Other reason is arrears in rent. As in the previous case, the landlord must first warn the tenant on the arrears and give him a fifteen-day deadline to cover the due amount. There is no provision on the notice period in this case. However, if the tenant covers the due rent before the landlord gives the notice, the contract remains valid. The landlord may also terminate the contract if the tenant subleased the dwelling without his consent, if the consent was needed in accordance with the statute or the contract. In this case, the landlord must comply with the notice period from either the contract or, if there is no agreement on this, the notice period stipulated with the 1978 Obligation Relations Act (eight days).

- Are there any defences available for the tenant in that case?

There are no defences available for the tenant.

- 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 limited in time market contracts, if the tenant does not leave the premises after the end of the tenancy, and the landlord does not oppose, a new open ended tenancy contract is concluded, under the same terms as the previous one (*tacita relocation*). There is no such provision in reference to the non-profit rentals.

If the tenant does not hand in all the keys of the dwelling, the landlord may file the lawsuit claiming the ownership over the keys (*rei vindicatio*). In addition, the landlord

may also file a lawsuit for protection of possession, if the tenant uses the keys and enters the dwelling. The competent court in both cases is the local court in the municipality, in which the dwelling is located.

4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?

Security deposit must be returned at the end of the tenancy. It may either be set off with the last rent or returned, given that the dwelling remained in the same condition as it was handed over to the tenant. The parties may agree on this matter in the contract.

- What deductions can the landlord make from the security deposit?

The security deposit may be used for returning the dwelling to its original condition. For instance, it may be used for painting the dwelling, refurbishing of the parquet floor, etc. The scope of deductions depends on the agreement between the parties. It may also be used for setting off the last unpaid rent.

- In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

Tenants are not obliged to restore the ordinary 'wear and tear'. However, if the wear to the furniture is greater, the landlord may demand that the tenant restore the item to its original shape or he may deduct the costs of the repair from the security deposit.

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
 - Are there specialized courts for adjudication of tenancy disputes?

There are no specialized courts for adjudication of tenancy disputes in Serbia. All actions are brought in front of the ordinary local court on the first instance, irrespective of the amount of the claim. Certain matters are dealt with in the non-contentious proceedings and others in the contentious proceedings. Competent is the court in the municipality in which the dwelling is situated.

Parties may appeal to the higher courts (the second instance). Appellate courts are competent to decide on the appeals on the decisions of higher courts and ordinary courts, for which higher courts are not competent. In both cases the appellate courts act as the second instance. The Supreme Court is competent for extraordinary legal remedies. However, the possibility of legal remedies is not unlimited. There are special requirements (required for all proceedings, appeals and extraordinary remedies) to be fulfilled in order to have an access to the second or third instance. Municipal authorities competent for the housing matters are in charge of unlawful residence and eviction procedures. The proceedings are considered as urgent matters, whereas the appeal does not withhold the execution of the decision. The

Ministry competent for the housing matters deals with the appeals on the decisions of municipal organs.

- Is an accelerated form of procedure used for the adjudication of tenancy cases?

Tenancy disputes are adjudicated in an accelerated form of procedure. However, due to the backlog of Serbian courts, the actual solution of the dispute is usually given several months after the start of the proceeding.

- Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?

The possibility of alternative dispute resolution in general is available, although there are no specific procedures developed precisely for tenancy matters. There is still no official stance on whether the tenancy disputes are arbitrable, since there is a provision stating that for tenancy disputes, courts have exclusive jurisdiction.

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?

The authority in charge (municipal housing organization usually) must first announce the notice in newspapers, on bulletin boards of municipalities, the Commissariat for Refugees, collective centers and City Center for Social Work (*Gradski Centar za Socijalni Rad*). Applicants are invited to enclose all the necessary documents (evident from the notice) to the City Centre for Social Work within thirty days from the public notice. All of the eligibility criteria must be stated in the notice (housing situation, income level, health conditions, invalidity, number of household members and property situation, nationality, underprivileged groups). After the thirty days period, the Centre delivers the applications to the Committee (which is in charge of the consideration of the applications and awarding of eligibility points). Afterwards, the Committee must form the preliminary list of rightful claimants based on the number of points of each applicant. If more than one applicant has the same number of points, the priority is given to the applicants according to the number of points awarded in the following order: socio-economic jeopardy, single-parenthood, age, households with children with developmental issues, households with severely ill members, households with member with bodily harms, victims of domestic violence, households with schooling children. The preliminary list is announced in the same manner as the notice itself.

There is a possibility of complaint, filed with the Mayor (*Gradonačelnik*) through the Committee within eight days from the public announcement of the preliminary list. After the complaint procedure has been completed, the Committee forms the final priority list of the rightful claimants. The Director of the City Center for Social Work then issues the decisions on the allocation of the apartments. The Mayor or other authorized person concludes the contracts on mutual rights and obligations with the future users. The complaint against the final priority list is not available.

Housing allowances are still unavailable in Serbia.

- Is any kind of insurance recommendable to a tenant?

No specific insurance is recommendable to tenants. Insurances play more important role for landlords, for instance, general housing insurance, against natural disasters, etc.

- Are legal aid services available in the area of tenancy law?

The Free Legal Aid Act has been prepared, but has not been enacted yet. Currently, in civil procedures, the measure of exemption from payment of costs applies, regulated by the Civil Procedure Act (*Zakon o Parničnom Postupku*).

The Court may dismiss the party from paying the costs of the proceedings, if the party is unable to bear the costs of the procedure due to its general financial situation. Exemption from the costs of the procedure includes the exemption from court fees and exemption from the advance deposit for expenses of witnesses, expert witnesses, investigation and court listings. The Court may dismiss the party only from paying court fees. When rendering the decision on exemption, the Court takes into account the circumstances of the claim and its value, the number of individuals that the party supports, as well as income and property of the party and its family members. The decision on exemption is rendered by the first instance Court upon the party's written motion. The party must also submit a certificate on property status from the competent authority. The certificate must indicate the amount of tax paid by the household and individual household members, as well as other sources of income and their general financial situation. If necessary, the Court may, *ex officio*, obtain the required data and information on the financial status of the party claiming the exemption and the opposing party as well. The decision on the exemption is not subject to appeal.

The party may be exempt from paying the costs in total or only partially. If the party is exempt only partially, the remaining part is subject to the general rule on distribution of legal costs according to success in litigation. Exemption from the costs on the first instance applies to the costs of procedure on the second instance, as well.

The Court may revoke the decision on exemption, if it finds that the party is able to bear the costs, in total or partially.

- To which organizations, institutions etc. may a tenant turn to have his/her rights protected? [please indicate addresses, email addresses and phone numbers]

There are several organizations of tenants in Serbia. Some of them are organized on the national level, whereas others are organized on the local level (Velegrad). However, their actual role in the protection of rights of tenants in Serbia is insignificant. Little information is available on their work.

1. **The Association for the Protection of Rights and Needs of Tenants in Serbia** (*Udruženje za Zaštitu Prava i Potreba Stanara Srbije*)
Address: Grčića Milenka 3,
11000 Belgrade
Phone: +38164/13 54 160
+38111/ 38 21 943
+38111/ 38 21 958

2. **The Association of Users of Apartments in Private Ownership** (*Udruženje Stanara u Privatnim Stanovima*) – no information on the address is available

3. **Velegrad**
Address: Velika Moštanica,
11262 Belgrade
Phone: +38111/80 76 209
+38163/387-470

SLOVAKIA

Tenant's Rights Brochure

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1. Introductory information

- Introduction: The national rental market
 - Current supply and demand situation

Rental housing in Slovakia is one of the key issues that need to be addressed, both in terms of its technical state and affordability. Results of the Census of Population and Housing conducted in 2011 have shown that the total number of dwellings in Slovakia amounts to 1,994,897 units situated in 1,070,790 houses (either family houses or blocks of flats). Owner-occupied housing in Slovakia is apparently the most prevalent form of housing, as 84.9% of the total number of occupied dwellings were occupied by their owners. On the other hand, only 2.6% of the occupied dwellings were rented privately and 1.8% by the municipalities – the dominant public rental entities. In countries of the European Union, the share of rental housing ranges from 19% to 62%, while the public rental sector represents 18% of the housing stock. These facts clearly indicate that access to rental housing in Slovakia is very limited, and its development is the goal of manifold governmental policy measures. Accessibility of long-term leases of residential dwellings is a key element of the supply side of the housing rental market in Slovakia. Its scarcity is a recognized obstacle for the mobility of workforce and the satisfaction of housing needs of predominantly young families.

Given the current state of quantity and quality of the housing stock, it is clear that the supply of residential rental dwellings corresponding to the potential long-term housing needs of households is insufficient. The supply of privately owned rental dwellings especially in urban areas is mainly oriented towards fixed period leases susceptible to higher fluctuation of tenants seeking ownership of their own housing units.

As far as features of the occupied housing stock are concerned, on average, most dwellings have a floor area between 41 to 80 m², and 3 or more rooms. The access to heating or water supply is not an issue since these are available in ca. 99% of households, and 47% of occupied dwellings have an internet connection.

Rentals in the public rental sector are price-regulated with much more affordable rents than the open-market rents. Private housing rental market is better developed in the urban areas (specifically in Bratislava, the capital). The rents in Bratislava, for instance, in the first quarter of 2012 spanned from 12.40 EUR/m² per month for a garconnière to 7.64 EUR/m²/month for a 4+ room flat. The average monthly rent in Bratislava in the last quartile of 2013 was 600 EUR, whereas an average mortgage instalment for a newly built purchased dwelling amounted to 781.12 EUR. Based on data for the whole housing stock of the country in 2011, the financial burden, which is considered as the proportion of expenses for housing in relation to the household income, amounts to about 17.92 % (EU-average ca. 16.9%).

- Main current problems of the national rental market from the perspective of tenants

- *Shortage of social dwellings*: the demand for social (municipal) dwellings exceeds its supply considerably; currently, there is a small number of newly constructed dwellings;
- *Rental market in the capital (Bratislava)*: finding an affordable and adequate rental dwelling is difficult as the rents for newly built and renovated flats are high;
- *Regulatory framework for the market rentals*: rules on the lease of flat for an indefinite period as a contractual type are overly protective for the tenant and therefore the landlords are prone to renting under other schemes, mostly through lease of flat for a specific period or a sublease.

- Significance of different forms of rental tenure

- Private renting

The private rental sector is underdeveloped (only 2.6% of the occupied housing stock), mainly as a result of the previous application of the rental price regulation, as well as of over-protecting tenants under existing civil tenancy arrangements. This sector should ensure the supply of housing especially in terms of labour mobility and flexibility for those people who need more short-term solutions to their housing needs. Private rentals are regulated by the Civil Code, and no rent regulation applies. It is a standard for-profit activity and is taxed accordingly. The commercial practice to a large extent uses short fixed-term leases (1-3 years) or subleases. A new legal regime of a short-term private lease is envisaged to be adopted in the future, which would further freedom of contract (e.g. agreements on easier termination and eviction) and proper tax registration of the landlords.

- “Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc)

The public rental sector aims primarily at providing social housing, and therefore is mainly available to such people who cannot satisfy their housing needs on the open market (targeted groups like young families, lower-income groups, elderly etc.). It is predominantly a domain of the municipalities, who rent their housing stock, similarly, on a temporary basis with regulated rents. Eligibility criteria is derived from a statutory regulation (social housing) and specified as well as evaluated by the municipalities, who overlook the selection process. Rents in this sector should cover all costs associated with the acquisition and operation of rental housing, while respecting the principle of the lowest possible cost. Neither housing associations nor agencies are active as landlords in the rental sector with a public task. However, starting from 1 January 2014, non-profit organizations have become eligible for subsidies for procurement of social rental housing, which may trigger their involvement in the not-for-profit housing sector.

- Some general recommendations to foreigners on how to find a rental home (including any specificities with respect to the position of foreigners on the national rental market)

It is generally advisable to not conclude a tenancy contract through means of distant communication (e-mail, phone) without knowledge of the prospective landlord and without viewing the premises, and it is particularly advisable to not pay any advance payments in such cases. Foreigners who come to Slovakia for work should ask their employer if they have an employment (service) flat available at an affordable price. In any case a foreigner should contact a native speaker in the event of a viewing of a flat, in order to avoid possible misunderstandings. Services of real estate agents are widely available and they usually have English or German speaking agents available.

- Main problems and “traps” in tenancy law from the perspective of tenants
- *Avoidance of standard housing rental legal framework*: instead of lease of flat for an indefinite period (overprotective of the tenant), lease of flat for a specific period or through a sublease is resorted to, which give the landlord the upper hand.
- The existence of a *sublease regime* is contingent upon the existence of a lease of flat; *therefore* if the contract is one of a sublease, the sub-tenant may end up without a place to live, if the underlying lease is terminated, since the subtenant is not eligible for any replacement housing.
- *Renting upon unwritten lease* contracts would be very tricky for both sides. It may, namely, be deemed a lease for an indefinite period (which is difficult to end from the landlord’s position). And from the tenant’s point of view, it may be difficult to present evidence of its existence (which would be crucial in order to avoid eviction or to succeed in court proceedings).
- Use of pre-fabricated standard *contracts that do not respect mandatory rules* especially on termination of the lease of flat, eviction or replacement housing. In the *event* of a conflict or alleged termination and looming eviction of the tenant, it is advisable that the contract be assessed by a professional.
- *Absence of regulation of rent ceilings and rent-increase regimen* means that any contractual agreement of the parties in the private rental sector in these *matters* is only *limited* by a vague standard of immorality. As a result, subsequent attempts to invalidate these provisions would have to be pursued through (usually lengthy) court proceedings.
- The *selection process* in the municipal housing attribution is difficult to pass, *since* the eligibility criteria tend to be restrictive (mostly income-based), the supply is insufficient and on rare occasions may be unpredictable (lottery, mayor’s discretion).

- Important legal terms related to tenancy law

Slovak	Translation into English
<i>byť</i>	Flat
<i>bytový dom</i>	block of flats
<i>dlžník</i>	debtor
<i>dom</i>	house
<i>drobné opravy</i>	minor repairs (the tenant's liability)
<i>nájomca, nájomník</i>	tenant
<i>nájomná zmluva</i>	tenancy contract
<i>nájomné</i>	Rent
<i>obydlie</i>	dwelling
<i>odstúpenie</i>	withdrawal
<i>omeškanie</i>	default
<i>oprava</i>	repair
<i>podstatná zmena</i>	substantial changes (in the flat)
<i>prenajímateľ</i>	landlord
<i>spotrebiteľ</i>	consumer
<i>úhrada za plnenia poskytované s užívaním bytu</i>	payment for utilities (services pertaining to the lease of flat)
<i>vada</i>	defect
<i>veriteľ</i>	creditor
<i>výpoveď</i>	termination by notice
<i>vypratanie</i>	eviction
<i>zábezpeka, depozit</i>	security deposit
<i>zľava z nájomného</i>	reduction of the rent

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?

Under the umbrella regulation of the Anti-Discrimination Act, the equal treatment principle shall be applied to access and provision of housing irrespective of sex, religion or belief, race, nationality or ethnic origin, disability, age, sexual orientation, marital status, family status, colour, language, political or other opinion, national or social origin, property, lineage or other position of the person in question. The act calls for use of good morals to extend the definition of discrimination and for a pro-active conduct of relevant subjects to prevent discrimination.

However, it relates only to housing which is provided to the public by legal persons or entrepreneurs. This means that only tenants of professional landlords are fully protected against discriminatory conduct.

- 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?

This issue is not regulated in Slovakia; hence the parties are basically free to negotiate by use of any relevant questions. Only if the questioning would amount to discrimination (less favourable treatment, harassment, directing or inciting other subjects to discriminate, unjustifiable sanctioning for realizing their rights) would the person be able to seek a remedy.

- Is a “reservation fee” usual and legal (i.e. money charged by the landlord to allow the prospective tenant to participate in the selection process)?

No payments by any of the parties are required by law with regard to the conclusion of a contract for a lease of flat.

- 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)?

It is usual that the landlord verifies the identity of the future tenant and gathers all his contact information (name, date of birth, permanent address, phone and e-mail contact), which are then included in the contract. The landlord would ask the potential tenants to present provable documents with this aim in view, such as ID cards. Everything beyond this may be considered inappropriate, as there is no legal obligation of the tenant to furnish any information about himself whatsoever. As a result, further inquiries are contingent upon the negotiation skills and assertiveness of the parties.

Cautious landlords usually make further inquiries into personal status of the tenant, i.e. his or her marital status or employment status; they interview the

tenant on his other plans, in order to avoid potential tenants who would prefer economically unfeasible short-duration leases. Landlords tend to be cautious with regard to the way tenants are willing to pay the rent (banking transfers seem to indicate regularity of the tenant's income). Internet research (search engines, social networks, public registers) into the person of prospective tenant is gaining importance, yet does not occur as a rule in the pre-contractual stage.

In the rental sector with a public task, the prospective tenants are required directly by the municipal regulations to provide sufficient proof of their status that contains sensitive personal data. The applicant's consent with processing of their personal data is always necessary.

- 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?

The role of estate agents or their specific rights and duties are not regulated specifically. Based on a contract, they serve as an agent/broker for sale, purchase and lease, advise the clients on economically feasible rents, take part in viewings, and assist the clients with related paperwork including preparation of the tenancy contract. There are no other bodies assisting the tenants to the same end.

- Are there any accessible "blacklists" (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?

There are no "blacklists" of bad tenants or landlords specifically. However, based on special legislation, a subject's payment discipline, with regard to debt ensuing from public duties is widely accessible as it is published on the internet (social security insurance, medical insurance, state or local taxes). Still, on the edge of legality, certain municipalities have adopted and maintain lists of debtors in their stock including also rent defaulters.

2.2 The rental agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?

The rules on lease of flat generally do not prescribe any formal requirements for a valid conclusion of a contract. It may be concluded orally, implicitly or in writing, of which the written form is recommended, as the lease contract is normally meant to regulate long-term relations. If unwritten, the Civil Code anticipates the parties to generate a written record of the content of the contract. The absence of such a record does not, however, invalidate the lease, but is of great importance in potential court or other proceedings.

A concrete lease is not subject to any registration requirement. Registration of the landlord renting a flat with the tax authority is his sole responsibility towards the agency, and does not have any bearing on the validity of the lease contract.

Although not a registration requirement, a specific legal regime to a similar effect has been in place since 2011, under which every contract of a public entity, but for a few exceptions, has to be made publicly available, in a central register or at the website of the entity (such as a municipality), in order to come into force.

- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?

A contract of a lease of flat must contain:

- determination of the object of a lease, i.e. the flat. The law does not prescribe concrete information that needs to be provided to describe the unit, it is only necessary that the flat is clearly distinguishable from other flats and according to all circumstances it be individualized. The law also directs the parties (yet not in a mandatory provision) to include the description of the accessories to the flat and description of the condition of the flat.

- the extent of the use of flat, i.e. an arrangement stating or implying the extent to which a tenant is entitled to use the leased flat and its accessories. If there is nothing else agreed, the tenant is entitled to the use of flat without restrictions.

- the amount of rent and of payments for services pertaining to the use of flat (utilities) or the method of their calculation.

Duration of the lease, although a very common provision, does not have to be specified in the contract compulsorily. In the absence thereof, a legal presumption of an agreement on lease for an indefinite period would apply.

Of course, the parties to a lease should be properly identified as well.

In the court practice, various deficiencies of lease contracts not specifically enumerated by the law have also lead to their invalidity, such as the pre-existing valid third party lease on the same flat, impossibility of occupying the flat by the tenant due to illegal inhabitants. Therefore, a check (and contractual affirmation) should be made that no such encumbrances relate to the rented flat.

- Duration: open-ended vs. time limited contracts (if legal, under what conditions?)

Tenancy contracts can be concluded either for a definite or an indefinite period of time. The law does not prescribe any limitations on reasons for conclusion of a time limited contract and no specific limitation on the agreed duration of one (with the exception of social housing leases).

Under both modifications the tenant of a flat is afforded protection in that the lease cannot be terminated at will by the landlord, whereas the tenant is allowed to do so. The lease would then extinguish upon elapsing of the notice period set forth by law at three months. In addition, limited in time leases of flat always extinguish upon elapsing of the agreed period, and no implied prolongation of the lease applies. Newly concluded open-ended leases of flats are a rarity nowadays, given the level of tenant-protection they afford.

- Which indications regarding the rent payment must be contained in the contract?

A valid contract for the lease of a flat must contain at least information/data or formula under which a concrete sum of rent and payments for services pertaining to the lease (utilities provided by the landlord) can be specified in the future with no further negotiation necessary (unlike statements as “usual” or “market” rent).

The law gives no constraints for the contractual agreement of the maturity of the rent payment. If absent, the rent is payable on a monthly basis in advance.

In addition, Slovakia bars cash payments above EUR 5000 between entrepreneurs and payments above EUR 15,000 if effectuated between non-entrepreneurs. Since the payment limit is calculated as an aggregate of partial payments from a single legal relationship, it affects mostly leases of longer duration. Breach of this legal prohibition does not make the lease invalid, yet it might be punishable by a fine. Therefore, banking transfers are generally recommended as the agreed form of rent payment nowadays.

- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

The landlord is liable for any repairs that make the leased flat fit for its agreed use (major repairs). In contrast, the tenant is liable for repairs, the necessity of which he himself, or through his co-habitants, incurred. Moreover, subject to the contract, any minor repairs made in the flat that are connected with the use of the flat and the costs associated with routine maintenance shall be borne by the tenant. A separate regulation gives a clear and lengthy list of what is to be deemed a minor repair: the tenant should be liable for a wide variety of failures in the household, ranging from changing of padding in the sanitary equipment to glazier's work or changing door-handles. Repairs not included in the specific list are also to be deemed minor and to be provided for by the tenant if the cost of such a single repair does not exceed 6.64 EUR.

Thus, the landlord may not shift the costs for repairs (and the duty to provide for them) to the tenant, but is allowed to assume a broader responsibility for repairs and maintenance than his default responsibilities.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

In Slovakia, the landlord is under no duty to provide a furnished flat. Therefore, his duties in this regard will be fully contingent upon the contract. The legislation does not contain any specific provisions on habitability of dwellings. The Civil Code determines only that the landlord must hand over the dwelling in a condition fit for the agreed use (housing) and to secure full and undisturbed exercise of the tenant's right connected with the use of flat. The building legal regulation and regulatory measures relating to the dwellings of the lower standard should be also taken into account.

- 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)?

Since there is no statutory list of required inventory of a rental flat as well as no presumption that certain equipment was in a dwelling and in a particular condition, it is in the interest of both parties to examine the flat at the beginning as well as at the expiry of the lease and state the condition of the flat and its inventory in a mutually agreed written record. In case of further conflict it would be an invaluable source of proof usable in court and extra-court disputes.

- Any other usual contractual clauses of relevance to the tenant

Usual contractual clauses of relevance to the tenant are the following:

- clause on the provision of a security deposit and terms for its repayment;
- clause on the apportionment of operating costs (establishing the extent of “services pertinent to the lease”);
- clause on the rent increase;
- clauses on the prohibited uses of the dwelling (usually reflecting the house rules);
- clause on the specifics of the right of the landlord to inspect the dwelling.

- Parties to the contract

- Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?

Only the tenant himself has a direct right to use the flat and services connected therewith. The law, however, anticipates other persons to be living with the tenant, yet does not give a crystal-clear definition of their identity. Specifically, the members of the tenant’s household (persons, who live together permanently and together cover costs of their needs) are expressly permitted co-users of the flat, notwithstanding their marital status, sex or kind of relationship they enjoy. Usually this would include spouses, children, non-marital partners, relatives or non-relatives, taking care of the tenant or being in the tenant’s care. Agreement with the landlord would be always a key issue with regard to other persons. A person’s long term use of the flat along with the tenant would bring about important legal consequences, especially the household member’s right to become a tenant of the flat upon the death of the original tenant.

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant’s primary home)?

There is no statutory requirement to actually use the dwelling if it is not specifically stipulated by the parties. The landlord, thus, would not be able to terminate the lease merely on the grounds of leaving the rented flat unoccupied.

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

The right of use of a flat by divorced partners (co-tenants) generally does not extinguish by mere fact of the divorce. The law anticipates the ex-partners to agree on who will continue the lease of flat as a tenant and who will leave. The agreement of the divorced couple would end the marital co-tenancy. If, however, the divorced partners cannot reach an agreement, either of them may apply for a court decision to terminate the right of co-tenancy and select the future tenant. The judicial practice shows that the remaining tenant would generally be the one who was granted the custody of their children. The spouse's permanent abandonment of the common household would bring about the same consequences as a divorce.

Under Slovak family law, only a bond of a single man and a single woman may enjoy the formal acknowledgement as matrimony. Therefore, the separation of non-married and same sex couples, even if living in a common household, does not bring about rights or duties for either of the parties. The partner, who is a tenant of the flat, would be able to continue the use of the flat without the need to provide replacement housing or other duties towards the co-habiting ex-partner. If, on the other hand, the partners are using the flat as (non-marital) co-tenants, the fact of their separation does not lessen their individual rights of the lease contract and they both would be able to continue the lease.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);

If a flat is shared by several subjects, their student or other status does not come into play and copies the situation of co-habiting partners (as co-tenants), with the exception that students usually do not form a common household.

- death of tenant;

Upon death of a tenant the lease is transferred to a different subject by operation of law.

First, death of a tenant cancels the marital co-tenancy and the surviving spouse will become the sole tenant of the flat. Second, the death of one of two or more co-tenants would narrow the number of co-tenants (and proportionately change the internal distribution of rights in the co-tenancy) to the remaining subjects. Third, if a single tenant of a flat dies, the lease would be transferred to other eligible subjects, who would then become co-tenants. It includes: the children, grandchildren, parents, siblings, sons- or daughters-in-law, who lived with the tenant in a common household at the day of his death, provided they do not have their own housing. Moreover, other persons, who had been taking care of a common household of the deceased tenant or if they had been dependent on his alimony, living together for at least three years prior his death without their own housing, would be such transferees as well. The landlord may, within a strict period, apply to the court to determine that the transfer of the lease did not take effect.

- bankruptcy of the landlord;

The official receiver in bankruptcy is generally given a right to terminate contracts of the bankrupt for perpetual or repetitive performance. However, the relevant act respects the protected nature of the lease of flat, and therefore it can only be terminated by the official receiver pursuant to the general provisions on lease of flat, i.e. termination on notice due to specific grounds.

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

The sublease of a flat (renting a flat by a third party from the tenant) requires a valid underlying lease for its existence. No specific form is prescribed for such an arrangement; however, a valid contract of sublease requires the existence of an express written consent of the landlord. Without such consent, the contract for a sublease of flat would be void and the landlord would be able to unilaterally terminate the underlying lease for gross breach of the tenant's contractual duty. However, the consent of a reluctant landlord may be replaced by a court's decision, provided the tenant himself cannot use the flat for serious reasons for a long time and the landlord does not give serious reasons for his refusal.

The sublease of a flat does not enjoy the level of protection of a comparable tenant under a lease of flat. The duration of the sublease may be limited in time or open-ended and always extinguishes upon the extinguishing of the underlying lease. There is no right of the subtenant for replacement housing upon termination of a sublease of a flat, nor is there a right of the household members of the subtenant for a transfer of the sub-tenancy on them upon the sub-tenant's death.

In order to counteract subletting, if the secondary landlord (tenant) refuses to offer an ordinary lease, the sub-tenant would (only subsequently) have to resort to court proceedings in order to prove that the contract – in combination with the underlying lease – was a wilful avoidance of the respective rules and the “true intent” of the parties – to conclude a direct lease – should be attested.

- Does the contract bind the new owner in the case of sale of the premises?

A change of landlord does not affect the position of the tenant. After the transfer (or transition) of ownership the new owner acquires the legal standing of a landlord by operation of law, with no detriment to the rights and duties of the tenant ensuing from the original lease.

- 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?

As far as “pertinent utilities” in blocks of flats are concerned, the contract of supply (heat, water, sewerage) is concluded between the managing entity of the block of flats and the operator of the facility. The concrete payments are collected by this entity from the user of the flat as advance payments and subsequently balanced

according to the actual (or computed) use of the service in question. Thus, neither the landlord nor the tenant concludes a contract to this end by themselves.

On the other hand, the power (electricity, gas) supply is based on a contractual relationship of the user (consumer) and the distributor. The person in a contractual relationship with the distributor is then responsible for payments of deliveries. It is open to the agreement of the landlord and the tenant to determine who this contracting party will be.

- Which utilities may be charged from the tenant by the landlord? What is the standard practice?

The contract of lease governs the extent of utilities that will be charged from the tenant by the landlord (and then reconciled with the supplier/manager etc.) or by other entity (supplier – as may be the case with electricity or gas supply; house managing entity – as may be the case with the services pertinent to the lease of flat). The tenant may always be charged for the “pertinent utilities”, as these are generally considered a prerequisite for habitability of the premises and ensuring its provision is the landlord’s utmost duty.

In lease-of-flat agreements for rather short duration the landlords tend to remain the sole contractual partner of the third-party suppliers of not only the “pertinent utilities” but also the power supply, and on some occasions also the TV or other additional service. In case of long-term leases, on the other hand, the standing practice is that the tenants conclude a separate power supply agreement and are charged directly by the electricity or gas supplier, whereas the “pertinent utilities” are charged by the landlord.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

Payments of local taxes are the responsibility of the landlord (owner). Local fee for the waste collection would be generally collected by the managing entity of the block of flats from its user (or through landlord) and counts among the “pertinent utilities”. If the tenant is in a distribution contract relationship with the electricity supplier, he would also be obligated to pay a fee for the public service provided by the national radio and television broadcasting entity.

- Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?

There is no legal obstacle for charging those costs from the tenant. However, the landlord (the owner of the flat) will be still responsible for settlement thereof in relation to the managing entity.

- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?

With lacking regulation of this matter in private contractual relationships, only the standard of good morals confines the admissible from excessive amounts of agreed deposits. However, the contractual practice tends to require the tenant to

pay a deposit in the amount of six, three or one month's rent, the latter being the most usual. In social housing rentals, on the other hand, the respective acts ban agreements on deposits over the amount of six months' rent.

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

The contract completely governs the regime of management of the money in the landlord's deposit in private rental relations. Unless otherwise agreed, the landlord does not owe interest on the money in escrow. In social housing rentals, a separate banking account for deposits is required to be used by the landlord.

- Are additional guarantees or a personal guarantor usual and lawful?

In tenancy relations personal guarantees are not usual, but would be still lawful if employed by the parties.

- What kinds of expenses are covered by the guarantee/ the guarantor?

Although a rarity in Slovak rental environment, if agreed, the guarantor's responsibility would copy (or if agreed otherwise be lesser than) the tenant's debt. The guarantor's debt would only be subsidiary, and his obligation to pay would arise only if the debtor was requested for payment in writing.

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)?

The landlord is obliged to deliver a flat in a condition fit for the proper use and to secure full and undisturbed exercise of the tenant's right connected with the use of the flat.

A flat is fit for use if the immediate costs are not required for its use, i.e. flat is not in the state of disrepair and it is in habitable condition, i.e. it fulfils the technical and hygienic requirements for housing. All services have to be duly performed (heating, running water, heated water in the bathroom).

- 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)

If the landlord is in default with handover of the flat even within an additional reasonable period, the tenant may *withdraw* from the contract.

If the rooms that were leased for habitation or accommodation of people are harmful to health, the tenant shall have a right to withdraw from contract even if he was aware of this fact upon the conclusion of the contract. The right of withdrawal from the agreement may not be waived in advance.

The tenant shall have the right to an adequate *reduction of the rent* if the landlord fails to rectify the defect in the flat or in the block of flats that impairs its use considerably or for an extended period of time even though the tenant has notified the landlord of such a defect. The tenant shall also have the right to a reasonable reduction in the rent if performance associated with the use of the flat was not provided or was provided defectively and if the use of the flat became impaired as a consequence thereof.

The tenant also has the right to an adequate *reduction of payments for the services* pertinent to the use of the flat if the landlord fails to provide such performance duly and timely.

The right for reduction in rent or payments for performances associated with the use of flat shall be exercised at the landlord without undue delay. The right shall expire if it is not exercised within six months of the rectification of the defects.

- Repairs of the dwelling
 - Which kinds of repairs is the landlord obliged to carry out?

Any minor repairs made in the flat that are connected with the use of the flat and the costs associated with routine maintenance shall be borne by the tenant. The definitions of minor repairs and of costs associated with routine maintenance are provided for in an implementing regulation. If the tenant does not fulfil his obligation to implement minor repairs and a routine maintenance of the flat, the landlord may ask him to do so. If the tenant fails to perform these obligations, the landlord may execute these repairs at his own expense and demand the reimbursement thereof from the tenant.

- Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

The tenant is obliged to notify the landlord without undue delay of any need to make repairs in the flat that are to be performed by the landlord and to allow their execution. If the tenant fails to notify or to provide any due assistance to execute such repairs (e.g. not allowing him to enter the flat), he will be liable for any incurred damage. If the landlord does not fulfil his obligation to remove any defects that hinder the proper use of the flat or that endanger the exercise of the tenant's right, the tenant shall have the right to remove such defects to the extent necessary upon prior notification of the landlord and to demand that the landlord reimburse him for any expenses reasonably incurred. The right to such reimbursement shall be applied for at the landlord without undue delay. The right shall expire if it is not exercised within six months of the rectification of the defects.

- Alterations of the dwelling
 - Is the tenant allowed to make other changes to the dwelling?

The tenant shall not, even at his own expense, undertake any construction work or any other material changes to the flat without the landlord's consent. The tenant is only entitled to make changes to the property with landlord's consent. The tenant may only demand reimbursement of any costs associated with the works pursued if the landlord had assumed the obligation to reimburse those. Unless the agreement stipulates otherwise, the tenant is only entitled to demand reimbursement of the costs after the termination of the lease and after deduction of the depreciation caused by the changes made, which occurred in the meantime due to use of the property. If the landlord granted his consent to the changes but did not undertake to reimburse the costs, after the termination of the lease the tenant may demand consideration for the increase in the value of the property.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

Whether the tenant is allowed to make changes to accommodate his/her handicap (e.g. building an elevator; ensuring access for wheelchairs etc) is generally a question of his/her agreement with the landlord. A separate law presupposes the existence of flats for special purposes, among them also flats that by their construction, disposition, situation, facilities and the manner of use are intended for specified classes of persons (disabled persons, diplomats, persons in public offices, etc). Similar functions have flats in buildings for special purposes.

- Affixing antennas and dishes

The owner of the block of flats or owner of the flat is obliged to enable the users of flats (i.e. also tenants) to receive the television signals provided that in that area broadcast signals are transmitted, he also has to enable the establishment of the internal telecommunication distribution, endpoint included. In the case of dispute, the Building Office decides about the scope of this obligation.

- Repainting and drilling the walls (to hang pictures etc.)

Although the statutes do not give an exhaustive list – they require the tenant to cover the costs of “routine maintenance works” usually associated with longer use of premises, from which follows the general acceptance that the tenant should be allowed to perform these. The notion encompasses costs for works that are usually carried out during prolonged use, such as wall decoration, impregnation of a stone-wood flooring, parquet creaming, maintenance of wooden wall panelling, built-in furniture repair (repair and replacement of locks and coatings), and drilling the walls for routine household purposes.

- Uses of the dwelling

- Are the following uses allowed or prohibited?

The rules for “living” in the block of flats are usually regulated by the Housing Orders enacted by the owners in the block of flats or by its manager, and these rules provide precise stipulation of the way in which the flat and the common premises should be used. Frequently they stipulate the restriction of noise in the night, smoking on balconies, and keeping animals. The most important principle however stems from the provisions of Civil Code on neighbours, and it is based on the reciprocity and reasonableness. Hence,

- keeping domestic animals

This would be generally allowed, if locally usual extent of noise/smell etc. connected therewith is observed, and unless the house order or the tenancy contract states otherwise.

- producing smells

The notion of locally usual extent of disturbance of the neighbours is the limiting standard in producing smells as well as other emissions.

- receiving guests over night

Receiving guests is usually not a problematic issue provided that they also respect the rules relevant for other users (owners, tenants and other persons living in their common household).

- fixing pamphlets outside

Fixing pamphlets outside may not conflict with Housing Order and the relevant rules of municipalities.

- small-scale commercial activity

Small-scale commercial activities are generally admissible if approved by the landlord. Using a dwelling as a registered seat of an entrepreneur, for the purposes of correspondence does not amount to disallowed use of flat for business as a ground for termination of the lease.

3.2 Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

Rent control applies only to social housing and other non-commercial rentals of public landlords.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?

The unilateral rent increase is possible but is allowed only in cases where the landlord and the tenant agree on such a procedure in their tenancy contract. Otherwise, the rent increase has to be subsequently mutually agreed.

Moreover, rent-increase clauses in consumer contracts are a dubious – yet in commercial practice, usual – issue. We have to observe that contractual conditions regulated by a consumer contract (in which the landlord is an entrepreneur) may not depart from the provisions of the Civil Code to the detriment of the consumer. In particular, the consumer may not waive his rights granted by the code in advance, or otherwise impair his position under contract. On the basis of this rule, we assume that agreement in a consumer lease contract that the landlord may unilaterally increase the rent will probably be invalid.

Since there is no regulation on rent-increase clauses, there is also no limit on the frequency of realizing this right. The standard of good morals would be the key limit.

- Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?

Outside the rare situations of temporary tenancies of tenants in houses restituted to their historical owners, there is no framework regulation on rent-increases and ceilings thereof. Again, the standard of good morals would be the key limit and mandatory provisions on consumer contracts would prevent such measures in the first place.

- What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?

If a rent increase was stipulated in the contract and the tenant assumes that the clause is invalid or the implementing act of the landlord following the clause is incorrect or invalid, the tenant may disregard such provisions. However, he would risk substantial loss, if his assertions would prove wrong in the later proceedings initiated by the landlord (suing for payment of new rent).

- Entering the premises and related issues

- Under what conditions may the landlord enter the premises?

The landlord is entitled to demand access to the property in order to verify that the tenant is using the property in a proper manner. If the agreement between the landlord and the tenant is not reached, the court decides about the manner, frequency and the scope of control.

- Is the landlord allowed to keep a set of keys to the rented apartment?

The question whether the landlord is allowed to keep a set of keys to the rented flat fully depends on the agreement of parties to the contract. Some landlords reserve this right in order to be able prevent the immediate damages threatening the flat or the block of flats in time when the tenant is not present. Entering the dwelling must be considered an extraordinary measure and the tenant has to be notified immediately thereof. To prevent misuse of the keys in situations other

than in an urgent need, some contracts stipulate that the landlord has the set of the keys at disposal in an envelope sealed by the tenant.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

The landlord is not allowed to lock a tenant out of the leased premises. In all relevant cases of breach of tenant's duties, the landlord must proceed lawfully, and self-help is not tolerated and allowed.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

If the tenant is moving out of the leased property or the chattels are being removed, although the rent is still unsettled or otherwise secured, the landlord may retain the chattels at his own risk (*statutory retention lien*). He is, however, obliged to apply for the drawing up of an official record of the retained assets by a court official within eight days or he would be required to return the property.

4. Ending the tenancy

4.1 Termination by the tenant

- Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?

A lease of a flat for indefinite period may be terminated by a written notice of the tenant. No special grounds are required. The lease ceases to exist upon the lapse of the notice period of three months. The period of notice shall commence on the first day of the month following the month in which the landlord received the notice.

- 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)?

As already mentioned, if the rooms that were leased for habitation or accommodation of people are harmful to health, the tenant shall have a right to withdraw from the contract even if he was aware of this fact upon the conclusion of the contract.

Moving for professional reasons does not constitute valid grounds for termination by notice, unless the parties stipulated such possibility of termination in tenancy contract. Otherwise, the sole solution will be the mutual agreement of the landlord and the tenant (it is still a debated issue whether the tenant may terminate a fixed term lease in the same manner as the open-ended one).

- May the tenant leave before the end of the rental term if he or she finds a

suitable replacement tenant?

This issue is not regulated in any way and would thus depend only on agreement of parties – either in advance in their tenancy contract or later as such situation may occur.

4.2 Termination by the landlord

- Open ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?

The landlord may terminate the tenancy by a written notice, provided there is a reason to terminate as set forth by the Civil Code (see below). **Notice period** is *three months* and it commences on the first day of month following the delivery of notice. The landlord may provide for a notice period longer than three months. The Civil Code also stipulates a longer notice period if the reason for termination was a default on the tenant's part in payment of rent and the tenant gives proof of his impoverishment (that he is without means of subsistence). In such a case the notice period will be prolonged by a *protection period of six months*.

The notice should be duly delivered. As far as joint lease of spouses is concerned, the notice has to be given and delivered to each of the spouses.

As far as **reasons for termination** are concerned, the landlord may terminate the lease of a flat if:

- a) the landlord needs the flat for himself, his spouse, children, grandchildren, son in law or daughter in law, parents or siblings;
- b) the tenant ceases to perform work underlying the lease of a service flat;
- c) the tenant or a member of his household severely damages the leased flat, its appurtenances, common areas or common facilities in the block of flats, or constantly disturbs the peaceful dwelling of other tenants or flat owners, endangers safety, or violates good morals in the block of flats;
- d) the tenant grossly violates his obligations arising from the lease of a flat, in particular by a failure to pay a rent or a payment for performances provided with the use of flat for more than three months, or by subletting the flat or a part thereof to a third party without a written consent of a landlord;
- e) with public interest in view, it is necessary to dispose of a flat or the block of flats in a manner that makes use of the flat impossible, or if the flat or the block of flats require such repairs that it is impossible to use the flat or the block of flats while they are being undertaken for at least six months;
- f) the tenant ceases to meet the conditions for the use of a special purpose flat or conditions for the use of a flat arising from a special-purpose building;
- g) the tenant uses the flat for other purposes than housing without the consent of the landlord. If the tenant uses the flat other than for housing, also for business purposes, it is highly disputable whether this conduct constitutes a reason for termination. The court shall decide whether tenant's housing need is so urgent

that he needs the flat as a dwelling or not. Registering the flat as the entrepreneur's seat does not amount to the grounds for termination.

The reason for notice shall be factually defined in the notice to avoid any possible confusion with any other grounds; otherwise, the notice is invalid. The reason for the notice may not be additionally changed. Notice for reasons stated in b), e) and f) shall be invalid if the landlord failed to attach a document proving the reason for termination to the notice. Apart from this the notice also has to identify the flat and it has to be duly delivered to the tenant.

- Must the landlord resort to court?

The landlord's notice of termination is not subject to compulsory court review nowadays. On the contrary, the procedural initiative has been shifted to the tenant.

- Are there any defences available for the tenant against an eviction?

The tenant may claim the invalidity of the notice before the court within three months from the delivery of the notice. The notice shall become effective on the day of the coming into effect of the court's judgement dismissing the petition to determine invalidity of the termination of lease.

The petition of the tenant to determine the invalidity of notice may be based on the following reasons:

- a) the notice as the unilateral juridical act of the landlord does not exist,
- b) the reason for termination given by the notice does not conform to legal or factual issues presupposed by the provisions of the Civil Code on the termination by notice,
- c) the landlord has not duly delivered the notice to the tenant.

In addition, the reason for termination of the lease of flat has an important role in determination whether the tenant after termination of the lease has a right to any replacement housing or if he is obliged to move out without any form of replacement. Apart from reasons for termination, the social status of the former tenant and the members of his household would be considered.

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?

In the open-ended contracts the landlord may terminate the lease of a flat only if one of the enumerated grounds in the Civil Code has occurred. It remains disputable, whether the same regulation applies also to leases with definite rental term. The answer tends to be positive and the same regulation will be applied for termination by landlord's notice in fixed term leases.

- Are there any defences available for the tenant in that case?

The legal standing of the tenant does not change in those situations, and the catalogue of defences of an open-ended lease tenant would be appropriately

applied, with the exception that all prolongations and terms would extinguish upon the expiry of the agreed lease term.

- 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?

Under Slovak law, removing of a tenant as a self-help remedy is generally not permitted and doing so would incur administrative or criminal prosecution for the wrongdoer, along with a possible damages claim by the evicted tenant. Hence, in virtually all eviction cases, an execution title would be required. and only an executor within executionary proceedings would be entitled to pursue the removal.

The execution title for eviction usually would be a court order, which is sometimes in practice replaced by a notary's record of the tenant's acquiescence with the forthcoming eviction (which seems to be an illegal practice, but happens from time to time).

Eviction proceedings have procedural peculiarities, which include the necessity of the court to determine whether the evicted tenant meets statutory requirements for replacement housing and if so, of which category, all of which is based mostly on substantive legal merit and only partly on social need. The court may also consider not issuing the eviction order if, without a rightful reason, it would contradict the moral standards as may occur to it case-by-case.

The eviction order is implemented via execution proceedings, by the executor. The proceedings may be instigated after replacement housing has been provided, in cases where the tenant is entitled, or immediately, if no right to replacement housing has been established. Depending on the facts, the replacement housing would have to be supplied by the municipality or the landlord. A tenant who is to be evicted must conclude an offered contract for replacement housing (replacement lease or other) within 30 days from the supply of the written offer; otherwise, his or her right to the replacement housing extinguishes.

Within several steps of the process, the executor under supervision of a representative of the municipality removes the tenant to replacement housing premises, or, if he is not entitled to any, he only removes the tenant from the premises.

The tenant's chattels are removed and given to him or her or to an adult member of his or her family. If there is no eligible person or they refuse to take over the chattels, they would be handed over to the deposit of the municipality, who will keep them at the tenant's cost. After six months of deposit with the municipality the chattels may be auctioned by the executor.

If the tenant leaves without returning the keys to the premises, the landlord would be allowed to seek vindication of the keys in court and/or any damages he thereby incurred.

4.3 Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?

As already stated above, currently there is no regulation on deposits in the private rental sector. Therefore, the contractual stipulations would also govern as to the time-frame and mechanics of returning of the deposit provided. If nothing else is agreed and the lease is extinguished, the deposit is not returned; it would be due on the following day upon request of the tenant for its re-payment. Usually, however, the due date can be inferred from the agreement – upon the handing over of the cleared flat.

- What deductions can the landlord make from the security deposit?

As the deposit payments are fully purpose-limited payments, the only use thereof to which the landlord would be allowed is determined by the enumeration of the claims it secures. Thus, subject to the lease contract, the landlord would be entitled to offset his claims pertaining to the lease with the account debt. Moreover, the average lease of flat contract in the private rental sector specifically states that the deposit may be used to offset the claims from damage caused to the flat by the tenant or anyone who he let dwell in the premises, for the tenant's outstanding debt on rent or utilities, or as payment of the last month's rent. Hence, the use of the deposit shall always serve to settling claims pertaining to the lease of flat and ensuing from its use.

- In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

Ordinary use and ordinary wear and tear of leased furniture as well as the flat itself is the fundamental feature of the lease and the consideration therefore is the rent. However, peculiarities of contractual agreements may provide for a regime of setting of claims for very specific damage incurred by the landlord through the use.

4.4 Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
 - Are there specialized courts for adjudication of tenancy disputes?

No, tenancy law is not linked to any special court structure. The Civil Procedure Code, as amended provides the basic legal regulation in this field. At the first instance the district court (*okresný súd*) is competent, appeal is generally admissible and decisions are taken by the court of the second instance – the regional court (*krajský súd*). Extraordinary remedies (*dovolanie, obnova konania*)

are allowed in specified cases that are not specifically related to tenancy law, but have been defined in general terms. Administrative jurisdiction also belongs to common courts, as it is nowadays not separated and its regulation is also covered by the Civil Procedure Code. This may be relevant in relation to municipalities. The Act on Arbitration does not exclude arbitration as the way of solving disputes in tenancy law. Enforcement of tenancy law is regulated by the Execution Order.

- Is an accelerated form of procedure used for the adjudication of tenancy cases?

Only general court proceedings would apply in case of tenancy disputes.

- Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?

There are virtually no alternative dispute resolution schemes being applied in the residential tenancy sector. With the recent line of judicature on consumer arbitration, it is very difficult to imagine a legally enforceable arbitration clause in a consumer contract, which would generally be the case in flat rentals. Although mediation as a progressive and efficient concord-driven framework is ever more furthered and well available in Slovakia, the parties would generally resort to court proceedings, given the history of in-court dispute resolution, as well as the binding character and substantive legal consequences of proceedings in court.

5. Additional information

- How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?

Since currently only municipalities dispose of social housing units and they also administer the process of their allocation, in order to obtain the tenancy an applicant must follow the procedure adopted by the municipality in question. This would usually require filling in a standardized form asking for specific information pertaining to the eligibility criteria for provision of social housing (in a broader sense). Along with documentation supporting the information provided (usually proof of employment, income statement, property declaration, etc.) the applicant should file the material with the respective municipality's office and wait for the decision on the attribution of the rental flat (commission's decision, lottery etc.). Municipalities usually offer consultation services on the process of provision of social housing. Making use of these services may be crucial in order to meet all the bureaucratic idiosyncrasies of the application procedure properly.

- Is any kind of insurance recommendable to a tenant?

It is not very common that the tenant would resort to insurances related to the tenancy, which is usually the landlord's interest and practice. However, out of plethora of insurance products on offer by numerous insurance companies in

Slovakia, specifically the insurance of a household may be relevant for the tenant. Such insurance covers all items which form part of a household. They can cover also e.g. historical objects or works of art. The items covered by the insurance conditions can be insured e.g. against theft or against natural disasters. Generally speaking, a household can be insured against e.g. fire, flood, hail, explosion, lightning, tree or mast falling down, windstorm, vandalism, burglary, crash of an aeroplane, earthquake, landslide, lava slide, supersonic or ultrasonic waves, smoke, weight of snow or water running out of burst water pipes. It can also be insured against specific risks, e.g. electricity outage; insurance of glass in the households, insurance of washing machine or insurance of bicycles when out of household; prolongation of the guarantee period of electric appliances is also common.

- Are legal aid services available in the area of tenancy law?

Although there are no governmental or non-governmental institutions that would provide legal aid services solely in the tenancy law area, a nation-wide network of branches of the Centre of Legal Aid and attorneys providing such general legal service is sufficient to overcome any burden on physical accessibility to providers of legal aid to eligible customers (parties to a lease contract). The Centre of Legal Aid is a state budgetary organisation established in order to improve the access to justice for people in material need.

Though legal fees may be perceived as an obstacle to the access to justice, in fact, a party, who rightfully claims its rights should not be deterred from doing so on these grounds. Generally, the losing party is liable for the costs of the proceedings, i.e. the court's fees as well as the basic (regulated) fee of the opposing party's attorney's cost. However, due to extraordinary circumstances, the court is entitled not to impose the duty to cover the cost of the proceedings to the losing party. Apart from that the party, if eligible, based on income and financial standing, may be exempt from the court's fees, the payment duty, and provided with free (or for partial reward) legal assistance from the outset. As majority of the tenants would also be in a position of a consumer, they would be also exempt from the court's fees payment duty by the mere fact of claiming (or protecting) their rights from a consumer (lease) contract and the landlord's attorney's fees that he may eventually be liable for, if unsuccessful in the proceedings, would be lower than in a general civil legal proceedings.

- To which organizations, institutions etc. may a tenant turn to have his/her rights protected? [please indicate addresses, email addresses and phone numbers]

There are many organizations that would dedicate their time to particular tenants' agenda within their much broader scope of interest. Organizations advocating purely tenants' rights are not active in Slovakia.

- The **Slovak Bar Association** as an independent self-administrative professional organisation, currently associates ca. 4100 lawyers. The legal profession helps to exercise the individual's constitutional right to defence and to protect any other individual's and legal entity's rights and interests in accordance with the Slovak Constitution and the laws, including all rights and duties associated with tenancy contracts and their enforcement. The duties

and obligations of the legal profession are fulfilled by lawyers, particularly by representing clients before courts of law, governmental authorities and other entities, acting for and defending individuals in criminal proceedings, legal consultancy, writing instruments about legal acts, making legal analyses and administration of clients' property. It can arrange for a contact to a relevant lawyer in for an interested party.

Slovenská advokátska komora

Kolárska 4

813 42 Bratislava

Slovak Republic

Tel: +421 2 52961522

Fax: +421 2 52961554

e-mail: office@sak.sk

- **Centre of Legal Aid** provides legal aid to eligible clients, who may be the parties to a lease contract. It has its own legal experts and cooperates with practicing lawyers, knowing of their specializations (including tenancy law). The Centre operates in 13 regional offices and another consultation centres across the country.

Centrum právnej pomoci

Kancelária Bratislava

Námestie slobody 12

P.O. BOX 18

810 05 Bratislava 15

Tel: +421 2 496 835 21

e-mail: info.ba@legalaid.sk

For a list of local offices of the Centre of Legal Aid see: <http://www.legalaid.sk/kontakty>.

- The **Public Defender of Rights** accepts complaints of persons, whose fundamental rights and freedoms are allegedly violated in conflict with legal order or principles of a democratic and legal state through acting, decision-making, or inactivity of a public administration body, including a municipality. Hence, private rentals are outside of scope of the Public Defender of Rights.

Kancelária verejného ochrancu práv

Nevädzová 5

821 01 Bratislava-Ružinov

Tel: +421 2 48 28 72 39

Fax: +421 2 48 28 72 03

e-mail: sekretariat@vop.gov.sk

for an on-line complaint form visit: <http://www.vop.gov.sk/would-you-like-to-file-a-complaint>.

- The **Slovak Trade Inspection** is an authority of internal market surveillance; it is independent in its inspection and decision-making activities. *Inter alia* it surveys shortcomings of subjects providing services to consumers (which could be the case of a tenant) with regard to consumer protection issues.

Ústredný inšpektorát

Slovenskej obchodnej inšpekcie

P.O. Box 29

Prievozská 32

827 99 Bratislava 215

Tel: +421 2 58272 103

Fax: +421 2 53414 996

e-mail: info@soi.sk

For a list of local offices of the Slovak Trade Inspection see: <http://www.soi.sk/sk/Kontakt.soi>.

for an on-line form of suggestion for control visit: <http://www.soi.sk/sk/Podavanie-podnetov-staznosti-navrhov-a-ziadosti.soi>.

SLOVENIA

Tenant's Rights Brochure

Tamara Petrović

Team Leader and National Supervisor: Špelca Mežnar

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1. Introductory information

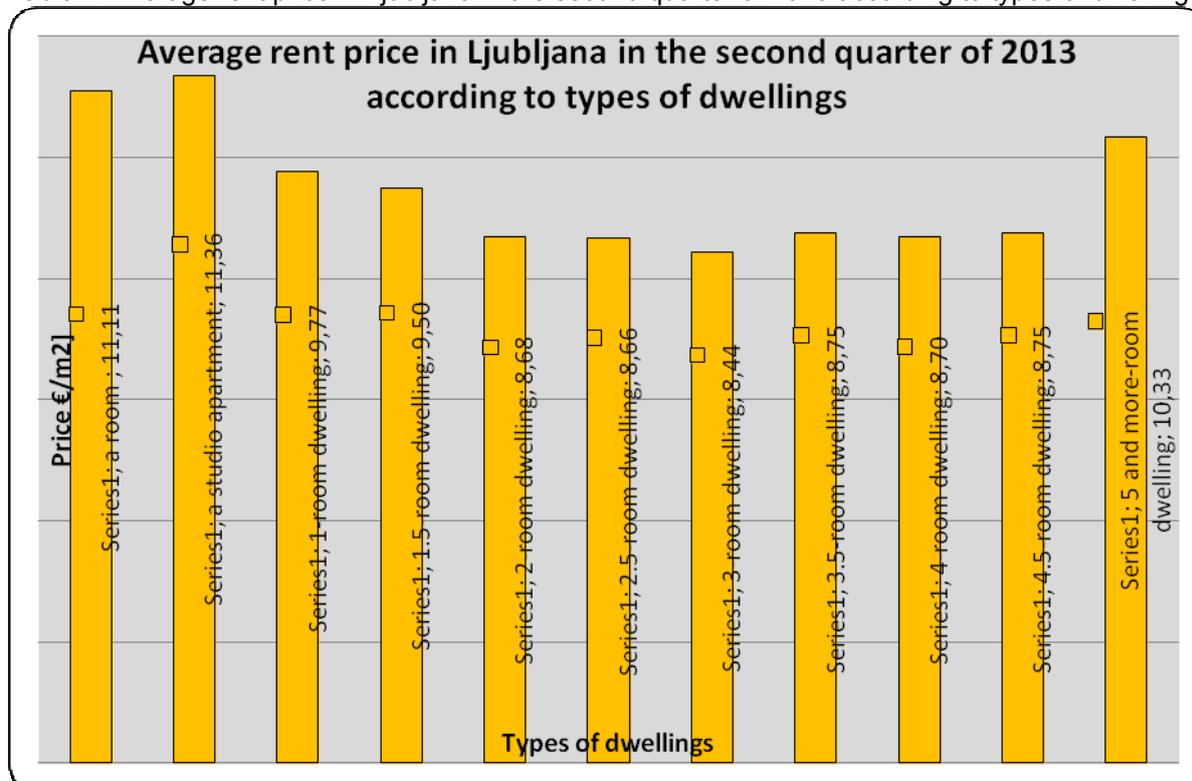
- Introduction: The national rental market
 - Current supply and demand situation

The main characteristic of the housing market in Slovenia is its high ownership rate. According to the census in 2011, there are 849,825 dwellings in Slovenia. Of these, 518,127 are owner-occupied (77% of the entire stock), whereas 61,113 are intended for renting (9% of the entire stock). Non-profit dwellings represent 6% of the entire housing stock, whereas market rentals represent merely 3%. Other forms of tenure (e.g. the residents of the house are neither its owners nor pay rent²⁰⁷) account for 93,480 dwellings (14% of the entire stock).

The rental market in Slovenia is currently marked by a shortage of dwellings in the non-profit sector, as well as the shortage of affordable dwellings in the profit sector. Supply in the profit sector is relatively higher than in the non-profit sector (as more prospective tenants are interested in non-profit rentals); the rents in the market sector are relatively high as well. Both demand and supply for rental dwellings are greater in centres of larger municipalities, due to employment and schooling prospects, as well as better transport networks.

As far as the price is concerned, the calculations for the second quarter of 2013 indicate that the average rent price of a square meter of a dwelling per month in Ljubljana (capital) in market sector ranges from 8.44 EUR/m² to 11.36 EUR/m² per month, depending on the size of the dwelling, as shown in the Table 1 below. All of the prices are given without monthly running costs.

Table 1. Average rent price in Ljubljana in the second quarter of 2013 according to types of dwellings



²⁰⁷ This group also includes one part of the rental sector, which is performed through informal market.

Therefore, the rent for a 30 m² studio apartment in Ljubljana is around 330 EUR per month, while the rent for 60 m² two-room apartment amounts to 520 EUR per month. However, one must bear in mind that the prices refer to average prices, meaning that a particular dwelling may be cheaper/more expensive, depending on the location²⁰⁸, furniture, age, etc.

The rent price for non-profit dwellings is accordingly lower. It ranges from 82 EUR for a studio apartment per month to 246 EUR for a 75 m² dwelling per month. As above, the prices are only rents, without running costs included. However, due to the shortage of supply and rather strict allocation criteria, it is difficult to obtain a non-profit apartment.

The average monthly running costs (irrespective of the tenure type) amount to around 212.30 EUR.

On average, three persons reside in a dwelling, in one or more households. There are on average 1.2 households per inhabited dwelling. An average usable area of a dwelling is 27.4 m² or 1.1 rooms (excluding the kitchen area; with included kitchen area, the average number of rooms per inhabitant is 1.4 rooms). In 27% of dwellings (or 178,337) there was 20 to 30 m² of the usable area. Less than 10 m² of usable area was in 3% (or 23,249) of dwellings. More than 60 m² of the usable area per inhabitant was in 12% of dwellings (or 84,407).

- Main current problems of the national rental market from the perspective of tenants:

- Unfamiliarity of the tenants with their rights and obligations in the rental relations – despite having written contracts.
- Only one association of tenants, situated in Ljubljana (the capital). There are no other similar organizations which would provide support and advice to tenants.
- Affordability of market rentals: only on the outskirts of municipalities.
- Subsidies in market rentals: awarded only if the parties concluded a written contract and only if the tenants applied for allocation of non-profit apartment, but failed to obtain it.

- Significance of different forms of rental tenure

Both the market and non-profit sectors represent an important portion of the rental market in Slovenia, even though the official statistics indicate that the portion of non-profit rentals is significantly higher (70% of all rented dwellings are non-profit, while 20% of the rented stock is market).

- Private renting

The market sector is more important in the larger municipalities, where there is greater pressure on the non-profit dwellings, since only a minuscule proportion of applicants acquire a non-profit unit (for instance, in Ljubljana, only one in ten applicants acquires a non-profit apartment). Another reason for the increased supply of market rentals in these municipalities is that universities, secondary schools and companies are usually seated there.

²⁰⁸ Especially in smaller municipalities, the prices tend to be lower.

The contracts in this sector are left to the autonomy of parties regarding the majority of contractual provisions (among others also rents). Some limitations are imposed with the mandatory provisions of the 2003 Housing Act (*Stanovanjski Zakon*) and the Code of Obligations (*Obligacijski Zakonik*) (e.g. on usurious rent).

Landlords in this sector may be both private and legal persons (under both private and public law). However, usually a landlord is a private person. Commercial landlords are usually legal persons under public law, such as the Housing Fund of Republic of Slovenia (*Stanovanjski Sklad Republike Slovenije*).

- “Housing with a public task” (e.g. dwellings offered by housing associations, public bodies, etc.)

Housing with a public task is offered by the municipal and non-profit housing organizations. This sector is subject to regulated rent, as well as strict conditions and procedures for awarding these dwellings.

In order for an applicant to be awarded a non-profit dwelling, he must fulfil numerous legal criteria. Usually, one of the criteria is the permanent residence for a certain period of time in the municipality where the dwelling is located. Other criteria include the income and property census, number of family members and children, etc.

One advantage of this type of housing is that the contracts are concluded as open-ended. However, the landlord has a right to check every five years whether the tenant still fulfils the criteria for awarding non-profit dwelling. If the tenant no longer fulfils the criteria, the rent may be increased to market rent. If the social and financial circumstances deteriorate again, the tenant may apply for reduction of the rent to the non-profit level.

- General recommendations to foreigners on how to find a rental home

The best options for finding a profit rental dwelling is browsing through the specialized web pages with rental ads²⁰⁹ or referring to one of the real estate agencies. The latter option is more expensive, since the services of agencies must be paid. Although usually the web pages contain privately posted ads, it is not unusual for the real estate agencies to post them as well.

Private landlords in the majority of cases do not discriminate against foreigners. However, they may demand rent payments to be made in advance, as a form of security. As far as non-profit dwellings are concerned, the position of foreigners is different. Foreigners, who are citizens of the EU Member States, are equated with the Slovenian citizens pursuant to Article 160 of the 2003 Housing Act. However, the condition of permanent residency in the municipality must be fulfilled in accordance with the Aliens Act (*Zakon o Tujcih*).²¹⁰ Citizens of third countries are not eligible to obtain non-profit dwellings.

- Main problems and “traps” in tenancy law from the perspective of tenants

²⁰⁹ For instance: www.salomon.si, www.nepremicnine.net, www.slonep.net.

²¹⁰ As a rule, one must reside in Slovenia for five years in order to obtain permanent residence.

When concluding a contract, tenants must be particularly careful to clarify all the details regarding the tenure, especially if the contract was not prepared by a professional (i.e. lawyer) but by the landlord himself. The parties must, in particular, determine and divide the payment of costs (who is to pay what part of the costs), their obligations regarding the maintenance of the dwelling and repairs thereof. Parties are also advised to conclude a record on the condition of the dwelling and the furniture.

Prior to concluding the contract, the parties should clarify whether the tenant will be allowed to register the address of the rented dwelling as his permanent/temporary residence. This is especially important for households which intend to apply for non-profit apartments (since one of the conditions is the period of permanent residence in the municipality), as well as for foreigners who are obliged under the law to register their temporary residence.

“Important legal terms related to tenancy law”

Slovenian	Translation to English
<i>aneks k najemni pogodbi</i>	an annex to a tenancy contract
<i>bistvene sestavine najemne pogodbe</i>	essential elements of a tenancy contract
<i>bivalna enota dejanska</i>	accommodation unit for those in severe housing distress
<i>dejanska površina stanovanja</i>	actual area of the dwelling
<i>deložacija</i>	eviction
<i>izredno pomoč pri uporabi stanovanja</i>	exceptional assistance for housing needs
<i>izročitev stanovanja</i>	handing over of premises
<i>lastna udeležba</i>	own participation for renting non-profit dwelling
<i>najem za določen čas</i>	limited in time tenancy
<i>najem za nedoločen čas</i>	open ended tenancy
<i>najemnik</i>	tenant
<i>najemna pogodba</i>	tenancy contract
<i>najemodajalec</i>	landlord
<i>namensko najemno stanovanje</i>	purpose dwelling, usually for older citizens
<i>neprofitno najemno stanovanje</i>	non-profit rental dwelling
<i>nepravdni postopek</i>	non-contentious procedure

<i>neprofitna najemnina</i>	non-profit rent
<i>obratovalni stroški</i>	operating costs; running costs
<i>oderuška najemnina</i>	usurious rent
<i>odpoved</i>	termination
<i>odpovedni krivdni razlogi</i>	culpable reasons for termination
<i>odpovedni nekrivdni razlogi</i>	non-culpable reasons for termination
<i>odpovedni rok</i>	notice period
<i>opomin</i>	warning
<i>opravljanje dejavnosti</i>	pursuing commercial activity
<i>ožji družinski člani</i>	closer family members
<i>rezervni sklad</i>	reserve fund
<i>podaljšanje najema za določen čas</i>	prolongation of limited in time tenancy
<i>podnajem</i>	subtenancy
<i>popravilo</i>	repair
<i>posest</i>	possession
<i>pravna napaka</i>	legal defect
<i>prednostna lista</i>	priority list for awarding non-profit dwellings
<i>primerna površina stanovanja</i>	appropriate area of dwelling
<i>primerno stanovanje</i>	appropriate dwelling
<i>prosto oblikovana najemnina</i>	market rent
<i>razpis za dodelitev neprofitnega stanovanja</i>	public tender for allocation of non-profit dwellings
<i>službeno najemno stanovanje</i>	employment based rental dwelling
<i>soglasje lastnika</i>	landlord's consent
<i>spor</i>	dispute

<i>stanovanjska pravica</i>	housing right
<i>stvarna napaka</i>	material defect
<i>subvencija</i>	subsidy
<i>škoda</i>	damage
<i>tožba na izselitev</i>	eviction claim; action for vacating premises
<i>tržno najemno stanovanje</i>	market rental dwelling
<i>uporabnik</i>	user
<i>utemeljene okoliščine</i>	justified circumstances
<i>varščina</i>	security
<i>vzdrževanje</i>	maintenance
<i>zaščiteni najemniki</i>	protected tenants

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?

The matter of discrimination in the selection of tenants depends on the type of the landlord. If the landlord is a public authority (national or municipal housing fund), who allocates dwellings as either non-profit or market rentals, discrimination is prohibited, unless expressly allowed. Positive discrimination is allowed. The authority in charge of the selection process may determine a specific category of eligible rightful claimants, who are prioritized. These categories usually include young families, families with small children, single parents, individuals with disabilities, etc. In addition, pursuant to valid legislation, only Slovenian citizens and citizens of the EU Member States upon the reciprocity condition are eligible for obtaining a non-profit dwelling.

Private (non-commercial) landlords select tenants according to their own preferences and without restrictions.

- 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?

In general, landlords in the market sector may ask any type of question, while tenants have the right to not answer truthfully. However, there may be other legal consequences thereof, such as invalidity of the contract or liability for damages.

In the non-profit sector, the landlords may as well ask any type of question, as long as the answer does not affect their choice of tenant. In addition, they may oblige the applicants to enclose different evidence regarding their material and family status when applying for non-profit housing. These documents are enumerated in the relevant legislation (e.g. Rules on Renting Non-profit Apartments (*Pravilnik o Dodeljevanju Neprofitnih Stanovanj v Najem*)). Thus, every document enumerated in the relevant legislation is regarded as appropriate. Tenants have the right to not answer truthfully. However, if they withhold the truth regarding issues which are relevant for awarding the dwellings, the landlord may terminate the contract. For instance, if the applicant alleges that he does not own any appropriate dwelling, although he does, the landlord may terminate the contract.

- Is a “reservation fee” usual and legal (i.e. money charged by the landlord to allow the prospective tenant to participate in the selection process)?

A reservation fee is usual for the selection process when the landlord is a public authority (national or municipal housing fund), although only for awarding market rental dwellings. The fee amounts to 500 EUR and is later set off with the security or returned to the non-eligible applicants.

In market rental sector, such fee is not usual, not even by the real estate agents. The agents are only entitled to the commission as agreed upon in the brokerage contract.

- 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)?

Checks on the personal and financial status of the tenant depend on the type of landlord and the type of rental. Private and legal persons acting as landlords in the market sector may demand any type of checks on the personal and financial status of the tenant. There is no legal obligation for them to do so, nor there is a provision preventing them from asking for such documents. Usually, legal persons under public law have internal acts, which closely determine the types of documentation which must be included.

On the other hand, legal persons acting as landlords in the non-profit sector have a right to demand from the tenant (as well as tenant’s household members of legal age) to enclose different documents, among which are also the certificates on incomes and dependent members, pursuant to Article 19 of the Rules on Renting Non-profit Apartments. These include a statement on possible non-taxable incomes and wages for the previous calendar year, a certificate on received net salaries in the year of the public tender, a statement on the pecuniary circumstances, and proof of payment of all previous non-profit rents, if the tenant is already in a non-profit rental. The tenant and other family members of legal age may also authorize the landlord to obtain the certificates and other documents from the competent authorities.

- 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?

The role of the agents is to present the prospective tenants the appropriate dwellings,

in accordance with tenants' demand. The agents also show the selected dwellings to the tenant upon request. Other services depend on the parties' preferences. In some cases, agents assist with the preparation of the tenancy contract.

Apart from the estate agents, there are no other bodies or institutions assisting tenants in searching for housing.

- Are there any accessible "blacklists" (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?

There are no formal mechanisms or lists for determining a bad or a good tenant/landlord.

Information on commercial landlords are available on the web pages of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (*Agencija Republike Slovenije za Javnopravne Evidence in Storitve – AJPES*). However, this database contains only the data on the business of the legal person and not other possibly relevant data (e.g. manner of maintenance of the dwellings).

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, the rental agreement (tenancy contract) must be concluded in writing. Nevertheless, oral agreement is also valid in front of the Court, if the party claiming that the rental relation existed can prove this. For instance, the proof may be the record of all the paid rents.

There are no other formal requirements regarding market rentals. For non-profit rentals, the special procedure for the selection of the tenant must also be obeyed, unless particular circumstances are present. For instance, the new contract may be concluded with one of the non-profit tenant's household members if the tenant moves to a nursing home or to other dwelling outside of the municipality. The new tenant must also fulfil the conditions for obtaining a non-profit apartment. He must also reside in the non-profit dwelling and must be enlisted as a user in the original tenancy contract.

All rental agreements must be registered with the Geodetic Office of the Republic of Slovenia (*Geodetski Urad Republike Slovenije*) by the landlord. The registration is free of charge. In addition, landlords must also notify the Tax Office in their municipality on the contracts.

- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?

The mandatory contents of contracts are non-exhaustively enumerated in Article 91 of the 2003 Housing Act.

These include:

- description of the dwelling, its location, area, structure, age and the manner of use,

- identification number from the Cadastre,
- communal equipment,
- information on the landlord, tenant and users,
- reasons for termination,
- type of rental relation (market, non-profit, purpose or employment based),
- mutual obligations
- maintenance of the dwelling and the building,
- rent price, as well as the manner of paying and the scope of running costs (for electricity, water, central heating and similar) and costs for operating the multi-apartment building (common costs),
- period of tenancy, if the dwelling is rented for limited time,
- manner in which the dwelling is handed over.

Parties are also able (and advised) to include any other information they find relevant (especially on the use of security after the termination of the contract, payment of the reserve fund, *rezervni sklad*²¹¹, etc).

- Duration: open-ended vs. time limited contracts (if legal, under what conditions?)

Duration of the contract is an important feature of contracts. Contracts for non-profit rentals are always concluded as open-ended and the parties may not change the duration. On the other hand, in market rentals, the duration of the contract is a matter of agreement between the parties. Unless the time period is stated in the contract, the contract is deemed as open-ended. Usually, contracts in the market sector are concluded for a limited period of time of one to two years, with the possibility of prolongation.

- Which indications regarding the rent payment must be contained in the contract?

Tenancy contracts must necessarily contain the indication of the level of rent and what it encompasses (only the rent or also the running costs). Rent price is usually agreed as a monthly payment, unless otherwise agreed between the parties (for instance, that the tenant is to pay for several months or a year in advance). The contracts also contain an indication on the day of the month on which the rent is due to be paid, as well as the manner of payment (in cash or bank account).

Non-profit contracts also contain the provision on the valorization of the rent (usually stating that the rent is to be changed in accordance with the valid legislation). In market contracts, such a provision is rare.

- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

²¹¹ This is a mandatory payment, usually by the landlord (the owner of the dwelling), to the manager of the building. The collected funds are then used for maintenance and repairs of the common areas and other facilities in multi-unit buildings.

Yes, as there are no strict rules regarding repairs and furnishing of dwellings in market rentals. Article 92 of the 2003 Housing Act and the Rules on Standards for the Maintenance of Apartment Buildings and Apartments (*Pravilnik o Standardih Vzdrževanja Stanovanjskih Stavb in Stanovanj*) regulates the obligations imposed on landlords. These provisions are intended for both non-profit and market rental landlords. However, the parties in market rentals are able to determine their obligations differently with the contract. If a maintenance issue is not regulated in the contract, the provisions of the 2003 Housing Act and the Rules on Standards for the Maintenance of Apartment Buildings and Apartments apply.

In general, a tenant must repair any damage that is caused by him or individuals for which he is responsible (such as users or guests). However, there is no obligation for the tenant to repair damage resulting from regular 'wear and tear'. For instance, if the parquet floor is dilapidated due to the usual use and not some irregular activities, the tenant is not obliged to change the whole parquet.

The primary concern of landlords is to maintain the dwelling and the common parts of the building in such a manner that the normal use of the dwelling and the common parts is possible. This means that landlords are responsible for providing the safe use of the dwelling and the common areas. Landlord is also expected to repair and maintain any piece of furnishing or equipment that has been impaired due to causes other than the tenant's negligence or intentional misuse. For instance, if the boiler is damaged due to the passage of time and is no longer safe for use, the landlord is obliged to repair or replace it.

On the other hand, repairs in non-profit dwellings are subject to strict rules, determined in the Rules on Standards for the Maintenance of Apartment Buildings and Apartments. The Rules contain detailed information on the type of repair and maintenance work attributed to both landlords and tenants. For instance, tenants are expected to regularly maintain (clean or repair) certain elements (cesspit, outer terrace, parking space, chimney, window sills on the façade, staircase, inner doorknobs, etc.). Landlords in non-profit rentals are obliged to perform large scale repairs and maintenance work, such as change of the roof, drain pipes, façade, etc.

In any case, if the landlord (market or non-profit) fails to perform his duty of repair (i.e. to provide the normal use of the dwelling), the tenant has a right to propose to the Housing Inspection to issue an order, setting the deadline for the provision of proper conditions for use. If the landlord fails to execute the order within the set deadline, the tenant may provide the needed repairs himself. The tenant may then offset his pecuniary debts towards the landlord (for instance, the rent) on account of the repairs performed.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

Furnishings in market rental dwellings may be provided by the landlord. The most necessary furniture, such as kitchen and toilet furniture and closets, are always provided. In some cases, the entire furniture is provided (also beds, tables, chairs, appliances). The provision of furnishings is usually reflected in a higher rent price.

Non-profit dwellings and market dwellings provided by the HFRS are offered without furnishings (except the most necessary toilet and kitchen furnishings). Therefore, tenants must provide appliances and other furniture.

- Is the tenant advised to have an inventory made so as to avoid future liability for losses and deteriorations (especially in the case of a

furnished dwelling)?

All tenants are advised to make the inventory at the very beginning of the tenancy, in order to avoid possible misunderstandings with the landlord afterwards.

- Any other usual contractual clauses of relevance to the tenant

There are no other usual contractual clauses of relevance to the tenant. Nevertheless, tenants should carefully read the contract before signing it in order to avoid any misunderstandings later.

- 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.)?

All individuals who are residing in the dwelling apart from the tenant must be listed in the contract (these are referred to as users of the dwelling). Other individuals (such as guests) may also use the dwelling up to sixty days in a three month period. For longer uses, the tenant must obtain the consent from the landlord beforehand.

If the number of users increase afterwards (for instance, if the tenant marries or his child is borne) or some of the users change (due to moving out or moving in), the tenant must notify the landlord on the change. Usually, an annex is concluded.

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

Although the obligation of the tenant to occupy the dwelling is not expressly governed, it may be assumed from other provisions of the 2003 Housing Act. For instance, the landlord may terminate the contract if the tenant does not take over the possession of the dwelling for undue reasons or he does not begin to reside in the dwelling within thirty days from the conclusion of the contract. However, this does not imply that the tenant or users must actually reside there. This provision refers to both market and non-profit rentals. In any case, tenants are liable for any damage that may arise if they do not notify the landlord on the damage or the threat. If the tenant does not reside in the dwelling, he may not be aware of the threat.

The occupation of the dwelling may be an issue especially in non-profit rentals. In market rentals, the landlord can find a new tenant relatively quickly, so his loss of income is negligible. However, landlords of non-profit units are in a more difficult position, since they must follow strict procedure for finding the tenant, which also gives rise to certain expenses. Furthermore, non-profit stock is intended for those who are in housing distress. Not residing in the allocated dwelling may imply that the tenant does not need the dwelling. As a result, pursuant to Article 103(11) of the 2003 Housing Act, tenants and users in non-profit rentals may not leave the dwelling for more than three months consecutively, since this may constitute a reason for termination.

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and

- same sex couples);
- death of tenant;

Changes of parties are allowed in cases of divorce, separation of non-married couples and death of tenant. In all of these cases, the landlord is obliged to conclude a new contract with the other spouse or partner. The position of same sex partners is not expressly mentioned. However, the Constitutional Court in the Decision no. Up-259/01 (20 February 2003) has indicated that the distinction of the same sex partners in these cases may constitute discrimination.

The same applies to the cases of domestic violence. The Court is entitled to grant the tenancy only to the marital or extra-marital partner who is the victim. The victim may ask the Court to decide that the dwelling which is co-used (based on co-ownership, usufructus or tenancy contract) is to be left to the victim. The claim must be filed within three months from the first act of violence. Such measure must be limited to six months and may be prolonged to maximum additional six months upon victim's request, if the victim failed to find other residence.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);

There are no strict rules regarding replacing a student who moves out. Whether a student moving out may be replaced by another student without permission of the landlord is a matter of agreement between the parties. Some landlords prefer to find the new student on their own, while others leave this to the other users.

- bankruptcy of the landlord

Bankruptcy of the landlord in general does not lead to any change of the tenant's position whatsoever. Of course, the tenant is entitled to terminate the contract if he finds the new landlord unacceptable. The new landlord (buyer of the dwelling in the enforcement procedure) enters into the obligations and rights of the previous landlord and is bound by the previous contract. However, if the lease or tenancy relationship was concluded after the acquisition of the security right or land debt, the new landlord is entitled to terminate the tenancy contract with one month termination period.

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

Subletting is allowed only with the prior consent of the landlord. If the landlord refuses to give consent, he is not required to justify his reasons for refusal. The landlord may agree to sublet the entire dwelling or only a part of it (one or more rooms). Subletting of non-profit dwellings is prohibited.

A subletting contract must be concluded for limited period of time. The period of duration of the subletting contract cannot be longer than the duration period of the tenancy contract. If the tenancy contract is terminated, the subletting contract is terminated *ex lege* as well. The fact that the period for which the subletting contract is concluded has not expired does not influence the termination of the subletting contract. Therefore, the validity of subletting relationship completely depends on the validity of the tenancy contract.

Abuse of subletting is not an issue in Slovenia.

- Does the contract bind the new owner in the case of sale of the premises?

The tenancy contract binds the respective buyer of the premises with the same extent of rights and obligations as the seller used to have. In addition, the law determines the joint and several liability of the previous landlord (the seller) for any obligations imposed on the new owner (the buyer) in respect to the tenant.

- Costs and Utility Charges

- What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?

The relevant legal regulation of utilities is different for market and non-profit rentals. Since market rentals are usually concluded for limited period of time, it is unsound to change the registered user. On the other hand, the relevant legal regulation for the non-profit sector expressly demands that the tenant conclude supply contracts upon moving in. If some of the utilities are not provided at the start of the contract (for instance, internet connection), the tenant is usually allowed to acquire them. However, if the installation of the utility would demand certain changes of the premises, the tenant is obliged to obtain landlord's consent beforehand.

- Which utilities may be charged from the tenant by the landlord? What is the standard practice?

The tenant is obliged to cover the costs stated in the contract and not included in the rent. These may include individual running costs and common running costs.

The individual running costs for non-profit rentals are paid directly to the supplier and include: costs of heating, costs for water and sewage, costs of electricity and power consumption, costs of telephone, cable, television and radio bill, costs of consumed gas, costs of compensation for the use of the construction land²¹² and other costs related to the use of the apartment. The common costs are paid to the manager of the building and encompass: costs of electricity for running common appliances and lightning of common areas, costs of cleaning common areas, manager costs, costs for landscaping, other running costs and costs of regular maintenance work of smaller value in the common parts of the building, which are charged from the manager in accordance with the regulatory acts.

In market rentals the parties can agree upon the range of the costs that are to be paid by the tenant; the level of the rent price is usually in accordance with the scope of other costs borne by the tenant. The tenant and landlord in market rentals may also agree that the tenant is to pay a lump-sum, covering both rent price and running costs. In that case, the tenant has no other costs, unless otherwise stated in the contract or annex. Usually a final assessment of bills for electricity or water is made at the end of the payment period, if the bills were paid as a flat rate (and not according to the actual consumption). However, paying a lump-sum is rather rare in practice.

²¹² This cost is paid to the Tax Administration of Republic of Slovenia.

The tenant is obliged to pay all the costs regarding the management of the multi-unit apartment building (for management of common parts, for costs for which individual assessment of consumption is not possible, costs of pest control, cleaning of common parts and protection against fire, etc.), while the landlord must cover all other costs (e.g. payments into the reserve fund), unless the tenancy contract states otherwise. However, the landlord (in both market and non-profit) is subsidiarily liable for the costs of operating the multi-apartment building. The landlord is not subsidiarily liable for costs of utilities, personally used by the tenant (for instance, services of internet provider or any other services, which are charged directly from the tenant), if he informed the manager of the building about the tenancy contract with the tenant. Otherwise, the landlord is liable for these costs directly (and not subsidiarily), since he failed to inform the manager on renting the dwelling. The manager of the multi-apartment building must send a written notice to the tenant who is in delay with the payment of bills. At the same time, he must send the information on the notice and delay to the landlord as well.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

Tenants in non-profit rentals are responsible also for the taxes levied by local municipalities (such as costs of compensation for the use of the construction land²¹³). Parties in market rentals may agree on this, although the standing practice is that the taxes are levied on the landlord.

Waste collection is paid by the tenant, as a running cost. Road repair is irrelevant in reference to the tenancy.

- Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?

Tenants are obliged to pay the common running costs, encompassing: costs of electricity for running common appliances and lightning of common areas, costs of cleaning common areas, manager costs, costs for landscaping, other running costs and costs of regular maintenance work of smaller value in the common parts of the building, which are charged from the manager in accordance with the regulatory acts. However, the tenant is not obliged to make the payment into the reserve fund. This cost is borne by the owner of the dwelling- unless otherwise agreed.

- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?

Usual amount of a deposit (security) ranges from one to three months rent in market rentals. Exceptionally, landlords may demand higher amounts of deposit if the dwelling is of very high standards. In non-profit rentals, the value of deposit amounts up to three months rents in accordance with the Rules on Renting Non-profit Apartments.

²¹³ This tax is no longer relevant, since it was replaced by the Real Property Tax as of 1 January 2014. The tax payer of the Real Property Tax is the owner and not tenants.

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

There are no special rules on managing the deposit in the market sector. Therefore, different agreements are possible between the parties.

The Rules on Renting Non-profit Apartments, on the other hand, contain precise provisions on both deposit and own participation. Parties determine the mutual rights and obligations regarding the deposit (payment, repayment and maintaining the value of the deposit, taking into account the principle of preserving the value of a deposit equivalent in EUR) in the tenancy contract. The deposit may also be paid in instalments. The deposit is returned at the end of the tenancy. Another possibility is that the deposit is set off with the value of the last rent. If the dwelling is not restored to the condition in which it was handed over at the start of the tenancy, the landlord may retain the deposit. The deposit is also retained if the tenant failed to pay the rent or running costs.

Conditions in connection with the payment and reimbursement of own participation²¹⁴ are regulated by the mutual agreement between the parties. This amount is returned to the tenant in EUR in no later than ten years, with a 2% interest rate.

- Are additional guarantees or a personal guarantor usual and lawful? What kinds of expenses are covered by the guarantee/ the guarantor?

Additional guarantees or a personal guarantor are not usual, although they are not unlawful. Provisions on the guarantees are contained in the Code of Obligations (Articles 1012 and further). A guarantor's obligation cannot be greater than the obligation of the tenant. If it is agreed that his obligation is greater, the value of the obligation is reduced to the amount of the tenant's debt.

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)?

Both material and legal defects of the dwelling and disturbances are legally relevant. The landlord is responsible to protect the tenant from non-obvious defects, as well, such as smell from the shafts. The landlord is also responsible for the absence of all characteristics of the dwelling which he had claimed to exist, unless the tenant was aware or could have been aware of them. The parties may agree that the landlord is

²¹⁴ These are repayable funds, paid by the tenant and intended for further generating of non-profit dwellings by the landlord. It amounts to maximum 10% of the value of the dwelling without the influence of the location

not liable for certain material defects, unless he was aware of them and failed to notify the tenant or unless the landlord misused his dominant position. For instance, the landlord is liable for repairing the leaking roof, even though the parties agreed that tenant is to bear all the cost connected to the repairs of the dwelling, if he knew about the broken roof tile but did not tell the tenant.

Exposure to noise (either by the neighbours or a building site) is relevant only if the landlord expressly asserted that the location is quiet. Otherwise, tenants are entitled to file the prohibition injunction against the person causing the noise. Mould and humidity are material defects, for which the landlord is responsible.

Occupation by a third party is also a defect. Landlord is obliged to protect the tenant from such disturbances. The tenant is entitled to a legal protection of possession for disturbances from the third parties in the same extent as the landlord.

- What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)

The tenant's primary obligation is to notify the landlord of the defect or the disturbance (material or legal) for which the landlord is liable to address. If the landlord ignores such notification, the tenant is entitled to propose to the Housing Inspection to order the landlord to perform the repairs of either the dwelling or the common parts of the building. If the owner refuses or fails to perform such repairs, tenant may perform them himself. Afterwards, he is entitled to the reimbursement of any costs as well as the interests thereof and can offset them with the rent or request the reimbursement of the entire amount. He may also request from the landlord to decrease the rent for the period during which he was unable to use the dwelling normally. Another possibility for a tenant is to request that the landlord provides him with another suitable dwelling²¹⁵.

Under the provisions of the 2003 Housing Act, a tenant is entitled to perform the repairs in the dwelling which are necessary to protect lives and health conditions of other residents or the dwelling itself as well as the equipment therein. Tenant is then entitled to reimbursement of the costs thereof.

As far as other disturbances are concerned, the tenant has the right (under the general civil law) to request a decrease of the rent or to withdraw from the contract. This right is granted if the tenant is substantially unable to use the dwelling for a significant period of time. For instance, if the water supply in the dwelling was impaired for one day, this may not account for the substantial prevention of use.

Any such request must be made to the landlord beforehand, and the tenant may then turn to the competent court if he is not willing to comply,

- Repairs of the dwelling
 - Which kinds of repairs is the landlord obliged to carry out?

The landlord is obliged to perform any repair that is not caused by the tenant or due to his negligence, so that the normal use of the dwelling is possible. However, in market rentals, the parties may also agree otherwise. If the tenant or an individual for whom he is responsible inflicts certain damage, the landlord is not responsible for the

²¹⁵ This is a more theoretical solution, since not all landlords are able to provide another dwelling.

repair. The parties may agree that the landlord also repairs such damage, but however at the tenant's expense.

- Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

The tenant has the right to make repairs at his own expense and then deduct the repair costs from the rent payment. However, the 2003 Housing Act explicitly limits this to repairs which are necessary and cannot be put off in order to protect the lives and health conditions of the residents or the premises, as well as to repairs which were not performed by the landlord in accordance with the order of the Housing Inspection.

In addition, the tenant may request that the rent is reduced for the period in which he was prevented from normal use of the dwelling due to the landlord's omission to perform repairs.

- Alterations of the dwelling
 - Is the tenant allowed to make other changes to the dwelling?
 - In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)
 - Affixing antennas and dishes
 - Repainting and drilling the walls (to hang pictures etc.)

Tenants in both market and non-profit sector may alter and improve the dwelling, its equipment and devices only with the written consent of the landlord. Written consent is needed in the procedures in which the tenant obtains an administrative permit before conducting the alterations. Of course, the parties may as well agree differently in the contract.

The landlord may refuse to consent, unless the following conditions are met: the intervention is in accordance with the contemporary technical demands; it is in tenant's personal interest; the costs are borne by the tenant; the alternation will not jeopardize landlord's interest or the interest of other condominium owners and the intervention is not to harm other common parts of the multi-apartment building and its exterior. The following situations are deemed as meeting those conditions (and are listed non-exhaustively): modernization or appropriate reconstruction (for meeting the needs of the household) of sewage, electricity, gas, heating or sanitary equipment; rearrangement intended to optimize the usage of electricity or increasing the functionality; improvements which are subsidized or loaned from public funds; wiring of telephone; installation of necessary antennas or other equipment for radio and television reception, if the connection to the present device is impossible. Building an elevator or ensuring access for wheelchairs would probably also meet the above criteria, if the tenant or one of the users is a disabled person.

If the landlord refuses to give consent in those cases, the tenant is entitled to demand the consent from the Court in a non-contentious procedure. In some situations, the landlord is allowed to make his consent conditional upon a statement of the tenant that he will return the dwelling in the previous condition or that he is not to demand the reimbursement of the investments.

The tenant is entitled to the reimbursement of the unamortized part of the useful and needed investment into the dwelling, performed with the consent of the landlord,

unless otherwise agreed. As an illustration: if the tenant installs an air conditioning system and then resides in the dwelling for several more years, he would not be entitled to the reimbursement of the entire investment, but only to a certain proportion (since he was using the air conditioning system as well).

Tenants must be aware that performing the improvements and changes without the landlord's consent may constitute a culpable reason for the termination of the tenancy contract.

Fixing antennas has not been raised as an issue and would probably be allowed. Repainting and drilling the walls is a matter of agreement between the parties.

- Uses of the dwelling
 - Are the following uses allowed or prohibited?
 - keeping domestic animals

Keeping domestic animals is not explicitly regulated. It is a matter of agreement between the landlord and the tenant. Also, in certain cases, this may be the matter of the internal house rules of the multi-unit building.

- producing smells

The rules of neighbour law apply to tenants as well. Therefore, tenants must refrain from inflicting disturbances to other residents. This refers to producing smells and other immisions (noise, garbage, etc.).

- receiving guests over night

Receiving guests overnight is free in principle. A limitation is imposed only on non-profit tenants (and market tenants, if agreed so). They must obtain the landlord's consent if the dwelling is to be used by the guest for more than sixty days in the three-month period. Otherwise, this may constitute a reason for termination of the contract.

- fixing pamphlets outside

Fixing pamphlets outside is not explicitly regulated. It is the matter of agreement between the landlord and the tenant. As with keeping domestic animals, this may be the matter of the internal house rules of the multi-unit building.

- small-scale commercial activity

Small-scale commercial activity is regulated with the 2003 Housing Act. Such activity may be pursued if it does not deprive other residents from the peaceful use of their dwellings. For pursuing such activity, one must also fulfil conditions in accordance with the legislation. The tenant must also obtain the written consent of the landlord beforehand, as well as the consent of at least 75% of other co-owners, including those whose units' walls or ceilings border the tenant's unit. Otherwise, the housing inspector may prohibit further performance of the activity. In addition, failing to obtain the landlord's consent or pursuing the activity contrary to the consent constitutes a culpable reason for terminating the contract.

3.2. Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

Rent control is exercised only in the non-profit sector. In the market sector the parties agree on the level of rent. In both sectors the rent must not exceed 50% of the average market rent in the municipality for the equal or similar category of dwellings, taking into account also the location and equipment of the dwelling (the so-called usurious rent). In addition, in the non-profit sector, the rent is determined by the national or municipal authority for each dwelling separately, depending on the numerous criteria. The formula for calculating the rent price and the relevant criteria are set in the Decree on the Methodology of Determination of Rents for Non-Profit Housing and the Criteria and Procedure for the Implementation of Subsidised Rents (*Uredba o Metodologiji za Oblikovanje Najemnin v Neprofitnih Stanovanjih ter Merilih in Postopku za Uveljavljanje Subvencioniranih Najemnin*).

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:

Rent increase in the market sector depends solely on the agreement between the parties, unless the increased rent meets the criteria for usurious rent. Rent increase in non-profit sector may be exercised only if the relevant legislation is amended or different values of dwellings are set. The tenant has a right to demand the reimbursement of the excessively paid rent.

There are no restrictions on how many times the rent may be increased in a certain period, nor is there a possible cap or ceiling determining the maximum rent that may be charged lawfully.

- Are there restrictions on how many times the rent may be increased in a certain period?

There are no 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 charged lawfully?

The ceiling determining the maximum rent that may be charged lawfully is set with the general provisions on the usurious rent, as stated above.

Landlords in non-profit rentals are bound by the rent as determined with the valid legislation on the non-profit rents.

- What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?

Increase of market rents has to be agreed by both parties. No particular procedure is prescribed, unless the parties agree otherwise in the tenancy contract. Increase of non-profit rents may not be imposed without the amendment of the Decree on the Methodology of Determination of Rents for Non-Profit Housing and the Criteria and the Procedure for Implementation of Subsidised Rents or with formal revaluation of the value of dwellings.

- Entering the premises and related issues
 - Under what conditions may the landlord enter the premises?

The 2003 Housing Act allows landlords (or their representatives) to enter the dwelling so to check if the dwelling is properly used. Tenants are obliged to allow such entry at most twice a year, unless other agreement is made between the parties.

In certain situations a tenant must allow the landlord to enter the dwelling, for instance if there is a need to perform repair or improvement of the dwelling (such as installation or reconstruction of central heating, sewage, cable, and similar). However, the tenant may as well deny entry if such work would impose difficulties for the tenant or his family members, lead to increased rent price, interfere with tenant's own investments, or if the work is not in accordance with the benefits of the tenant and other residents in the building. Unlawfully denying entry in these two cases is deemed as a liability-based reason for termination of the contract.

- Is the landlord allowed to keep a set of keys to the rented apartment?

A landlord is in general not prohibited from keeping a set of spare keys of the rented dwelling, although the parties may agree otherwise in the tenancy contract.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

A landlord may not legally lock the tenant out of the premises. If a tenant breaches the contract, the landlord must give an admonition on the breach. Given that the tenant does not comply with the landlord's demand to cease with the breach within the set deadline, the landlord may file a lawsuit for termination of the contract and motion for moving out. In practice, this would mean that if the tenant does not pay the rent, the landlord must notify him on the arrears and offer him an additional deadline for the payment. If the tenant does not pay within the deadline, the landlord must file a lawsuit and cannot legally lock the tenant out of the premises.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

A landlord does not have a right to seize tenant's (movable) property in case of rent arrears or other breach of the contract. However, landlord and tenant may establish a non-possessory²¹⁶ lien with a provision in the contract. The contract must be written and signed in the form of a directly enforceable notary deed. The tenant may use

²¹⁶ This means that the items are not delivered to the landlord, but remain in the possession of the tenant or a third person.

these items in accordance with their economic purpose or an agreement with the landlord. However, he has no right to sell the item without the landlord's consent.

4. Ending the tenancy

4.1. Termination by the tenant

- Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?

A tenant may terminate the contract at any time, without stating reasons thereof, with a ninety days notice period and in a written form, unless otherwise agreed in the contract. Therefore, if a particular deadline, reasons or procedure are set with the contract, the tenant must obey these.

- 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 valid legislation does not expressly differentiate between the open ended and limited in time contracts regarding the tenant's right to terminate the contract. However, the jurisprudence does not recognize the right of the tenant in limited in time contracts to terminate the contract before the end of the rental term. Therefore, it is advisable that the parties agree on this matter in the contract. In addition, the parties should agree on the possible compensation in such case. This refers only to market rentals, since in non-profit rentals the contracts are concluded as open ended.

- May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?

In general, there is no obligation for the tenant to find a suitable replacement tenant. However, the parties in market rentals may agree on this matter in the contract. Such replacement would not be allowed in non-profit rentals, since the non-profit tenants must fulfil certain criteria in order to be awarded a non-profit dwelling.

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 valid legislation does not differentiate between the open ended and limited in time contracts regarding the termination by the landlord. However, there is a difference between the culpable and non-culpable reasons for termination of tenancy contracts, as well as different types of rental contracts. In non-profit sector, the culpable reasons are clearly enumerated in the 2003 Housing Act and the parties may not agree on additional reasons. These are:

1. causing significant damage to either the dwelling or common areas by the tenant or other users;
2. pursuing commercial activity in the dwelling without permission or contrary to it;
3. not maintaining the dwelling in accordance with the Rules on Standards for the Maintenance of Apartment Buildings and Apartments;
4. not paying the rent price or other running costs within the deadline set with the contract or, if such deadline is not set, within sixty days from receiving the bill;
5. grave violation of fundamental rules of neighbourly cohabitation by the tenant or other users' manner of use, which are regulated with the house rules, or severe disturbance of other cohabitants' peaceful use;
6. performing alterations of the dwelling or installed equipment without the landlord's permission, apart from the cases regulated with Article 97²¹⁷;
7. use of the dwelling by other person(s), not enlisted in the tenancy contract, without landlord's consent, during more than sixty days within three months period;
8. sub-letting the dwelling without the landlord's permission;
9. refusing entry to the landlord in cases regulated with Articles 94(3)²¹⁸ and 99²¹⁹;
10. refusing to take over the dwelling or reside in the dwelling within thirty days after the conclusion of the contract;
11. ceasing to use the dwelling for three months consecutively by the tenant or other users;
12. providing false information for obtaining the rent subsidy in accordance with Article 121.

In the market sector the same reasons apply, although the parties may agree on additional or different reasons, as well as different notice periods.

- Must the landlord resort to court?

According to the legal standing in the case law, the landlord is obliged to resort to court in order to terminate the contract. Unless the tenant complies with the notice period and vacates the premises following the landlord's termination (which practically means there is agreement on termination), the landlord is advised to terminate the contract in front of the court, in order to avoid a possible subsequent lawsuit from the tenant.

- Are there any defences available for the tenant against an eviction?

Under the rules of the 2003 Housing Act, the tenancy contract of a non-profit tenant cannot be terminated due to arrears regarding rent and other expenses. Certain conditions must be fulfilled, however: the tenant is in arrears due to exceptional circumstances, to which he and other users of the dwelling were exposed; the circumstances were unforeseeable or foreseeable but unavoidable (for instance, death in the family, loss of employment, serious illness, disasters and similar); he

²¹⁷ Technical modernization, which is in accordance with the tenant's interests and which do not present threat to other users of the building and the exterior of the building.

²¹⁸ Two times a year, to check the condition of the dwelling.

²¹⁹ For performing maintenance and repair work.

initiated procedures for obtaining a subvention of non-profit rent and exceptional financial aid for housing within thirty days from the occurrence of the circumstances and notified the landlord thereof.

The procedure for obtaining financial assistance is filed with the centre for social work. If the circumstances are such that there is a possibility of a long-term inability of the tenant to cover the rent, the municipality may move the tenant to another non-profit dwelling which is more adequate, or to a housing unit intended for temporary accommodation of individuals in need.

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?

The landlord may terminate the contract before the end of the rental term due to either culpable (liability-based) or non-culpable reasons.

The landlord may terminate the contract due to culpable reasons if he respects the prescribed procedure. He must first notify the tenant about the breach in writing. The manner of the notification is not prescribed, although according to the case law the landlord must assert himself that the tenant obtained the notification. The notification must contain the breach, manner and deadline for eliminating the breach. The deadline must not be shorter than fifteen days. If any of these elements is missing, the termination is not lawful. If the tenant does not comply with the notification within the deadline or eliminates the breach only partially, the landlord may file a lawsuit for termination of the contract and emptying the premises.

It is important to stress that the tenant may prove before the Court that the culpable reason was incurred due to circumstances beyond his control or that he was unable to resolve it in due time. If the tenant's objections are justifiable, the Court may then deny the landlord's request for termination.

One of the culpable reasons for termination includes not using the premises for more than three months in a row. However, certain situations are regarded as justifiable: if the tenant is in institutional treatment due to an illness, in a retirement home for a period shorter than six months, or due to other justified reasons, such as official employment relocation or schooling in another place, military service, incarceration, etc.

One of the culpable reasons applies only to non-profit rentals. If the tenant or his partner (marital or extra-marital) owns a dwelling or a housing building, the landlord is entitled to terminate the contract. However, if the dwelling was to be rented for an unlimited period and for non-profit rent on the day of the enactment of the 2003 Housing Act, termination is not possible. However, if the tenant charges a profit rent, he must also pay the profit rent to his landlord.²²⁰

Non-culpable reasons apply to both profit and non-profit rentals. If the landlord terminates the contract for a reason not enumerated in the 2003 Housing Act or in the tenancy contract, he is to provide another adequate dwelling for the tenant. However, the tenant's rental position must not deteriorate. An adequate dwelling is a dwelling that does not deviate from the present dwelling regarding any important feature and does not significantly reduce housing conditions of the tenant and other users.

The mere possibility of providing the tenant with another dwelling is not enough for terminating the tenancy contract. If there are no justifiable reasons, the landlord may

²²⁰ This usually refers to the individuals, who are obliged to rent the dwelling to the previous holders of housing right or some of their entitled relatives.

terminate the contract under such conditions to the same tenant only once. If the justifiable reason is given, it is possible to terminate the contract regardless of whether the landlord has already terminated the contract to the same tenant.

The following reasons are deemed as justifiable: own housing needs of the landlord or his close family member²²¹ and objective circumstances regarding the dwelling, due to which it is no longer habitable (anticipated demolition, change in the purpose of the building, endangered safety of residence, etc.). The costs of moving are borne by the landlord. Any disagreement is to be settled by the Court in a non-contentious procedure.

The described restriction on terminating the contract to the same tenant only once does not refer to the dwellings owned by municipalities, non-profit housing organizations, the HFRS or the state, if they are performing the changes so as to assure rational occupancy of the housing stock.

- Are there any defences available for the tenant in that case?

In case of culpable reasons, the tenant may prove before the Court that the culpable reason arose due to circumstances beyond his control or that he was unable to resolve it in due time. If such allegations are justifiable, the Court may deny the landlord's request for termination.

If the tenant regards the new offered dwelling as inadequate, he may resort to the court in order to decide on this matter.

- What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?

If the tenant does not leave the premises after the end of the tenancy, he is using the premises unlawfully. Tacitly renewed tenancy contracts (meaning that the contract is automatically renewed, if neither of the parties opposes) are not recognized in Slovenia. The landlord has a right to file a lawsuit emptying the premises at any time in front of the Court.

If the tenant does not hand in all the keys of the dwelling, the landlord may file the lawsuit claiming the ownership over the keys (*rei vindicatio*). In addition, the landlord may also file a lawsuit for protection of possession, if the tenant uses the keys and enters the dwelling. The competent court in both cases is the local court in the municipality in which the dwelling is located.

4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?

Security deposit must be returned at the end of the tenancy. It may be either set off with the last rent or returned, given that the dwelling remained in the same condition as it was handed over to the tenant. The parties may agree on this matter in the contract.

Own participation in non-profit rentals must be returned in maximum ten years with

²²¹ As such, the statute deems the needs caused by the increased number of closer family members, increased number of households in accordance with the Rules on Renting Non-Profit Apartments.

2% interest rate.

- What deductions can the landlord make from the security deposit?

The security deposit may be used for returning the dwelling in its original condition. For instance, it may be used for painting the dwelling, refurbishing of the parquet floor, etc. The scope of deductions depends on the agreement between the parties. The security deposit may also be used for setting off the last unpaid rent.

- In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

Tenants are not obliged to restore the ordinary 'wear and tear'. However, if the wear to the furniture is greater than ordinary wear and tear, the landlord may demand that the tenant restore the item to its original shape or he may deduct the costs of the repair from the security deposit.

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
 - Are there specialized courts for adjudication of tenancy disputes?

There are no specialized courts for adjudication of tenancy disputes in Slovenia. All actions are brought in front of the ordinary local court on the first instance, irrespective of the amount of the claim. Certain matters are dealt with in the non-contentious proceedings and others in the contentious proceedings. The competent court is the court located in the municipality in which the dwelling is situated.

Parties may appeal to the higher courts (the second instance). The possibility of extraordinary remedies in front of the Supreme Court RS is also available. However, some rather strict conditions are set in order for a decision to be rendered by the Supreme Court RS.

- Is an accelerated form of procedure used for the adjudication of tenancy cases?

Tenancy disputes are adjudicated in an accelerated form of procedure. However, due to the backlog of Slovenian courts, the actual resolution of the dispute is usually given several months after the start of the proceeding.

- Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?

The possibility of alternative dispute resolution is available, although there are no specific procedures developed precisely for the tenancy matters, nor are these compulsory. Instead, a court-annexed mediation is usually offered to the parties. However, these types of dispute settlement are not pervasive in Slovenia.

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?

In order to get non-profit (social or subsidized) housing, a prospective tenant must apply to the public tender, when it is announced in the media. He must submit necessary documentation to the authority in charge, which is evident from the notice. Apart from the application, the applicant must submit documents on incomes, statement on ownership of property²²², the present rental contract, the last decision on the income tax charged and other documentation set by the public notice. For instance, if some of the household members are disabled, relevant documentation must be enclosed (medical report). Afterwards, the decision is rendered by the housing committee in charge. Eligible tenants are divided in two different lists, A and B. Eligible tenants on list B pay own participation and security deposit, while those on the list A do not. In the case that an applicant is not satisfied with the decision, he has a right to appeal to the second instance authority (for instance, Mayor, if the dwellings are allocated by the municipality housing fund). After the final lists are composed, tenants must wait for their dwelling to be vacated or completed (in case of the newly built dwellings). The tenancy contracts are then concluded, alongside the contracts on the payment of own participation and security deposit.

The procedures of different public landlords are similar and may differ only in the documentation needed or certain criteria (e.g. some municipalities demand that the applicant must have a registered permanent address in that municipality for five years, while others may demand less).

Housing subsidies (for market and non-profit dwellings, as well as the exceptional housing aid) are awarded by the centres for social work. The prospective tenant applies for the subsidy in the centre for social work in the municipality, in which he has permanent residence registered. He must enclose a particular form (application), as well as the documentation proving his property and financial circumstances. The subsidy is awarded for the period of one year and may be awarded in the following years as well. If the tenancy contract is concluded for the period less than one year, the subsidy is awarded for the same (shorter) period.

- Is any kind of insurance recommendable to a tenant?

No specific insurance is recommendable to tenants. Insurances play a more important role for landlords, for instance, insurance of the loan, against natural disasters, etc. Tenants may, at their own discretion, insure movables in the dwelling with one of the insurance companies in Slovenia.

- Are legal aid services available in the area of tenancy law?

Legal aid services are available also for tenancy disputes. Free legal aid may be granted for the following legal actions: legal counselling, legal representation, all types of juridical protection in front of courts of general jurisdiction and specialized courts in Slovenia, which have jurisdiction over out-of-court settlements, exemption

²²² With this statement, the applicant and his household members allow the organ to inquire on their personal data.

from court fees, as well as other legal services set by the law. The aid, however, does not cover the costs incurred during the court procedure (such as production of evidence), actual expenses and other party's attorney fees

An application for free legal aid is filed with either the court competent for the dispute or the court in which the applicant has his residence registered. The application may be submitted at any stage of proceedings (at the very beginning or later in the process). Free legal aid may be granted only for the expenses incurred after the submission of application.

The criteria for obtaining free legal aid are rather strict. Apart from the social and financial threshold, the essential conditions for granting free legal aid is that the case is not manifestly unreasonable, that it is vital for applicant's personal and socio-economic status, that the expected result of the case is vital for the applicant or his family, that the case has probable chances for success and is therefore reasonable to file it or defend or object thereto, or that the unresolved case is the reason for the applicants financial hardship.

- **To which organizations, institutions etc. may a tenant turn to have his/her rights protected?**

There is only one organization for helping tenants protect their rights or give information. It is the **Slovenian Association of Tenants** (*Združenje Najemnikov Slovenije*) and is situated in Ljubljana (the capitol).

The Association offers assistance and legal help to tenants regarding their rights and obligations deriving from their tenancy contracts. A membership fee is charged, amounting to 40 EUR per year. However, the membership fee is paid only by the tenants residing outside of Ljubljana, since the municipality of Ljubljana sponsors the fee for its residents.

The contact information of the Association is below.

Address: Tavčarjeva 3, 1000 Ljubljana

Telephone numbers: +3861/43-12-324

+38640/829-428

E-mail address: info@zdruzenje-najemnikov.si

Working hours: every Tuesday from 17:00 to 20:00

SPAIN

Tenant's Rights Brochure

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1. Introductory information

- **Introduction: The national rental market**
 - **Current supply and demand situation**

In Spain, the supply and demand for rental housing was weak during the real estate boom period (1997- 2007), with a rental rate of 10% in 2006, due to the advantages and incentives associated with ownership. However, as of 2007, with the slump in the construction sector, a large excess stock of unsold new homes began to accumulate, which reached the sum of 687,523 homes in 2011. Faced with the impossible task of selling this surplus, owners, especially banks and developers began to place these properties on the rental market, resulting in an increase in the number of homes on offer, both on the open market and on the private market.

Moreover, in the current economic climate, the demand for rental properties has risen, not just due to the increase in the number of people who require housing and who cannot afford to buy, but also because of the many potential buyers who, faced with financial uncertainty, have opted for this form of tenure, which does not require loans or a large capital outlay. However, it must be borne in mind that 70% of unsold housing stock does not match the requirements of potential tenants, particularly the market group of young people under the age of 35, given that 65% of youths between the ages of 18 and 35 live with their parents, a figure that is far higher than in other European countries.

- **Main current problems of the national rental market from the perspective of tenants**

The main problem is the mismatch between supply and demand for rental housing, because even though there is a proportion of unoccupied homes on the market (13.7%), there is an unmet demand from tenants who are not suitable candidates to occupy the available housing.

The stock of empty homes consists mainly of second homes and primary residence projects in minor towns, which therefore have fewer potential tenants. Moreover, this surplus housing is composed mostly of medium to high quality properties that do not meet the primary needs of the rental market or correspond with its current financial capacity to make rental payments.

Although rent prices have fallen by about 30% since 2007, they are not yet proportional to the income of prospective tenants, which tend to be the people who are in the most precarious financial and social positions. Even if they have a job, a worker who earns the minimum wage will have to allocate more than 85% of his/her income to paying a free market rent, which places them at risk of social exclusion and homelessness.

- **Significance of different forms of rental tenure**
 - **Private renting**

The rental market in Spain makes up about 12 to 16% of the occupied housing market, depending on the source consulted, which is very far from the European average of around 33.2%. Furthermore, only 2.8% of rental properties are below

market price. Perhaps one of the most significant issues is that Spain does not have a professional sector dedicated to the rental market, since most of the properties on offer are owned by private individuals.

- **“Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc)**

The volume of social housing available for rent in Spain is much reduced; it barely makes up 2%, whereas the European average is around 9%. Also, social housing is mostly managed by public entities, with access to a very limited and fragmented selection of rental properties that are mostly provided by non-profit organizations who cannot provide sufficient coverage to cater to all the people who are at risk of becoming homeless, a situation that has been on the increase since the start of the economic crisis in 2007; the poverty rate now stands at 21%.

- **General recommendations to foreigners on how to find a rental home**

In order to find a rental property, it is important to check the various different sources of information: local newspapers, real estate websites, local real estate agents and to sign on to the Register of Subsidized Housing Applicants, in addition to applying to the various reduced price social housing programmes.

Immigrants need to verify that the dwelling complies with housing regulations and offers suitable living conditions for their family, given that if they are searching for low rents, they may be affected by overcrowding and/or substandard housing. For the purposes of finding affordable housing it is important to concentrate on outlying areas rather than the city centre.

- **Main problems and “traps” in tenancy law from the perspective of tenants**

- With the approval of the latest amendment to The Law of Urban Leases (hereinafter, also the LAU), applicable to rental agreements signed on or after the 6th of June 2013, the tenant's stability in the home has been reduced: the mandatory minimum term for rental agreements is cut from 5 years to 3 years, rent updates may now be freely negotiated, without an indexing system that limits the maximum amount of rent that can be charged or ensures affordable rental rates, the law also permits the waiving of the right of first refusal.

- In order for the mandatory minimum term to remain in effect, when faced with the possible sale of the property or in the event that the landlord's property rights are terminated, the agreement must be entered into the Property Registry, with the corresponding financial costs that this entails.

- In the event that the landlord loses his/her property rights by virtue of the rental property being the subject of a mortgage foreclosure, the rental agreement will be null and void, given that in most cases, the placement of the mortgage on the Property Register will predate the entry of the rental agreement.

- When regulating the landlord's power to terminate the tenancy prior to the end of the minimum extension period, in the case that he needs the dwelling for himself or a for first-degree relatives, a three month deadline was established for the owner to occupy the property, however the regulation did not establish how long the owner or his family must remain in the property, something that may give rise to a fraudulent use of this provision, given that he/she may rent out or freely dispose of the property immediately after he or his family have taken up residence there.

- If the landlord fails to fulfil his/her obligation to maintain the dwelling, the tenant is entitled to carry out repairs and seek reimbursement from the landlord only in the case of imminent damage or when the damage causes severe discomfort. In all other cases, when faced with the landlord's neglect, the tenant's only option is to make a legal claim for compliance in the courts. It may take the courts between one and three years to settle his/her claim, so in the majority of cases the tenant is not willing to wait that long, especially considering that the duration of tenancy contracts is of no more than three years. Given the lack of effectiveness in dealing with the problem of landlord neglect, in these cases the tenant usually terminates the tenancy contract and looks for another rental property.

- ***Important legal terms related to tenancy law***

Spanish legal terms	Translation into English
Actividades molestas, insalubres, nocivas, peligrosas o ilícitas	Annoying, unhealthy, noxious, dangerous or illegal activities
Alquiler social	Social rental
Arras	Earnest money (deposit)
Arrendador	Landlord
Arrendamiento de vivienda	Renting a dwelling
Arrendamiento para uso distinto de vivienda	Rental for a use other than as a place of residence
Arrendamiento urbano	Urban leases
Arrendatario	Tenant
Aval	Surety
Buena fe	Good faith
Certificado de ingresos	Certificate of income
Compensación	Offsetting
Contrato de arrendamiento	Tenancy contract

Crédito refaccionario	Renovations loan
Desistimiento	Withdrawal
Devengo	Accrual
DNI (Documento Nacional de Identidad)	National Identity Document
Efectos <i>erga omnes</i>	<i>Erga omnes</i> effects
Ejecución hipotecaria	Mortgage foreclosure
Enervación	Enervation
Expropiación forzosa	Forceful expropriation
Fianza/depósito	Guarantee/deposit
Gastos de comunidad	Communal expenses
Hipoteca	Mortgage
Impuestos (sobre el inmueble)	Taxes (on the property)
Indemnización (de daños y perjuicios)	Compensation (for damages)
Índice General de Precios al Consumo	General Consumer Price Index
Lanzamiento	Eviction
Mantenimiento	Maintenance
NIE (Número de Identificación de Extranjeros)	Foreign Resident Identity Number
Nulidad	Nullity
Precontrato	Pre-contract
Prorroga obligatoria	Mandatory extension
Renta	Rent
Reparaciones de conservación	Maintenance repairs
Reparaciones de uso	Day-to-day repairs
Reparaciones por culpa del arrendatario	Repairs due to actions of the tenant
Retracto convencional	Conventional redemption

Retracto legal	Legal redemption
Salario mínimo interprofesional	Minimum wage
Seguro de caución	Guarantee insurance
Servicios (agua, gas, etc.)	Utilities (water, gas, etc.)
Subarrendamiento	Subletting
Subrogación (legal)	Subrogation (legal)
Tácita reconducción	Tacit renewal
Tanteo	Right of first refusal
Vicios de habitabilidad o conservación de la vivienda	Defects in the habitability or conservation of the dwelling
Vicios ocultos	Hidden defects

2. Looking for a place to live

2.1. Rights of the prospective tenant

- **What bases for discrimination in the selection of tenants are allowed/prohibited? What about, for example, status as a foreigner, student, unmarried partner, or person with a short-term work contract?**

In Article 14 of the Spanish constitution, Spain recognizes the right not to be discriminated against for reasons of birth, race, gender, religion, opinion or any other personal or social condition or circumstance. Also, in compliance with Directive 2000/43/CE, it includes housing among the publicly offered goods that are subject to a prohibition of discrimination. Thus, when it comes to access to housing lists, subsidies and tax benefits, the same rights have been conferred upon the both natives and European citizens and their families, as well as nationals from third party countries that are long term residents in Spain. In addition, the law prohibits discrimination in access to housing when it prevents unmarried or same sex partners from subrogating one another on the tenancy contract.

Differential treatment is only accepted when there is a reasonable and objective justification for it, that is, if it pursues a legitimate objective or if there is reasonable proportionality between the purpose being sought and the means employed to achieve it. In this sense, protection is afforded to certain groups that are considered vulnerable, due to the fact that they suffer the risk of social exclusion: People who have been evicted, the disabled, people over 65, women who are victims of domestic violence, single parent families or young people between 18 and 35. Positive discrimination policies have been approved in their favour when they have limited financial resources, giving them preference in access to social housing or granting them public subsidies for the payment of rent.

- **What kinds of questions by the landlord are allowed (e.g. on sexual orientation, intention to have children etc)? If a prohibited question is asked, does the tenant have the right to lie?**

The landlord may request whatever financial and personal information he or she deems necessary to know if the prospective tenant is suitable to rent the property. However, this does not include such intimate areas of people's private lives as their sexual orientation or whether or not they intend to have children. In these cases, the tenant is under no obligation to provide such information; therefore, if he lies about it, he will not suffer any legal repercussions.

- **Is a “reservation fee” usual and legal (i.e. money charged by the landlord to allow the prospective tenant to participate in the selection process)?**

In Spain, an amount is normally paid in advance (deposit or down payment) to reserve the rental property, not to participate in the selection process. A pre-contract may be signed that should contain the basic provisions of a tenancy contract as well as all the stipulations that the parties must meet at a later time.

Normally, in order to reserve a property you must sign an earnest money contract; the amount paid is usually equivalent to one month's rent. In our legal system, there are three types of deposit: confirmatory (art. 1124 CC), bail and security (art. 1454 CC). The last type are the only ones that allow the parties to terminate or withdraw from the contract by either losing the amount deposited or returning double the amount received, since the others are binding for both parties and the second party may demand compulsory compliance. In the event that no form of deposit is specifically agreed, it is understood that the deposit is confirmatory and the amount paid as a down payment is an advanced payment on the rental fee.

- **What kinds of checks on the personal and financial status of the tenant are usual and legal (e.g. the landlord requiring an independent credit report)?**

Before entering into a private tenancy contract with the tenant, in general terms, it is common to ask for the submission of identity documents for each of the future titleholders (DNI or NIE) as well as documentation that proves they have sufficient financial resources by means of presenting an employment contract together with the most recent pay slips, the latest tax declaration filed, a pension certificate or a document certifying the public subsidy received, as the case may be. This financial and personal information may be requested by the owner or by the real estate agent if they have received authorization to this effect from the prospective tenant, given that personal information cannot be made available to third parties without prior consent from the tenant.

- **What is the role of estate agents in assisting the tenant in the search for housing? Are there other bodies or institutions assisting the tenant in the search for housing?**

The services that a real estate agent can offer prospective tenants are: looking for a dwelling that is suited to their needs and financial circumstances, managing the

tenancy contract, giving advice on the preparation and conclusion of the contract and providing information concerning the rights and duties assumed by both parties. It is also possible that they may manage the tenancy throughout its duration, oversee the payment of rent and any other amounts owed by the tenant as well as offer advice on the upkeep and use of the dwelling, the work that needs to be carried out and any other issues that may arise from the legal relationship. The agent may also offer a mediation service to help resolve any conflicts that may develop between the landlord and the tenant.

Searching for rental properties on internet websites such as, for example, www.fotocasa.es or www.idealista.com is also a common practice, as is the use of public agencies or groups who act as intermediaries or manage their own unoccupied housing. An example of this are the brokerage services offered by the universities, homeowner associations, Local Housing Offices, the municipal or regional bodies that manage social housing programmes, the Urban Property Chambers and the banks with regard to their own rental properties.

- **Are there any accessible “blacklists” (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?**

The landlord may verify the tenant's creditworthiness by consulting with one of the companies that check files containing the names of people with recognized delinquency or payment defaults, such as SNEF, EQUIFAX, EXPERIAN, BADEXCUG, RAI, CIRBE and FIJ.

He can also consult the Register of final judgements in cases involving the non-payment of rent in order to verify whether or not the prospective tenant has any convictions for failing to make rental payments recognized by a court ruling or a final decision in an arbitration process. The landlord is only required to submit a contract proposal with the tenant's personal details.

2.2. The rental agreement

- **What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?**

The tenancy contract may be written or verbal, although it is recommended that it should be drawn up in writing. The contract is finalized with the consent of both parties, declaring that an offer was made and accepted relating to the issue that will make up the subject matter of the contract. The legislator has not established entry into the Property Register as a mandatory requirement. Nevertheless, by recognizing its access to the registry through the provision of a registration entry, the legislator has sought to protect tenancy law by making it effective before third parties (*erga omnes*). The dwelling should also have a valid occupancy certificate, unless it was agreed that the dwelling would be restored. In addition, the landlord is obliged to provide the tenant with a copy of the energy efficiency certificate.

- **What is the mandatory content of a contract?**
 - **Which data and information must be contained in a contract?**

It is mandatory for the contract to state the following: the identity of the contracting parties, their consent to be bound by the terms of the contract, the identification of the rental property and the initial rent payable. The term is also an essential component of the tenancy contract; however, if this is not declared in the contract, then the duration will be one year.

- **Duration: open-ended vs. time limited contracts (if legal, under what conditions?)**

Tenancy contracts must be for a fixed term, therefore, any clause that attaches indefinite extensions to the contract duration is deemed null and void, since it violates the general notion of time limitations and the notion that decisions should be dependant on both parties. In Spain, a minimum contract extension of three years is established, which is mandatory for the landlord. If neither party provides notification to the contrary, the contract shall be automatically renewed annually for one more year. Subsequently, if the tenant continues to use the dwelling during the fifteen days following the expiry of the final year of extension with the knowledge and acceptance of the landlord, then the tenant may continue to occupy the dwelling for a period equal to the rental periods, be they yearly, monthly or daily (tacit renewal).

- **Which indications regarding the rent payment must be contained in the contract?**

The contract must set the price of the rent. Concerning the form of payment, the place, the deadline and the updating of the rent price, if the parties do not agree otherwise, the provisions of the LAU will be applied, that is to say, the payment will be made in cash, monthly, within the first seven days of the month and in the rented property. The rent price will be updated in proportion with the increase in the CPI over the previous twelve months.

- **Repairs, furnishings, and other usual content of importance to tenant**
 - **Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?**

The tenant is responsible for making minor repairs, of limited scope and cost, arising from the ordinary day to day use of the property, any damage that can be attributed to him or those who live with him; and when the property is destroyed for reasons not attributable to the landlord, since in this case the lease would be terminated. In no case can the landlord pass on to the tenant the costs of the maintenance required to keep the dwelling in the living conditions necessary for the usage stipulated in the contract, including the deterioration caused by the passage of time, natural wear and tear, and its correct usage in accordance with the stipulated conditions.

- **Is the landlord or the tenant expected to provide furnishings and/or major appliances?**

Normally the tenant expects the dwelling to be equipped with furniture and household appliances, given that rental contracts have a short duration and furnishing the dwelling would be a significant expense for the tenant. Nevertheless, the law is silent

on this matter; the parties are free to agree a contract with or without furniture.

- **Is the tenant advised to have an inventory made so as to avoid future liability for losses and deteriorations (especially in the case of a furnished dwelling)?**

Yes, this document is not mandatory but it is essential when the landlord wishes to pursue a legal claim against the tenant for any damage and deterioration that has occurred in the dwelling. Also, the tenant can use it to demonstrate the real condition of the furniture and appliances at the time the contract was signed, so that claims cannot be made against him for defects that were already reflected in said inventory. It is important to ensure that a set of photographs documenting the state of the property, the furniture and the household appliances is attached to the inventory.

- **Any other usual contractual clauses of relevance to the tenant**

The tenancy contract must mention the delivery of a copy of the property's energy efficiency certificate, the number of the occupancy certificate that certifies that the property complies with the legal regulations and the property register reference number that identifies the property. It should state whether or not the tenant is permitted to sublet the property, transfer it to third parties or set up a business on the premises. It must also declare whether it is possible for the tenant to withdraw from the contract before the end of the first six months as established by law, and it should provide details of the placement of the security deposit in the corresponding register as is mandatory under the law. If it is stipulated that the tenant must pay taxes or other costs that are not charged individually to each household depending on consumption, it is essential that the annual cost of these expenses be entered into the contract.

- **Parties to the contract**

- **Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?**

His/her spouse, non-separated common law wife/husband, legal partner and his/her dependent children may reside at the rented property, also, the tenant will be considered to have his/her permanent residence there as long as these other people are occupying the dwelling, even if the tenant does not live there permanently.

The tenant may live in the dwelling with other people as long as he/she adheres to the rules on maximum occupancy set out in the certificate of occupancy and provided this does not involve subletting the property without consent.

- **Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?**

There is a requirement for the tenant or his or her spouse, non-separated common law wife or husband, legal partner or dependent children to permanently live at the rented property. Otherwise, the landlord is entitled to terminate the contract.

- **Is a change of parties legal in the following cases?**
 - **divorce (and equivalents such as separation of non-married and same sex couples);**

Yes, the law recognizes a legal right of subrogation for the tenant's spouse or partner when they are granted the right to use the rented property in a separation, annulment or divorce process. Also, following the approval of the new amendment to the LAU, Article 15 has been modified; it recognizes the non-lease holding spouse as the titleholder of the tenancy contract in the event that he or she is attributed a period of use of the rented property that is greater than the time remaining on the tenancy contract.

- **apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);**

The LAU does not recognize the right of subrogation for students. Nevertheless, it may be agreed in the tenancy contract, in accordance with the principle of freewill, given that this agreement does not go against the interests of the tenant.

- **death of tenant;**

A legal right of subrogation is recognized in favour of certain relatives if they were living with the tenant at the time of death. Therefore, the contract may be subrogated, with preferential treatment, to: a spouse or 2 year common law partner or the 2nd parent of the tenant's child/children, children under the tenant's tutelage or guardianship, romantic partners, children, parents, siblings, or other people with at least a 65% degree of disability who had lived with the tenant for the previous two years. If within three months the landlord has not received notification from the parties who are interested in subrogating the tenant on the contract, then the contract will be terminated. Also, for contracts with a duration of more than three years, the parties may agree to waive this right in the tenancy contract; the waiver would be applied once the first three years have elapsed.

- **bankruptcy of the landlord;**

When the landlord declares it has entered into an arrangement with creditors and the rented property is the subject of a mortgage, the creditor may foreclose on the mortgage provided that the loss of the property does not negatively affect the business activity of the entity under administration. In this case, if the tenancy contract was not filed in the Property Register, the contract will be terminated. If it is filed, the new proprietor will be subrogated into the agreement and will assume the rights and duties of the previous landlord for the duration of the contract, meaning that it will have to respect the exiting contract.

- **Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?**

The sublease must be partial (not complete) and it must have the written consent of the landlord. If this is not the case, he is entitled to terminate the tenancy contract,

and the sublease contract will be considered invalid. The sublet rent cannot be higher than the amount that the tenant is paying the landlord, and the duration of the sublease contract is subject to the length of the main contract.

In order to avoid the application of the rules and protections afforded by the LAU (Title II), it is common for the subtenant to be given a bedroom rental contract, which is subject to the CC, when it is in fact a sublease contract that is covered by Title II of the LAU. This happens when the landlord signs a contract that grants each person the right to occupy part of the dwelling, but in reality the householders each have joint access to the entire dwelling, as may happen in the case of a married couple or housemates with a close personal relationship, who do not use the dwelling separately or divide it by rooms but rather rent the dwelling with the intension of using it together.

- **Does the contract bind the new owner in the case of sale of the premises?**

The new owner is subrogated into the position of the landlord when the tenancy contract is entered into the Property Register prior to the sale or when it can be proven that the new owner did not act in good faith because he was aware of the existence of the tenancy. The new proprietor is also obliged to take over any contracts signed prior to 6 June 2013 during the first five years of these contracts.

- **Costs and Utility Charges**

- **What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?**

The tenant shall pay any expenses that are charged by means of individual meter apparatus such as water, electricity and gas. However, agreements to the contrary may be reached, as long as they are not detrimental to the interests of the tenant. The contract may establish who is responsible for contracting these services.

- **Which utilities may be charged from the tenant by the landlord? What is the standard practice?**

Regarding the remaining general expenses, such as services, taxes and liabilities that are not charged individually to each household depending on consumption, they are charged to the landlord, unless there is an agreement to the contrary, for example the payment of property tax or the condominium costs. The owner is normally responsible for these expenses, but there are an increasing number of contracts charging these costs to the tenant to compensate for the fall in prices experienced in the rental market since 2007.

- **Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?**

No, Public Services consider the owner of the property to be the one responsible for making these payments. However, the landlord may pass the cost of these services

on to the tenant, provided that the annual cost of these taxes is stated in writing in the tenancy contract.

- **Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?**

Yes, the recurrent costs charged by the homeowners association (condominium costs) may be passed on to the tenant, including any costs that arise from the proper maintenance of the condominium and that are payable by each homeowner in accordance with their share of ownership: communal area cleaning costs, property management fees, community water and power costs, etc. However, it is compulsory to enter this agreement into the tenancy contract and to include the annual condominium costs.

- **Deposits and additional guarantees**
 - **What is the usual and lawful amount of a deposit?**

When renting a property, it is compulsory for the tenant to pay one month's rent as a deposit, and failure to do so may lead to the termination of the tenancy contract. The landlord may also request any additional guarantees he deems necessary. It is common practice to request two or three months' rent as a deposit or the establishment of a joint and several personal surety from a person with an adequate level of solvency or the arrangement of a bank guarantee.

- **How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?**

The security deposit legislation is handled by each Autonomous Community, which sets its own regulations. In Catalonia for example, it is mandatory for the contractual landlord to deposit it at the *Institut Catala del Sòl*, using the official form, which may be processed at a set group of financial institutions, at the Chamber of Urban Property or at the institute itself. Upon termination of the tenancy contract, the contractual landlord himself will request the return of the security deposit, to be transferred to the bank account number he indicates, where he is the titleholder, within 21 days of the time he requests it. The landlord must refund the security deposit, or whatever amount remains after deducting the corresponding amounts in the event of damages or if outstanding expenses are owed. He will have a month to refund the deposit to the tenant, beginning from the time the keys are returned. From that time on, the amount owed will accrue the legal rate of interest.

- **Are additional guarantees or a personal guarantor usual and lawful?**

The parties may agree on any type of additional guarantee to ensure the tenant complies with his tenancy duties, apart from the cash deposit, such as a personal or bank guarantee. The guarantees that the tenant is required to provide in a tenancy contract might be abusive when they are not proportional to the risk taken or when the wording of the clause that imposes them is not clear and simple, with its content being obscure or confusing.

- **What kinds of expenses are covered by the guarantee/ the guarantor?**

The guarantee of a tenancy contract ensures compliance with the duty to pay the rent and other related expenses, as well the duty to compensate the landlord for any damage or detriment to the rented property or for the failure to comply with the duty to return possession of the property when the contract expires.

3. During the tenancy

3.1. Tenant's rights

- **Defects and disturbances**

- **Which defects and disturbances are legally relevant (e.g. mould and humidity in the dwelling; exposure to noise e.g. from a building site in front of the dwelling; noisy neighbours; occupation by third parties)?**

A) Hidden defects: The tenant can make claims from the landlord on account of hidden defects that already existed at the time of concluding the contract and which become apparent in the dwelling before six months have elapsed since the handover of the leased dwelling.

B) Conservation and use: During the term of the tenancy contract the landlord is obligated to carry out maintenance repairs as required to keep the dwelling in suitable conditions for habitation that allow it to serve the use established in the contract. Thus, the most important damages that the landlord must answer for are structural damages, which can lead to dampness, cracking, mould and other problems. The landlord will also answer for defects in electrical, gas and water installations, and for broken boilers.

C) Occupation: Furthermore the landlord must also ensure tenant's peaceful enjoyment of the dwelling and, thus, must protect the latter from illegal occupation (squatting) of the home. Nonetheless, the tenant is also entitled to take direct action against a third party who disrupts possession of the property (hold and recover action).

D) Activities undertaken in the dwelling: The tenant is not allowed to carry out in the leased home any annoying, unhealthy, noxious, dangerous or illegal activities, the landlord being able to terminate the contract should such activities take place. Consequently, the tenant must avoid emitting excessive noise or odours, and must not carry out activities in the dwelling that are illegal, such as prostitution or the sale of drugs, as well as any activities that are simply annoying or unhealthy for other neighbours in the building.

- **What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)**

A) Hidden defects: the tenant will be able to withdraw from the tenancy contract or request a reduction on the rent. Also, if the landlord has acted in bad faith, he could be required to pay compensation for any damages suffered.

B) Defects in the habitability or conservation of the dwelling: the tenant can demand that the dwelling be repaired and, if this is not done, withdraw from the tenancy contract and claim compensation for any damages suffered.

C) Illegal occupation (squatting): the tenant will have a period of one year as of the time when the dwelling is occupied by third parties to claim possession of the leased property through a hold and recover action. Illegal occupation (eviction): the tenant will be able to request the resolution of the lease with the corresponding compensation for damages suffered due to any disturbance in fact or of rights by the landlord affecting the dwelling.

D) Activities in the home: the landlord will be able to request the resolution of the lease, a faculty that will also be available to the homeowners' association when the tenant indulges in annoying, unhealthy, noxious, dangerous or illegal activities.

- **Repairs of the dwelling**
 - **Which kinds of repairs is the landlord obliged to carry out?**

The landlord is obligated to carry out any maintenance repairs that are required to keep the home in a suitable state for habitation in line with the use agreed in the contract, including deterioration due to the passage of time, natural wear and tear and correct usage in accordance with what was agreed. The landlord will also answer for repairs deriving from normal use that would have an excessively high cost for the tenant. On the other hand, he will not be liable for damage that is attributable to the tenant or anybody living with the tenant, or if the dwelling is destroyed for causes that are not attributable to the landlord, in which case the lease will be rescinded.

- **Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?**

The tenant may carry out on his/her own account only those urgent maintenance repairs that are necessary to prevent imminent damage or serious discomfort, with prior notice to landlord. The tenant will be able to demand the cost of such repairs immediately from the landlord. In all other cases, the tenant may only resort to court when faced with passivity or opposition to the works from the landlord, being able to choose either the termination of the lease and compensation for the damages suffered or, alternatively, the mandatory execution of the necessary repairs that the landlord is obligated to make, at the expense of the latter, as well as compensation for damages caused by the landlord's negligent behaviour.

- **Alterations of the dwelling**
 - **Is the tenant allowed to make other changes to the dwelling?**
 - **In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)**

The tenant may, following written notice to the landlord, carry out any works or actions inside the dwelling that are necessary for it to be used appropriately and in keeping with a physical disability or with being of an advanced age (specifically over seventy years old) in the case of either the tenant or his/her spouse or partner, or any relative living with them on a regular basis, provided that such works or activities do not affect communal parts or services of the building or lead to its reduced stability or security. Nonetheless, the tenant is obligated, at the end of the term of the contract, to return the dwelling to the state it was previously in, if so required by the landlord.

- **Affixing antennas and dishes**

The tenant will be able to install an antenna on his home without the need to obtain the owner's approval, given that this does not imply a modification of the home's configuration. However, if the antenna is placed on the facade, it will be necessary to obtain the approval of the homeowners' association, as this is a communal part of the building.

- **Repainting and drilling the walls (to hang pictures etc.)**

The tenant will be able to carry out works on his own account, without the need to obtain the landlord's approval, provided that these do not alter the dwelling's configuration (he must not redistribute the structure, change its initial appearance, or perform fixed and attached works on the dwelling or its accessories), nor must he alter the stability or security of the same. Thus, the tenant will be able to paint the dwelling, hang paintings on the walls and install anything that is movable and which can later be returned to its original state.

However, at the end of the lease the dwelling must be returned in the state it was in when handed over, not taking into account deterioration due to the passage of time and natural wear and tear. Thus, if the home was handed over by the landlord correctly painted, it must be returned in the same condition. The tenant cannot be required to return the home in the very same colour, but it must belong to a similar colour range and not have any eccentric colours, if none were present when handed over by the owner, given that removing such colours has a higher cost than would otherwise be involved in getting the property ready for the next tenancy. As regards holes in the walls, if these were not present when the home was handed over by the landlord, they must be filled in to return the property in a suitable condition, and the tenant must refrain from drilling holes into tiles or other materials that would be impossible to return to their previous state.

- **Uses of the dwelling**
 - **Are the following uses allowed or prohibited?**

The landlord is granted the faculty to resolve the contract by law whenever any annoying, unhealthy, noxious, dangerous or illegal activities take place in the dwelling.

- **keeping domestic animals**

Consequently, it is not forbidden to keep animals in rented homes, although if these prove to be a source of annoyance or lack of hygiene in the home, the landlord could request the termination of the tenancy contract.

- **producing smells**

Smells in the home are banned if they are strong enough to be a source of annoyance to neighbours or if they might lead to a lack of hygiene. It is possible to request the intervention of the Public Administration in order to verify if there is really a danger of unhygienic conditions on the property; if so, the tenancy contract could be terminated.

- **receiving guests over night**

It is not forbidden to receive visitors at night, nor for the tenant to cohabit with other persons, provided that there is no danger of overcrowding or lack of space and that no annoyance is caused to neighbours.

- **fixing pamphlets outside**

There is no legal prohibition in this regard. However, the homeowners' association may establish a ban on this matter by voting on the same at an owners' assembly meeting and incorporating the decision into the communal bylaws.

- **small-scale commercial activity**

It is necessary to have generic authorization to use the home for other purposes besides the main one, as otherwise there would be a sublease or an unauthorized assignment of part of the property. Also, the commercial activity must have a secondary, accessory and subordinate nature with regard to the main purpose, which is to use the dwelling as the permanent residence of the tenant. Otherwise, the tenancy contract could be terminated due to not using the dwelling for its principal purpose of serving as a home.

3.2. Landlord's rights

- **Is there any form of rent control (restrictions of the rent a landlord may charge)?**

There is no rent control system in Spain. The parties are free to set the initial rent and to update the same.

- **Rent and the implementation of rent increases**
 - **When is a rent increase legal? In particular:**
 - **Are there restrictions on how many times the rent may be increased in a certain period?**

The rent can only be updated on an annual basis, on the same date as the tenancy contract was signed (art. 18.1 LAU 1994).

- **Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?**

There is no maximum limit on the rent price. Furthermore, it is established that the rent update can be freely agreed between the parties (art. 18.1 LAU 1994).

- **What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?**

The rent update can be agreed between the parties. In the event that there is no express agreement, the rent can be updated on an annual basis, on the same date as the tenancy contract was signed, applying to the rent in place for the previous year the percentage variation in the National General Index of the System of Consumer Price Indices (IPC) in the twelve-month period immediately prior to the date of each update, taking as the reference month for the first update the month corresponding to the last index published on the date of the signing of the contract, and for successive ones that which corresponds to the last one applied.

The updated rent will be due from the tenant as of the month following that when the interested party notifies the other party in writing, expressing the percentage variation applied and attaching, if the tenant requires it, the corresponding certification of the National Institute of Statistics, or providing reference to the Official State Gazette in which it is published.

- **Entering the premises and related issues**
 - **Under what conditions may the landlord enter the premises?**

As of the moment when the landlord delivers the keys to the tenant, the landlord shall not be able to enter into the dwelling unless he has the tenant's permission or a court order, even if the tenant is residing unduly. The entry into the dwelling by the landlord may imply a crime of housebreaking specifically punishable under article 202 CP by an imprisonment of six months to two years.

- **Is the landlord allowed to keep a set of keys to the rented apartment?**

It is not prohibited in Spain for the landlord to have a set of keys to the rented dwelling. However, he shall not make use of them unilaterally to enter into the rented dwelling, since this would require the tenant's consent or a judicial warrant.

- **Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?**

No, he cannot do it unilaterally. In the event that the lease contract is terminated, there must be evidence that the tenant has abandoned the dwelling, for example by signing a contract termination agreement and by handing over the keys. Otherwise, the landlord shall request of the court the tenant's eviction and wait for the actual expulsion to occur, so as to proceed to enter the dwelling.

If these conditions are not met and the landlord decides to change the lock of the

rented dwelling without the proper legal cover and with the intention of preventing access to the dwelling, he may be guilty of coercion, either as a crime, or as a misdemeanour, depending on the seriousness of the facts and the violence used. It is also possible for the landlord to commit a crime of housebreaking; in fact, a forced entry is a qualified variety of coercion under the Spanish system.

- **Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?**

The special legislation on tenancies does not recognize any legal and specific right of the landlord to seize the tenant's movable property in the event that the latter should have a debt with the former, although the parties could agree to establish this faculty in the contract.

4. Ending the tenancy

4.1. Termination by the tenant

- **Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?**

In Spain it is not possible to establish an open-ended lease.

- **Under what circumstances may a tenant terminate a tenancy before the end of the rental term (e.g. unbearable neighbours; bad state of dwelling; moving for professional reasons)?**

The parties can agree to terminate the lease at any time. Furthermore, the tenant may withdraw from the contract at the end of each yearly extension, notifying the landlord at least thirty days in advance, also being able to withdraw unilaterally when at least six months have elapsed since the signing of the tenancy contract, notifying the landlord at least thirty days in advance, and compensating him with one month's rent for every year left to run on the contract, if so agreed in the tenancy contract. The tenant will also be able to withdraw from the contract when the leased dwelling becomes unfit for habitation or when improvement works are performed that significantly affect the leased dwelling. The tenant may terminate the contract due to breach of the landlord's obligations: any disturbance on the part of the landlord affecting the use of the dwelling, or when the landlord is in breach of the duty to maintain the dwelling.

- **May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?**

The tenant may only transfer his right of tenancy to a third party when he has the landlord's consent.

4.2. Termination by the landlord

- **Open ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it**

differently in the future)?

In Spain it is not possible to establish an open-ended lease.

- **Must the landlord resort to court?**
- **Are there any defences available for the tenant against an eviction?**
- **Under what circumstances may the landlord terminate a tenancy before the end of the rental term?**

The landlord may terminate the tenancy contract once the first year of the term of the same has elapsed, provided that he notifies the tenant of this intention two months in advance, the latter needing the leased dwelling to serve as his/her permanent place of residence or that of first degree relatives or adopted dependants, or for his/her spouse in those cases where there is a final ruling of separation, divorce or marriage annulment. The contract will also be rescinded when the lease is not registered in the Property Registry prior to the sale of the dwelling or the termination of the landlord's right. The landlord may terminate the tenancy contract due to breach of the tenant's obligations: failure to pay the rent or assimilated amounts, the amount of the deposit or the update of the same, unauthorized subletting or assignment, negligent damage to the leased dwelling or the performance of works not approved by the landlord in cases where such consent is required, cases where the dwelling is used for annoying, unhealthy, noxious, dangerous or illegal activities, or when the home is no longer used primarily to satisfy the tenant's or his/her family's need for a place of residence.

- **Are there any defences available for the tenant in that case?**

If the leased dwelling, once recovered due to need, is not occupied by the landlord or a member of his family within three months of the eviction of the tenant, except in cases of force majeure, the landlord will have to reinstate the tenant in the possession of the dwelling for a term of three years or compensate him with one month's rent for every year left to run on the contract.

In cases of the sale of the leased dwelling or the resolution of the landlord's right, the tenant will be able to try to show that the new owner has not acted in good faith, as he was aware of the existence of the tenancy, or that the landlord had consented to a sublease, transfer or the performance of works on the dwelling.

In the event of non-payment of the rent or other amounts, the tenant will be able to oppose the demand for payment on the grounds that he had already made payment previously, or because he prefers to make the payment in Court when required to do so (enervation), if he has not previously availed of this possibility.

- **What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?**

The landlord will have to file a lawsuit claiming the end of the contractual period if he is unable to recover possession of the property himself, both in the case that the tenant does not leave the property and also if he/she leaves without returning the keys to the dwelling and does not sign any contract termination document.

4.3. Return of the deposit

- **Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?**

The landlord will have a period of one month to return the deposit, or the amount of the same left after deducting the cost of any repairs for damages or unpaid expenses. As regards the accrual of any interests on the deposit lodged in cash with the corresponding Administration, the LAU establishes that no interest will accrue on the amount deposited while the tenancy contract is in force. However, if after one month of the termination of the contract and the corresponding communication to the Administration, the deposit amount has not been returned, it will accrue interest at the legal rate for money.

- **What deductions can the landlord make from the security deposit?**
 - **In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?**

The landlord can use the deposit to satisfy the following obligations, in cases where these have not been satisfied by the tenant when the contract was resolved:

- The obligation to pay the rent and any amounts whose payment was assumed by or corresponds to the tenant, such as those for water, electricity, gas and IBI (property tax) if so agreed.
- The obligation to compensate the landlord for any damages to the leased property, due to inappropriate or non-diligent use by the tenant or by people that he answers for, including damage to furniture.
- The compensation due because of breach of the obligation to return possession of the property on the termination of the contract (art. 1561 CC).

4.4. Adjudicating a dispute

- **In what forum are tenancy cases typically adjudicated?**
 - **Are there specialized courts for adjudication of tenancy disputes?**

The resolution of tenancy disputes corresponds to Courts of First Instance of the place where the property is located. In 2008, ten Courts of First Instance were created that specialize in expediting eviction processes. These courts are not exclusively dedicated to these matters, but can give preference to resolving them.

However, it must be borne in mind that there is also an administrative procedure for evictions for VPO homes, although it is barely used. Also, as of 2013 there is the possibility of resolving tenancy contracts before notary publics when the breach is due to a failure to pay rent, this has been provided for in the contract and the same is registered in the Property Registry.

- **Is an accelerated form of procedure used for the adjudication of tenancy cases?**

In civil law, legislators have regulated a simpler and more agile procedure for processing evictions due to lack of payment or expiration of the contractual term. Once the suit has been lodged and compliance with the formal requirements has been verified, the clerk of the court issues a Decree accepting the suit, indicating the time and date for the hearing in the event that the tenant should oppose the suit, as well as for the actual eviction. If the tenant does not oppose the suit (by paying or opting for enervation) the court will proceed directly with the eviction.

- **Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?**

Efforts have been made to promote arbitration, acknowledging the importance of including a clause submitting to arbitration in tenancy contracts. Nonetheless, Arbitration Tribunals hear a much lower number of cases than Courts of Law, and, for example, in 2012 the Courts in Barcelona Province handed down 3,619 Eviction Rulings and 7,764 Eviction Decrees in tenancy matters, while the Arbitration Tribunal of Barcelona only processed 71 cases, of which only 3% dealt with tenancy matters.

As of 2013 there are also regulations on mediation as a voluntary process before resorting to court.

5. Additional information

- **How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?**

First of all, he/she will have to register in the Registry of Applicants for Social Housing of his/her Autonomous Community and/or municipality. Once registered, he/she will be included in the public draws for social housing for which he/she is eligible. Also, once registered he/she will be able to approach social housing developers directly, which may be private companies, Town Councils, foundations, associations or financial entities.

Whenever there is a risk of residential exclusion, applicants should also approach the social services in the place where they live, as well as any non-profit organizations that have social housing or reserved flats to respond to the most urgent cases of housing needs.

- **Is any kind of insurance recommendable to a tenant?**

It is increasingly common for landlord's to take out insurance policies to cover the expenses incurred in managing tenancies. The prices of these policies can vary between approximately 80€ and 200€ per annum, depending on the coverage provided. It is possible for such policies to include only legal defence expenses, or for them to also cover part or all of the cost of rents due, and even acts of vandalism that might be committed by the tenant in the dwelling.

- **Are legal aid services available in the area of tenancy law?**

To obtain legal aid it is necessary to go to a private lawyer or to the Legal Advice

Service of the municipality or province, which is usually available at the headquarters of the Courts of Justice. The tenant can request prior advice and consultation before the judicial process, as well as defence and representation by a lawyer and court representative at the hearing, provide the requirements for obtaining free legal aid in court are met. These requirements establish a maximum income of between 2 and 3 times the IPREM (Public Income Indicator), depending on the number of members in the cohabitation.

- **To which organizations, institutions etc. may a tenant turn to have his/her rights protected?**

- Chamber of Urban Property: For obtaining general information on tenancy and, above all, advice for owners. There are different municipal offices. There is also the Confederation of Chambers of Urban Property, a State entity. C. Princesa, 1-3, Via Laietana, 22, 08003 Barcelona, cambra@cambrapropbcn.com, Tel. 933.192.877.
- Office of Consumers and Users: For obtaining information on the contractual rights and obligations of consumers and for lodging complaints against companies that breach consumer rules. Although there are different municipal and provincial offices, the headquarters are at: C. de Albarracín, 21, Polígono Julián Camarillo 28037 Madrid. They can be contacted at www.ocu.org/contacto, Tel. 913 000 045.
- Agència de l'Habitatge de Catalunya [Catalonian Housing Agency]: Each Autonomous Community has an entity that provides information on housing issues. The Agència de l'Habitatge de Catalunya is the body that manages social housing in Catalonia, and it also has provincial offices: C. de la Diputació, 92, 08015 Barcelona, agenciahabitatge@gencat.cat, Tel. 932 28 71 00.
- Local Housing Offices: The local corporations also have entities that provide information on social housing at Town and County Councils. For example, in Barcelona there are 10 such offices, like the Consorci de l'Habitatge de Barcelona [Barcelona Housing Consortium]: C. de Bolívia, 105 1ª planta 08018 Barcelona, which can be contacted at www.bcn.cat/habitatge

SWEDEN

Tenant's Rights Brochure

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1. Introductory information

- Introduction: The national rental market
 - Current supply and demand situation

The shortage of rental dwellings is a big problem in Sweden, especially in Stockholm, Gothenburg and Malmö and in the university towns.²²³ Overall, there is a net shortage of 92,000 to 156,000 dwellings in the whole country, depending on which economic model is used. This means that the supply needs to increase by between 102,000 and 163,000 homes where there are shortages, and reduced by 7,000 to 10,000 homes in the regions where there is a surplus.²²⁴ Almost half of the municipalities in Sweden (43 %) indicate that they have a shortage of housing.²²⁵

- Main current problems of the national rental market from the perspective of tenants

It is quite difficult to find a rental apartment without waiting for years in a housing queue in most large cities in Sweden, at least in the inner-city areas. This has created problems with swindlers advertising apartments and asking for deposit or rent in advance, as well as a black market of tenancies being sold although it is illegal to do so.

Tenants must also be aware that there are rogue landlords who will try to circumvent the legal rules and offer the tenant a sublease contract only. This is often arranged by the use of a front man, such as a separate company or a relative, who in turn will sublet to the tenant.

The tenancy legislation in Sweden is quite difficult to interpret, even for lawyers, and it is difficult to understand the legal rules on protected tenancy, period of notice etc., especially for people without legal knowledge.

- Significance of different forms of rental tenure
 - Private renting
 - “Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc)

In Sweden, rental tenures with and without a public task are not distinguished. Sweden has by definition no social housing, but about half of the rental sector is owned by municipally owned housing companies, whose goal is to provide housing for all, regardless of gender, age, origin or incomes. After time on a waiting list, the dwellings are allocated. To avoid stigmatization, there is no upper income limit for potential tenants, and as long as tenants can afford the rent, no lower income limit. Some tenants will need a housing allowance to be able to pay the rent.

- Some general recommendations to foreigners on how to find a rental home (including any specificities with respect to the position of foreigners on the national rental market)

How to find a rental home differs from municipality to municipality, since some have house allocation boards and some do not. Some allocation boards supplies dwellings

²²³ National Housing Credit Guarantee Board, "Samband mellan bostadsmarknad, arbetskraftens rörlighet och tillväxt" (2008) pp. 16-17

²²⁴ <http://www.boverket.se/Om-Boverket/Nyhetsarkiv/Vad-ar-bostadsbrist/>

²²⁵ <http://www.dn.se/ekonomi/stor-bostadsbrist-i-sverige/>

from both private and municipal landlords, such as Boplats Syd in Malmö and the Housing Authority of Stockholm (Stockholm stads bostadsförmedling). It costs around 25€ per year to be a part of the waiting list. Many private landlords have their own queues, which one can sign up for on their web pages or by calling them.

In areas where there is a severe housing shortage, as in Stockholm, it might not be possible to find a rental apartment to rent for oneself to start with. Some alternatives might be subletting, renting a room or living with others in these cases.

- Main problems and “traps” (circa 5) in tenancy law from the perspective of tenants

1. Look out for swindlers, especially on "Blocket" (www.blocket.se)

2. Make sure that the tenant who is subletting his or her apartment has permission from the landlord or from the board of the co-operative housing association; otherwise, the tenant runs the risk of forfeiting the tenancy or the co-operative apartment, and then the subtenant must move, too

3. Try to check if a landlord is on the Union of Tenants blacklist of landlords, as then it might be a good idea to stay away

4. Always ask for a tenancy agreement in writing. Even though an oral contract is binding, it is much easier to have everything agreed in writing in case of a conflict

5. Be aware that even a quite short delay of rent might forfeit the tenancy; pay the rent in time. (The tenant has a chance of recovering the tenancy by paying the rent within three weeks. This period of time starts when he is served with a notice explaining how he may recover it and a notice is sent to the social welfare committee in the municipality where the apartment is located. If the tenant does not pay on time, he will be evicted.)

- **Important legal terms related to tenancy law**

hyresgäst	tenant
hyresvärd	landlord
hyresrätt	tenancy
hyra	rent
besittningsskydd	protected tenancy
inneboende	lodger/live-in
förhandlingsklausul	bargaining clause
uppsägningstid	period of notice
hyresnämnden	rent tribunal
hyresgästföreningen	Swedish Union of Tenants
Kronofogdemyndigheten	Enforcement Authority
fullmakt	power of attorney
andrahandsuthyrning	sub-letting
bostadsrätt	co-operative apartment

tingsrätt	district court
tvistemål	civil case
deposition	deposit
stämningsansökan	application for a summons

2. Looking for a place to live

2.1. Rights of the prospective tenant

- What bases for discrimination in the selection of tenants are allowed/prohibited? What about, for example, status as a foreigner, student, unmarried partner, or person with a short-term work contract?

A landlord is free to choose whomever he wants as a tenant as long as it can not be considered discriminatory in any way. However, if a landlord exposes for example a prospective tenant for discriminatory behaviour in conflict with the Discrimination Act (diskrimineringslagen)²²⁶, the tenant can report it to the Equality Ombudsman (Diskrimineringsombudsmannen).²²⁷

- What kinds of questions by the landlord are allowed (e.g. on sexual orientation, intention to have children etc)? If a prohibited question is asked, does the tenant have the right to lie?

Questions on sexual orientation etc. are not prohibited per se but can be considered as evidence towards a discriminatory act if the prospective tenant does not get the contract.

- Is a “reservation fee” usual and legal (i.e. money charged by the landlord to allow the prospective tenant to participate in the selection process)?

No, such fees are not usual and not legal.

- What kinds of checks on the personal and financial status of the tenant are usual and legal (e.g. the landlord requiring an independent credit report)?

Before entering into a contract, most landlords will do a credit report and ask for a birth certificate, a certificate of employment and references from previous accommodations. If a tenant does not have a fixed income, many landlords will require a guarantor or charge a deposit. It is usual and legal.

- What is the role of estate agents in assisting the tenant in the search for housing? Are there other bodies or institutions assisting the tenant in the search for housing?

Estate agents work mainly with purchase and sale of property, but might in rare

²²⁶ SFS 2008:567

²²⁷ The Equality Ombudsman (DO) is a government agency that seeks to combat discrimination and promote equal rights and opportunities for everyone, and primarily concerned with ensuring compliances with the Discrimination Act

cases help a property owner letting his item if he is having problems getting it sold.²²⁸ Estate agents are generally not necessary for rented accommodation because of the housing shortage – a landlord setting legal rents will have a series of potential tenants to choose from.

In some municipalities there are allocation boards which may help tenants in the search for housing. If the tenant is in Sweden to study, he or she might be able to get help from the university or the student union.

- Are there any accessible “blacklists” (or equivalent mechanisms) of bad landlords/tenants? Is there a system for rating and labelling preferred landlords/tenants?

A tenant can check the blacklist of landlords which is developed by the Swedish Union of Tenants and published in their magazine. All landlords who receive a decision on a remedial injunction or compulsory management as provided in the Housing Management Act against them ends up on the list.

Many landlords most likely have some sort of list of tenants guilty of misconduct but it must be in writing and shared from person to person in order not to be in conflict with the Personal Data Act.

However, there is no rating system for either landlords or tenants.

2.2. The rental agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary; is registration necessary and if yes, what kinds of fees apply lawfully)?

Written form is not necessary; a contract may also be oral. No registration is necessary and no fees apply.

- What is the mandatory content of a contract?
 - Which data and information must be contained in a contract?
 - Duration: open-ended vs. time limited contracts (if legal, under what conditions?)
 - Which indications regarding the rent payment must be contained in the contract?

None of the above terms are mandatory contents of a contract, since the contract also can be oral. If the parties do not agree on a period of notice for example, the statutory provision of three months will apply. If they do not agree on a duration of the contract, it will be counted as an open-ended contract according to the Tenancy Act.

- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

²²⁸ An estate agent will either have a real estate license or a housing allocation license. I know of no instance where an agent has both.

No, it is the landlord who handles the repairs and furnishings. The above said does not apply, however, if an agreement has been made to the contrary and the tenancy agreement refers to a single-family dwelling or a holiday cottage, or the tenancy agreement includes a bargaining clause and the derogatory provisions have been included in a bargained agreement.²²⁹

If the rented property is a single family home or a holiday cottage, the parties may agree that the tenant will be responsible for maintenance. Through a collective bargaining agreement, it can be determined that the mandatory rule of the landlord's obligation to do customary repair shall not apply. The idea is that a residential tenant who is being offered repair is able to abstain it, and in return be able to get lower rent or a rebate. This is called tenant-controlled apartment maintenance and is quite common among the municipal housing companies.²³⁰

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

The landlord is expected and required to provide major appliances. The tenant provides furnishings unless the contract says otherwise (which is not uncommon).

- Is the tenant advised to have an inventory made so as to avoid future liability for losses and deteriorations (especially in the case of a furnished dwelling)?

Yes, it is a good idea.

- Any other usual contractual clauses of relevance to the tenant

There are no further contractual clauses of relevance to 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.)?

According to the Tenancy Act, anyone can move into the apartment together with the tenant, as long as it does not entail detriment to the landlord.²³¹ Situations that can entail detriment to the landlord are for example when a tenant has too many lodgers and it causes damage to the apartment or it is disturbing to other tenants.

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

A tenant who does not use the apartment as his primary residence runs the risk of getting a notice of termination from the landlord. The landlord may claim that the tenant has a lack of need of the dwelling, which makes it easy to find a ground that breaks the protected tenancy according to section 46 paragraph 10 in the Tenancy Act. In such a court matter, the rent tribunal must do a weighing of interests between the landlord and the tenant. If the tribunal finds that the tenant uses the apartments as his or her home he will remain in his apartment. The tenant may argue e.g. that

²²⁹ Section 15

²³⁰ Nils Larsson et al, *Bostadshyresavtal i praktiken*, 2010, pp. 87-88

²³¹ Section 41.

the apartment is a necessary complement to his usual residence and show that he uses the complementary apartment at least 2 - 3 times a week. But if the tenant never has lived in the apartment and he only wants to keep it to eventually be able to switch it to another apartment, or to use it for his children's housing needs in the future, he has no interest worthy of protection.²³²

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

Yes. A divorce can under certain conditions entitle a spouse to be assigned the tenancy. It must be the case of an apartment that is intended to be used as the couple's joint housing, one of the spouses is in most need of the dwelling and it is otherwise reasonable for that spouse to be assigned the dwelling. Who will be assigned the dwelling is not a question for the tenancy legislation; it is regulated in Chapter 11 section 8-10 in the Marriage Code (äktenskapsbalken).²³³ A dispute between the spouses is tried by the district court. If a tenancy has been awarded to one spouse through an estate division or a distribution of an estate, the spouse enters into the stead of the tenant or of the estate of the deceased. This also applies for a surviving spouse who is the sole heir. This type of change of parties does not require consent from either the landlord or from any authority. According to the Tenancy Act²³⁴, the landlord must accept the spouse as a sole tenant without any examination of the spouse's suitability.

In this matter a registered partnership has the same legal effect as a marriage. However, the Marriage Code became gender neutral on 1 May 2009, which means that same-sex couples now can marry. And registered partnerships were converted to marriage, and thus they do not exist anymore.

Similar rules apply to what in Sweden is called a "sambo", which means a cohabitant. Two people who live together on a permanent basis as a couple and who have a joint household are cohabitants. To count as a cohabitant some criteria must be fulfilled; the cohabitant must live with his/her partner on a permanent basis, and it can not be a relationship of short duration.²³⁵ The cohabitant and his/her partner must live together as a couple, in a partnership normally including sexual relations. The cohabitant must share a household with his/her partner, which means sharing chores and expenses. Whether the cohabitants are of the same sex is of no importance.

There are two possibilities for a cohabitant to take over the tenancy according to the Cohabitees Act. If the dwelling has been acquired for joint use, it can be assigned one of the cohabitants through an estate division.²³⁶ If the dwelling has not been acquired for joint use, it can be assigned one of the cohabitants under section 22 in the Cohabitees Act (sambolagen).²³⁷ This section says that one cohabitant may be

²³² Nils Larsson et al, *Bostadshyresavtal i praktiken*, 2010, pp. 206-207. If the tenant has no need of the apartment, the landlord need only the weakest of justifications to break the tenancy. Still the landlord need a justification. If both parties have the same interest (zero interest) the the tenant shall win.

²³³ SFS 1987:230

²³⁴ Section 33.

²³⁵ The relationship must have lasted at least six months.

²³⁶ Under section 3-21 in the Cohabitees Act

²³⁷ SFS 2003:376

entitled to take over the apartment, if he is in most need of the dwelling and such a takeover can be considered reasonable when taking the circumstances in general into account. If the cohabitantes do not have or have had children together, this applies only if there are extraordinary reasons for doing so.

If the cohabitants can not agree, the dispute is tried in the district court. When the dwelling has been assigned to one of the cohabitants, he or she may enter into the stead of the tenant or of the estate of the deceased.

If a cohabitant cannot be assigned the dwelling according to the rules in the Cohabitantes Act, he or she may be entitled to the tenancy under section 34 in the Tenancy Act. Section 34 gives a tenant who is not intending to use his dwelling unit the right to transfer it to a person closely connected to the tenant ("närstående" in Swedish). According to the preparatory work this can be a spouse, a child, a parent, a grandparent, a cohabitant, a cousin or another relative. Two friends can never be considered as "närstående".

The person to whom the dwelling can be transferred must also permanently live together with the tenant, and the rent tribunal must grant permission for the transfer. Such permission shall be granted if the landlord can reasonably be satisfied with the change. The permission can be made conditional. This also applies if the tenant dies during the term of the tenancy and his estate wishes to transfer the tenancy to a relative or some other "closely connected to the tenant who was permanently cohabiting with him.

A spouse or a cohabitant who does not have a share in the tenancy, can have an independent right of prolongation of the agreement if the tenant gives a notice of termination or takes any other measure to bring it to an end or if he or she is otherwise not entitled to prolongation of the agreement. The spouse or the cohabitant, if he or she has his or her home in the unit, is entitled to take over the tenancy and to have the tenancy agreement prolonged for his or her own part, insofar as the landlord can be reasonably satisfied with him or her as a tenant. The aforesaid also applies when the landlord has given notice of cancellation of the tenancy agreement on grounds of forfeiture. If the tenant is deceased, his or her surviving spouse or cohabitee will have the same right if the estate of the deceased is not entitled to prolongation and this has not been occasioned by the surviving spouse or cohabitee.²³⁸

If the landlord does not wish to consent to a prolongation of the tenancy agreement he shall request the spouse or cohabitee to move no later than one month after the tenancy relation with the tenant ended. Any such request is of no effect unless the landlord, within a month thereafter, refers the dispute to the regional rent tribunal or the person requested moves in any case before the period for referral has expired. If, however, the request has been made more than one month before the expiry of the term of the tenancy, referral can be made until the expiry of the term of the tenancy.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord);

²³⁸ Under section 47 in the Tenancy Act

It is possible to conclude a contract with several persons. These persons then have a joint responsibility to the landlord. However, it is important to note that if either of the persons on the contract gives the landlord a notice of termination, the contract becomes void, also in relation to the co-tenants. However, the co-tenants are entitled to have the tenancy agreement prolonged for their own part if the landlord can reasonably be satisfied with them as tenants.²³⁹

- death of tenant;

If a tenant is deceased all rights and obligations are taken over by the tenant's estate. The estate is entitled to terminate the contract with one month's notice.²⁴⁰ This also applies for a surviving spouse, cohabitant or a "närstående". If the landlord wants to give the estate a notice of termination, the regular rules on the period of notice apply which usually means three months.

- bankruptcy of the landlord;

If a property is brought to an executive auction on a forced sale, the tenants shall be notified so that they become included in the list of parties concerned. The property is offered up for bids, first without a proviso concerning the grant and then with the proviso. If the price offered is lower for the property with a proviso and that damages creditors with superior rights, the property is sold without the proviso.²⁴¹ But the new owner must give notice of termination of the tenancy agreement within one month of the access. Otherwise, the agreements are valid against the new owner.²⁴² The landlord must give the tenants a period of notice of three months and then apply to the rent tribunal. In this situation, the trustee is in no better position if he tries to evict the residential tenants than the original landlord was. The bankruptcy does not make it easier for the trustee. Hence, a tenant with a protected tenancy remains in his apartment. The provisions on terminating agreements are however important with regard to commercial contracts.

If the property is sold with the proviso, the tenancy agreements are valid against the new owner. If, however, the property is assessed as a rental housing unit, residential tenancies for an indefinite period of time which are based on a written document are always valid against the new owner if the tenant took possession of the dwelling before the executive sale.²⁴³

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary tenancy contract but only a sublet contract) be counteracted?

A tenant is normally not allowed to sublet his or her apartment without prior consent from the landlord.²⁴⁴ If the tenant still sublets without permission and does not take corrective action after being given a reprimand or ask for permission to the sublet without delay, he or she risks forfeiting the tenancy.

If the landlord does not give permission for the subletting, the tenant can apply to the rent tribunal. The rent tribunal can give permission under the conditions

²³⁹ Section 47 of the Tenancy Act

²⁴⁰ Under section 5 in the Tenancy Act

²⁴¹ Chapter 12 section 39 of the Enforcement Code (utsökningsbalken, SFS 1981:774)

²⁴² Chapter 12 section 46 of the Enforcement Code

²⁴³ Chapter 7 section 16

²⁴⁴ A general exception to this rule is found in section 39, which applies when a tenancy leased by a municipality. Such an apartment may be sublet without requiring the consent of the landlord. The landlord shall nevertheless immediately be notified of the sublease.

specified in section 40 in the Tenancy Act. The section states that the tenant must have notable reasons (beaktansvärda skäl) for the grant; age, illness, temporary employment in another locality, special family circumstances or comparable circumstances and the landlord does not have any justifiable reasons to refuse consent.

Special family circumstances are, for example, when a couple is moving in together as cohabitants and one of them wants to keep his or her apartment for a period of time to see how it goes. Temporary employment in another locality is equated with temporary studies elsewhere. A tenant can also receive permission for a longer trip abroad (usually a trip of at least three months). An elderly person who moves to a retirement home has the right to sublet, even if it is unclear whether or not the person will be able to return home.

The permission from the rent tribunal shall be limited to a fixed term and may be combined with provisions.²⁴⁵ For example, a tenant usually receives permission for one year when he or she wants to try the life as a cohabitant. When the permission has expired, the tenant can reapply for a new permission from the rent tribunal. Permission is normally given for one year at a time and seldom for more than a total of three years.²⁴⁶ If the subtenant can reasonably be accepted as a tenant, the landlord usually does not have any justifiable reasons to refuse permission. The subtenant's solvency normally lacks significance because it is the primary tenant that remains liable for the payment of the rent. The decisions from the rent tribunal in these matters can not be appealed.

There are rogue landlords who will try to circumvent the legal rules and offer the tenant a sublet contract only. This is often arranged by the use of a front man, such as a separate company or a relative, who in turn will sublet to the tenant. In these situations the subtenant can have the same right as a primary tenant under certain conditions.²⁴⁷

The first condition is that there is a community of interest between the property owner and the grantor. It may also be presumed that the legal relation is being used in order to evade a statutory provision which favours a usufructuary when this community of interest is considered along with the circumstances generally. If these conditions are fulfilled, the lessee and the tenant have the same right in relation to the property owner as they would have had if the property owner had granted their right of user. In other words, the subtenant is entitled to a prolongation of the agreement.²⁴⁸

- Does the contract bind the new owner in the case of sale of the premises?

If a property is transferred to a new owner, it will generally not affect the validity of the tenancy agreements concluded between the former owner and tenants of the

²⁴⁵ Nils Larsson et al, *Bostadshyresavtal i praktiken*, 2010, pp. 168-169

²⁴⁶ Charlotte Andersson, *Lägenhetsbyten och andrahandsuthyrning*, 2008, pp. 51-52

²⁴⁷ Under Chapter 7 section 31 in the Land Code

²⁴⁸ In NJA 1992 p. 598 a landlord had let an entire floor to her daughter. The daughter divided the floor into two apartments and sublet one of them. When the agreement between the landlord and the daughter expired, the landlord tried to evict the subtenant. The Supreme Court found that the subtenant had a protected tenancy and that he was entitled to a prolongation of the agreement. The landlord and her daughter had a community of interest, they had both tried to make the subtenant move and the landlord had said that she intended to let the apartment to one of her grandchildren.

transferred property. The new owner will in most cases be bound by the agreements and will become the new landlord. If a written tenancy agreement exists and the tenant has acceded to the apartment, the new owner is bound by the agreement according to Chapter 7 section 13 in the Tenancy Act. If there is no written contract or if there is a written contract but the tenant has not acceded to the apartment, the new owner is bound in the following situations:

- if the transferor has made a proviso concerning the grant (Chapter 7 section 11)
- if the new owner had or should have had knowledge of the grant at the time of the transfer. (Chapter 7 section 14)
- if the grant does not apply against the new owner under sections 11-13, the grant shall nonetheless remain in force against him if he does not give notice of cancelling the agreement within three months of the transfer.²⁴⁹ However, the notice of termination must be examined by the rent tribunal and can only be approved if sections 49 and 46 in the Tenancy Act are fulfilled. Hence, it is quite difficult to terminate a tenancy agreement in these cases.

If the transferor has not made a proviso as referred to in section 11 and, consequently, the grant of a right of user will not apply against the new owner, the transferor shall compensate the holder of a right for the damage he suffers.²⁵⁰

When it comes to a forced sale of the property on an executive auction, the tenant shall be notified so that it becomes included in the list of parties concerned. Then the property is offered up for bids, first without a proviso concerning the grant and then with the proviso. If the price offered is lower for the property with a proviso and that damages creditors with superior rights, the property is sold without the proviso.²⁵¹ But the new owner must give notice of termination of the tenancy agreement within one month of the access. Otherwise, the agreements are valid against the new owner.²⁵² The landlord must give the tenants a period of notice of three months and then apply to the rent tribunal.

- Costs and Utility Charges
 - What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities?
 - Which utilities may be charged from the tenant by the landlord? What is the standard practice?

The amount of rent shall be determined in the tenancy agreement, or if the agreement contains a bargaining clause, in the bargaining agreement. However, this does not apply to compensation for expenses relating to the supply of heat, hot water or electric current or charges for water and sewerage, if the tenancy agreement includes a bargaining clause and the basis of payment computation has been established through a bargained agreement or through a decision from the rent tribunal. Furthermore, provisions on compensation for such expenses are not required in a tenancy agreement (or related bargaining agreement) if the unit is

²⁴⁹ Chapter 7 section 14 in the Land Code

²⁵⁰ Chapter 7 section 18 in the Land Code

²⁵¹ Chapter 12 section 39 of the Enforcement Code (utsökningsbalken, SFS 1981:774)

²⁵² Chapter 12 section 46 of the Enforcement Code

situated in a single-family or two-family dwelling or if the cost of the utility is charged to the tenant by individual metering.²⁵³

Usually, regarding apartments in an apartment building, most tenancy agreements have a total rent where the heat and water supply are included in the rent, as well as waste collection. The household electricity is usually charged separately by a separate contract between an electricity supplier and the tenant. The cost of broadband is usually supplied by an external provider and is in addition to the rent. When individuals rent one or two dwelling houses from other individuals they usually conclude contracts directly with the supplier.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

Please see above.

- Is it lawful to shift condominium costs, and if yes, which ones, onto the tenant (e.g. housekeeping costs)?

No.

- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?
 - How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?
 - Are additional guarantees or a personal guarantor usual and lawful?
 - What kinds of expenses are covered by the guarantee/ the guarantor?

There are no rules regarding deposits in the Tenancy Act besides section 28a. This section states that the tenant is entitled to get his deposit back after two years from the date the commitment entered into force (a period of notice of nine months applies). This right can not derogated from by agreement.

The use of deposits is increasing but is not common; usually a deposit is used as a guarantee for future claims due to damage to the apartment or unpaid rents. It is therefore important that the parties agree on what should apply for the deposit. The deposit will usually be paid back when the contract period is over. The rent tribunal can only mediate about a claim for a deposit which has not been repaid, if the tenant wants a decision on the matter he has to apply to the district court.

If a tenant has a requirement of a security in his tenancy agreement, it is possible to get the fairness of the clause tried. If the clause is considered unreasonable, it will be repealed. If a collateralization deteriorates, it does not give the landlord the right to terminate the contract – the tenant still has a protected tenancy.²⁵⁴

As stated above, there is no lawful amount mentioned in the tenancy legislation, but the most common amount of deposit is one to three months rent. There are no rules on how the landlord has to manage the deposit as to special accounts etc., or on how the landlord is allowed to use to deposit.

²⁵³ Section 19 of the Tenancy Act

²⁵⁴ Nils Larsson et al, *Bostadshyresavtal i praktiken*, 2010, p. 79

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)?

There is no general definition of what a defect is under the Swedish tenancy legislation. There is a defect in an apartment when the apartment is not in the condition that the tenant is entitled to claim or if there are impediments in the tenancy. For example, if the apartment is not ready when possession is to be taken, if the apartment is not vacated in time by the party who is to move, or if any of the situations mentioned in section 16 has occurred during the rental period. Section 16 states that if the unit is damaged during the term of the tenancy without the tenant being liable for the damage, or if the landlord defaults on his duty of maintenance (regarding wallpapering and painting etc.) or if an impediment or detriment otherwise occurs in the tenancy without any negligence from the tenant, the apartment has a defect.

Defects in an apartment are usually related to physical defects, such as a stove that does not work. However, a tenant can also suffer inconveniences for many other reasons. There may be a case of lack of water supply or heating supply, poor cleaning of the stairs or disruptive behaviour from another tenant. But even impediments and detriments that the landlord has no control over – such as noise from a neighbouring property – principally falls in under the rules of impediments in the tenancy. However, traffic disruptions are normally not considered as impediments.²⁵⁵

- What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)

The sanctions that may be considered by the tenant when a defect occurs in the apartment at the handover or during the rental period are the right to self-help, an advance notice of cancellation, rent reduction, damages or a remedial injunction.

If the apartment is not in the condition that the tenant may claim, he may remedy the defect at the landlord's expense. A prerequisite is that the landlord neglects to take action within a reasonable amount of time after he has been told about it. It is enough that the tenant sends a registered letter to the landlord, in order to fulfil his obligation to tell the landlord about the defect. If there is a right to self-help the landlord is required to pay what it cost to remedy the defect. The right to self-help is rarely used nowadays, as a remedial injunction often is more effective.

If the defect has a substantial importance for the tenancy, the tenant may be entitled to an advance notice of cancellation. This applies if the defect cannot be remedied

²⁵⁵ Nils Larsson et al, *Bostadshyresavtal i praktiken*, 2010, p. 91

without delay or if the landlord delays taking action as soon as possible. A notice of cancellation of the agreement may not be given after the defect has been remedied by the landlord.

Besides the sanctions already mentioned, a tenant can make a reasonable reduction of rent for the time the apartment has defects or there are impediments in the tenancy. The landlord's liability is strict, i.e. the tenant is entitled to an equitable reduction of the rent regardless of who or what caused the defect or if it occurred by accident. The right to a reduction of rent applies even if the landlord has made every effort to eliminate the defect or impediment. However, the defect must be fairly durable. An important exception from this rule is that the parties may agree that the tenant shall not be entitled to a reduced rent for the impediments that can arise when the landlord performs work to put the apartment in the agreed condition, regular maintenance or other work specified in the tenancy agreement. Such a clause is usually a standard term in residential tenancies.

A tenant may also claim compensation for the damage he suffers because of the defect or impediment. The prerequisite for damages is that the landlord through negligence or misconduct caused the tenant damage. The landlord can escape liability if he proves that the defect is not due to his negligence or misconduct. Damages include not only personal injuries and damage to property, but also economic loss.

If a defect occurs in a residential apartment, the tenant can apply to the rent tribunal for a remedial injunction. A remedial injunction may be considered when the apartment is damaged, when the landlord fails to do the periodic maintenance or for other reasons which create impediments in the tenancy. It may also be considered when the landlord does not maintain the common areas. When the rent tribunal orders a landlord to remedy a defect, the tribunal shall also determine a specific date when action must be taken at the latest. A remedial injunction may be combined with a fine, often when there is reason to assume that the landlord will not follow the injunction. A decision from the rent tribunal on a remedial injunction can be appealed to the Svea Court of Appeal.²⁵⁶

- Repairs of the dwelling
 - Which kinds of repairs is the landlord obliged to carry out?
 - Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

The landlord is responsible for all maintenance works and repairs and for keeping the dwelling in such condition that, according to the general view in the locality, it is fully serviceable for the purpose intended.²⁵⁷ The landlord shall, at reasonable intervals of time, arrange for papering, painting and other customary repair in the dwelling due to the deterioration of the unit from age and use. What a reasonable interval of time is varies depending on the size of the apartment and how many tenants are living there. When it comes to painting and wallpapering, the interval has become longer and is now about twelve to fourteen years. It is important to note that the landlord's obligation to repair does not occur simply because a certain amount of time has elapsed since the previous repair, it is also required that the apartment is actually in need of maintenance.

²⁵⁶ Nils Larsson et al, *Bostadshyresavtal i praktiken*, 2010, pp. 92-98

²⁵⁷ Section 15 in combination with section 9

If the apartment is not in the condition that the tenant may claim, he may remedy the defect at the landlord's expense. A prerequisite is that the landlord neglects to take action within a reasonable amount of time after he has been told about it. It is enough that the tenant sends a registered letter to the landlord, in order to fulfil his obligation to tell the landlord about the defect. If there is a right to self-help, the landlord is required to pay what it cost to remedy the defect. The right to self-help is rarely used nowadays, as a remedial injunction often is more effective.

- Alterations of the dwelling
 - Is the tenant allowed to make other changes to the dwelling?
 - In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)
 - Affixing antennas and dishes
 - Repainting and drilling the walls (to hang pictures etc.)

Yes, residential tenants are entitled to carry out painting, wallpapering and comparable measures in the dwelling at their own expense. Some examples of comparable measures are installation of blinds, tiling of kitchen and bathrooms, replacement of baseboards, laying carpeting on a linoleum floor, replacement of interior doors and knobs and set of wooden panelling in the hall and rooms. A residential tenant is also entitled to drill the walls in order to hang pictures etc. In this way, the Swedish tenancy legislation gives a tenant far-reaching possibilities to customize his home to fit his personal taste.

If the utility value of the apartment is reduced due to the changes made by the tenant, the landlord is entitled to compensation for the damage. However, if the tenancy agreement refers to a single-family dwelling which is not intended to be let permanently or to a cooperative apartment, the parties may agree that this rule shall not apply.²⁵⁸

If a person is disabled he might be entitled to a home adaptation allowance for adaptation of the solid features in the dwelling. The landlord must approve of the measures and is free to say no to such adaptations. The tenant is only entitled to make the changes in the apartment that is stated in section 24a, installing a handle to make it easier to get in and out of a bathtub for instance. Landlords may refuse to agree to an adaptation even when a tenant has gotten an allowance and a promise of compensation for removal of the installations. There is no preferential treatment for a disabled person within these rules in the Tenancy Act.

Normally the landlord must consent before a tenant installs an antenna or a dish, since the landlord is responsible for the safety of the property and there is a risk that the antenna or dish will fall down. But the European Court of Human Rights concluded that the eviction of a family with three children from an apartment simply because they would not comply with the landlord's rules on antennas, was not a proportionate measure and therefore was a violation of Article 10 in the ECHR.²⁵⁹ However, in this case the family had followed the landlord's rules to a certain extent, because they had moved the dish from the outside of the balcony onto the balcony, and fastened it carefully. There is no reason to believe that the rent tribunal and the Svea Court of Appeal would not follow this ruling in future cases.

²⁵⁸ Section 24a

²⁵⁹ Case of Khurshid Mustafa and Tarzibachi v. Sweden, application no. 23883/06

- Uses of the dwelling
 - Are the following uses allowed or prohibited?
 - keeping domestic animals
 - producing smells
 - receiving guests over night
 - fixing pamphlets outside
 - small-scale commercial activity

Keeping pets, producing smells and receiving guests over night is allowed if it is not disturbing the neighbours or damaging the apartment in any way. A tenant may not fix pamphlets on the message board of the apartment building unless it is allowed by the landlord.

According to section 23 in the Tenancy Act the, tenant may not use the apartment for a purpose other than that intended to avoid the risk of forfeiting the tenancy. The landlord, however, may not adduce deviations of no importance to him.²⁶⁰ Usually it is stated in the tenancy agreement what the apartment is to be used for; in agreements for residential premises it is stated that the apartment must be used as a dwelling. The tenant is then basically bound by this if he does not get the landlord's consent to use the apartment for another purpose. The landlord is responsible that the apartment is not used in a way that causes any inconvenience for the other tenants.

3.2. Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

Yes, there are restrictions. Rents are set based on the utility value of the apartment and not based on demand.

- Rent and the implementation of rent increases
 - When is a rent increase legal? In particular:
 - Are there restrictions on how many times the rent may be increased in a certain period?

A rent increase must be negotiated with the Union of Tenants or, if the tenancy agreement lacks a bargaining clause, with the tenants individually. If the parties cannot agree, the rent increase must be examined by the rent tribunal. Six months must have elapsed since the last increase.²⁶¹

²⁶⁰ There very are few cases regarding this matter in terms of dwellings. In NJA 1920 p. 581 a lawyer leased a dwelling consisting of six rooms and a kitchen. In two of the rooms he pursued his business and he got about ten visits from clients a day. The landlord argued that the tenancy was forfeited because the tenant did not have permission to manage his business in the apartment, and that there were disadvantages due to the many client visits. But the tenant was not considered to have used the apartment for any other purpose than for residential purposes, and the tenancy was not forfeited.

²⁶¹ Section 55 d in the Tenancy Act

- Is there a possible cap or ceiling (fixed by statute or jurisprudence) which determines the maximum rent that may be charged lawfully?

The Tenancy Act states that the rent shall be established at a reasonable amount. The rent cannot be considered to be reasonable if it is palpably higher than the rent for units of equivalent utility value.²⁶² (The meaning of the term "palpably" will vary depending on the circumstances, but approximately 2-5 percent).

- What is the procedure to be followed for rent increases? To what extent can the tenant object to a rent increase?

All rent increases are carried out in the same way, and it depends on whether or not the landlord has a principal bargaining agreement with the Swedish Union of tenants and the tenants have a bargaining clause in their tenancy agreements, or if the landlord lacks such an agreement and then has to negotiate the rents with the tenants individually.

A principal bargaining agreement requires the landlord to negotiate rents, terms and conditions of housing with the union. If the landlord is bound by this type of agreement, he must send the union a written notice about what new terms he requests. Then the landlord and the union negotiate what conditions that should apply. If they do not agree, an application to the rent tribunal must be made. A tenant is bound by the new negotiated rent or term if there is a bargaining clause in the tenancy agreement regarding this matter, but can apply to the rent tribunal for an amendment of the agreement.

A landlord without an agreement with the union must negotiate the rent with each tenant individually. He shall start by informing the opposite party of what new terms and conditions he requests. If an agreement cannot be reached, he must refer the dispute for a decision by the rent tribunal. The application to the rent tribunal may be made one month after the opposite party has been informed at the earliest (section 54 in the Tenancy Bargaining Act).²⁶³

The tenant may object to the rent increase, but it is the rent tribunal which makes the decision.

- Entering the premises and related issues
 - Under what conditions may the landlord enter the premises?

A tenant disposes the dwelling himself, and the landlord has no right to enter the apartment without the tenant's consent. However, the landlord is entitled to gain access to the unit without respite in order to exercise necessary supervision or carry out improvements which cannot be deferred without damage. The landlord may also have less urgent improvements carried out in the unit which do not cause substantial impediment or detriment in the right of user, if he gives the tenant a notice at least one month in advance. Such works, however, may not be carried out during the last month of the tenancy without the tenant's consent. If the landlord wishes to carry out other work in the unit, such as work which may cause substantial impediment to the right of user, the tenant may give notice of cancellation of the agreement within a

²⁶² Section 55

²⁶³ SFS 1978:304

week of receiving a notice. When the unit is to be let, it is the duty of the tenant to allow it to be shown at a suitable time.²⁶⁴

It is for the landlord to prove that the tenant has received a notice of the planned improvements. To simply send a registered letter to the tenant is not sufficient in this case.

- Is the landlord allowed to keep a set of keys to the rented apartment?

Yes, but only if the right to keep extra keys is included in the tenancy agreement. And the keys do not entitle the landlord to enter the premises whenever he likes, he may only enter in the situations mentioned above to avoid the risk of damages.²⁶⁵

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

No, a landlord can never lawfully lock a tenant out for not paying rent; it would make him guilty of arbitrary conduct. If he locks the tenant out, the tenant can turn to the Enforcement Authority which will help the tenant to enter the apartment.

The exception is if the apartment is abandoned, because it entitles the landlord to take it back.²⁶⁶ If the apartment is abandoned and the landlord does not know where the tenant is, the tenant cannot be served with a message on how to recover the tenancy.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

No.

4. Ending the tenancy

4.1. Termination by the tenant

- Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?

A tenant can always give the landlord a notice of termination, even if they have a fixed term agreement. The period of notice is usually three months, and the agreement will then expire from the turn of the month occurring immediately after three months from the notice.²⁶⁷ This applies provided that no other period has been agreed upon. If a period of notice of e.g. one month has been agreed, the tenant may choose between the statutory and the agreed period. If the parties have agreed on a period of notice of more than three months, that period applies for the landlord but not for the tenant – he may choose the statutory period of three months instead.²⁶⁸

- 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

²⁶⁴ Section 26 in the Tenancy Act

²⁶⁵ Holmqvist & Thomsson, *Hyreslagen en kommentar*, 2013, the commentary to section 26 in the Tenancy Act.

²⁶⁶ Section 27 in the Tenancy Act

²⁶⁷ Section 5 in the Tenancy Act

²⁶⁸ Section 3 in the Tenancy Act

professional reasons)?

Please see above.

- May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?

A tenant can always give a notice of termination, even if the parties have a fixed term agreement.

4.2. Termination by the landlord

- Open ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?
 - Must the landlord resort to court?
 - Are there any defences available for the tenant against an eviction?

A landlord may terminate the contract only when any of the situations mentioned in section 42 or 46 in the Tenancy Act has occurred.

A landlord must always give a notice of termination in writing and then resort to the rent tribunal (when a notice of termination under section 46 has been given) or to the district court (when termination under section 42 has been given). This means that a tenant cannot be evicted before the rent tribunal or the district court has made a decision.

- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?
 - Are there any defences available for the tenant in that case?

The only way for a landlord to terminate a tenancy before the end of the rental term is if the tenant is guilty of misconduct under section 42.

- What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?

If the tenant does not leave, the Enforcement Authority can evict him. If he does not hand in all the keys the landlord will probably change the locks and send the bill to the tenant.

4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?
- What deductions can the landlord make from the security deposit?
 - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

Please see above.

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
 - Are there specialized courts for adjudication of tenancy disputes?
 - Is an accelerated form of procedure used for the adjudication of tenancy cases?
 - Is conciliation, mediation or some other form of alternative dispute resolution available or even compulsory?

Tenancy cases are adjudicated in the rent tribunal and in the district court. No accelerated form of procedure is available for tenancy cases.

The rent tribunal as well as the district court will always try to mediate between the parties first.

5. Additional information

- How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?

There is no social housing in Sweden.

It is the Swedish Social Insurance Agency (Försäkringskassan) that administers the subsidies. The Agency makes a schematic trial after it receives an application. Families with children and young people aged between 18 and 29 with a low income might be entitled to housing allowance (bostadsbidrag). The amount depends on the income, how much the housing cost and how many children there are in the family. A person who has activity or sickness compensation can be entitled to housing supplement (bostadstillägg), and the same applies for pensioners. The amount received is based on income and the housing costs. The right of housing allowance or supplement applies whether you are a tenant or a home owner.²⁶⁹ A tenant with little or no income can also get a rent guarantee from the municipality, which makes it easier to obtain a tenancy.

- Is any kind of insurance recommendable to a tenant?

It is recommended that a tenant take out a home insurance policy to insure against losses to the apartment or to his belongings.

- Are legal aid services available in the area of tenancy law?

Most individuals have an insurance against legal costs as a part of their home insurance, or as a part of their villa or holiday home insurance. It can also be included in boat or car insurances. This legal protection will cover a percentage of the

²⁶⁹ www.forsakringskassan.se

legal costs up to a maximum amount. If a person does not have insurance, he can sometimes have a right to legal aid under the Legal Aid Act.²⁷⁰ But the legal aid does not cover the whole cost; the individual still needs to pay a legal aid fee which is a percentage of the total cost of his legal representation. It is a person's financial circumstances and the total cost of his legal representative that determine how much he should pay.

Legal aid includes a part of the cost for a lawyer or a legal practitioner for up to 100 hours, but it can be increased if there are special reasons. The whole cost can be covered in the case of a person under the age of 18 who is lacking income or wealth. It also includes the cost of evidence in a general court, the Market Court and the Labour Court, investigation costs up to 10,000 SEK (approximately 1100 Euro and excluding VAT), costs for interpretation and translation, the court application fee, copies of documents from authorities and documents that have been served etc., and the cost of a mediator.²⁷¹ It is the court that decides whether or not a person is entitled to legal aid, but is the Legal Aid Authority that handles payment.

The insurance against legal costs usually does not apply in the rent tribunal, and legal aid is generally not granted. But legal representation is usually not needed for matters in the rent tribunal. The chairman uses direction of proceedings and asks questions in order to sort out the circumstances that are relevant to the dispute.

- To which organizations, institutions etc. may a tenant turn to have his/her rights protected?

The Swedish Union of Tenants (Hyresgästföreningen)

Address: The union has several offices throughout Sweden. Please see their website www.hyresgastforeningen.se for the one nearest you.

Phone number: 0771-443 443

E-mail address: it is possible to send e-mail to the union through their webpage.

The Equality Ombudsman (Diskrimineringsombudsmannen)

Address: Diskrimineringsombudsmannen (DO), Box 3686, 103 59 Stockholm

Phone number: +46(8)120 20 700

E-mail address: international@do.se (Please note that it is not possible to file a complaint regarding discrimination by using this e-mail address. Please use do@do.se instead)

The municipal consumer counselling (kommunens konsumentrådgivning)

Every municipality has a consumer counselling where anyone can get free and impartial advice. In many municipalities there is a special section (rental counselling) that will help persons who risk eviction due to unpaid rents.

²⁷⁰ Rättshjälpslag (SFS 1996:1619)

²⁷¹ <http://www.rattshjalp.se/In-English/In-English/>

SWITZERLAND

Tenant's Rights Brochure

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1. Introductory information

- Introduction: The national rental market
 - o Current supply and demand situation
 - o 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 costs on 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.

- o 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 up only a small share at 3.4%. They are owned mostly by cantons and municipalities and therefore subject to diverse regulations. Contracts concluded for 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, to cover only 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.

- o General recommendations to foreigners on how to find a rental home

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 for 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' 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 exceeding 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 abusive	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 against a candidate on the grounds of race, ethnic origin or religion is a criminal offence. However, even if a landlord is adjudged to have discriminated against a candidate, this does not give the latter a right to move into the apartment. Discriminating against 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). Furthermore, 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 are the following questions 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, reservation fees are not 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 ask 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?
 - o 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.

- o 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 tenancy contracts concluded for a very long time (e.g. the lifetime of one of the parties) are also possible. A contract concluded for

eternity on the other hand would be considered to excessively restrict 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 rooms with heating can be kept warm enough to be used without warm outdoor 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 whether these installations shall remain in the dwelling at the end of the tenancy. 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 refuse the consent to this sublease only 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 him.

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 is not allowed to make a 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 cover 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 months' 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
 - o 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.

- o 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, the tenant 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 over-paid amount.
- 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 must then 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?

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 use 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?
 - o 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 the condition it was in 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.

- o 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.

- o 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?
 - o 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.

- o 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
 - o 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?
 - o 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 charged lawfully?
 - o 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 from 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
 - o Under what conditions may the landlord enter the premises?
 - o 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 must also 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 entitled to self-help only 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.

- o 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.

- o 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 a 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.

Ordinary termination

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 help decide whether to challenge the notice or not, the tenant can request that the landlord 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 and no reason was actually given, the notice is ineffective and not only challengeable.

The principle of good faith

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 restrictions 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 not only challengeable but is ineffective.

- 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 refund 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 from the security deposit?
 - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

If 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?
 - o Are there specialized courts for adjudication of tenancy disputes?
 - o Is an accelerated form of procedure used for the adjudication of tenancy cases?
 - o 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 authorization to proceed or in some cases with a proposed judgment or a decision. The litigation proceedings are either submitted 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 with 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 organizations 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 Svizzera Inquilini). These associations offer legal advice, and often legal protection is included for members, covering court fees 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 varies according to the section and range 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 varying 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.

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.deutschfribourg@gmx.ch

Postfach 41
3185 Schmitzen
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
8867 Niederurnen
Tel: 0848 051 051

Graubünden

<http://www.mieterverband.ch/start09.0.html>
graubuenden@mieterverband.ch

Frau Carmen Sprecher-Gartmann
Postfach 361
7004 Chur
Tel: 0848 064 064

Jura

<http://www.asloca.ch/?q=node/59>

Rue des Granges 10
Case postale 46
2800 Delémont 1
Tel: 032 422 74 58

Lucerne / Uri / Obwalden / Nidwalden

http://www.mieterverband.ch/lu_top.0.html
mvlv@bluewin.ch

Hertensteinstrasse 40
6004 Luzern
Tel: 041 220 10 22

Neuchâtel

<http://www.asloca.ch/?q=node/61>
aslocane@bluewin.ch

Rue des Terreaux 1
Case postale 88
2004 Neuchâtel
Tel : 032 724 54 24

Ostschweiz (St. Gallen / Thurgau / Appenzell I.Rh. / Appenzell A.Rh.)

http://www.mieterverband.ch/os_top.0.html
ostschweiz@mieterverband.ch

Webergasse 21
9000 St. Gallen
Tel: 071 222 50 29

Schaffhausen

<http://www.mieterverband.ch/start07.0.html>
mieterverband.sh@kas.ch

Platz 7
8201 Schaffhausen
Tel: 052 630 09 01

Schwyz

<http://www.mieterverband.ch/start03.0.html>
mvsz@bluewin.ch

Postfach
8854 Siebnen
Tel: 0848 053 053

Solothurn

<http://www.mieterverband.ch/start010.0.html>
info@so.mieterverband.ch

Westbahnhofstr. 1
Postfach 1121
4502 Solothurn
Tel: 0848 062 032

Ticino

<http://www.asi-infoalloggio.ch/>
segretariato@asi-infoalloggio.ch

Via Stazio 2
6900 Massagno
Tel: 091 966 25 02

Valais

<http://www.asloca.ch/?q=node/62>
aslocaval@sunrise.ch

Rue de l'Industrie 10
Case postale 15
1951 Sion
Tel: 027 322 92 49

Vaud

<http://www.asloca.ch/?q=node/63>

Rue J.-J Cart 8
1006 Lausanne
Tel: 021 617 50 36

Zug

<http://www.mieterverband.ch/start05.0.html>
mvzug@bluewin.ch

Industriestrasse 22
6301 Zug
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Zurich

http://www.mieterverband.ch/zh_home.0.html

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My Rights as Tenant in Europe

End of Document

The compiled national Tenant's Rights Brochures
from the Tenlaw Project

Christoph U. Schmid and Jason R. Dinse, editors



TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

This project has received funding from the European Union's Seventh Framework Program for research, technological development and demonstration under grant