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

National Report for

DENMARK

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Table of Contents

- 1 Housing situation
 - 1.1 General features
 - 1.2 Historical evolution of the national housing situation and housing policy
 - 1.3 Current situation
 - 1.4 Types of housing tenures
 - 1.5 Other general aspects
- 2 Economic urban and social factors
 - 2.1 Current situation of the housing market
 - 2.2 Issues of price and affordability
 - 2.3 Tenancy contracts and investment
 - 2.4 Other economic factors
 - 2.5 Effects of the current crisis
 - 2.6 Urban aspects of the housing situation
 - 2.7 Social aspects of the housing situation
- 3 Housing policies and related policies
 - 3.1 Introduction
 - 3.2 Governmental actors
 - 3.3 Housing policies
 - 3.4 Urban policies
 - 3.5 Energy policies
 - 3.6 Subsidization
 - 3.7 Taxation
- 4 Regulatory types of rental and intermediate tenures
 - 4.1 Classifications of different types of regulatory tenures
 - 4.2 Regulatory types of tenures without a public task
 - 4.3 Regulatory types of tenures with a public task
- 5 Origins and development of tenancy law
- 6 Tenancy regulation and its context
 - 6.1 General introduction
 - 6.2 Preparation and negotiation of tenancy contracts
 - 6.3 Conclusion of tenancy contracts
 - 6.4 Contents of tenancy contracts
 - 6.5 Implementation of tenancy contracts
 - 6.6 Termination of tenancy contracts
 - 6.7 Enforcing tenancy contracts
 - 6.8 Tenancy law and procedure “in action”
- 7 Effects of EU law and policies on national tenancy policies and law
 - 7.1 EU policies and legislation affecting national housing policies
 - 7.2 EU policies and legislation affecting national housing law
 - 7.3 Table of transposition of EU legislation

8. Typical national cases (with short solutions)
8.1 - 8.10

9. Tables
9.1 Literature
9.2 Cases

1. Current housing situation

1.1 General features

1.2 Historical evolution of the national housing situation and housing policy

- *Please describe the historic evolution of the national housing situation and housing policies briefly.*
 - *In particular: Please describe briefly the evolution of the principal types of housing tenures from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatization or other policies).*
 - *In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)*

In connection with the transition from an agricultural to an industrial society in the mid-19th century, many people moved to towns and larger cities; this was especially true for the country's capital, Copenhagen, and as a result the demand increased for housing there. The statutory regulation of construction activity in Denmark dates back to 1856. Construction of the first social housing began during the following year.

Today (2013) approximately 1.2 million people live in Copenhagen. That is approximately 22 % of the population in Denmark. The greater Copenhagen region is home to approximately 1.95 million residents. The second largest city, Aarhus, has approximately 256,000 citizens today.¹

In 1834 119,292 people lived in Copenhagen. In 1890 the population had more than doubled to 312,859; by 1930 it had increased to 612,434.² In Aarhus residents amounted to 11,000 (1830), 50,000 (1900) and 100,000 (1935).

This development is similar in the smaller cities on a smaller scale. Today Denmark has six cities with a population of more than 100,000 people.

At the start of the 20th century, the private-sector construction of housing was widespread in urban areas. This housing comprised residential properties and apartment blocks, using "new" techniques such as built-in water and wastewater systems, electric lighting and so on. However, central heating and bathing facilities were not yet widespread. In Copenhagen, the apartments in the larger apartment blocks in the main city often still did not have their own bathroom. Bathroom facilities were placed in the basements or in the back staircase. For a while during the first decade of the century, there were vacant dwellings, but by the outbreak of the First World War, there was once again a housing shortage in the major towns and cities. Increasing prices and uncertainty over financing put a stop to private-sector construction.

Until 1916, there were no specific statutory restrictions in Denmark on the right to freely establish conditions for rental agreements for residential accommodation. The

¹ Source: Statistics Denmark

² Statistics from the Municipality of Copenhagen.

tenancy relationship was regulated solely through the individual agreement between the parties concerned. The reason that there had been no political need to regulate this area up until this point was probably that there was no housing shortage, rising prices or other circumstances which created a great need to protect the parties in the tenancy relationship.³ The first Danish statutory regulation of tenancy relationships was introduced in 1916, as a result of a desire to accommodate a sharp increase in the number of tenancies brought about by a considerable increase in running property costs related to the outbreak of the First World War. The regulation of rents – through maximum prices – combined with rising retail prices and wages, which made housing cheaper in relative terms, resulted in a growing demand for rented housing. Migration from rural areas into the towns and cities, particularly Copenhagen, also continued. As a result of this, the reserve of vacant housing developed during the years leading up to the First World War was eliminated, which in turn led to a housing shortage in the major towns and cities after 1916.

In the early 1920s, construction began again as a result of a number of factors: As early as 1917, the City of Copenhagen had already felt compelled to begin constructing small apartments, and once the war was over, this type of construction accelerated. In other parts of the country the demand for such housing was not as great.

Secondly, The National Bank (*Danmarks Nationalbank*) lowered interest rates on a number of occasions, and the government set up a housing fund, which offered grants for new construction in 1922. Instead of the previous support for the less affluent in the form of grants and cash support, the housing fund issued loans in the form of bonds.

Collectively, these developments during the first half of the 1920s helped reduce the housing shortage. In addition to the relatively high level of construction activity, population growth and migration from rural areas to urban areas was less than in previous decades.⁴ During the mid-20s, a situation had been reached where there was a balance between prices, rents and construction costs, and consumption was rising. This meant that rent regulation could be liberalised. The growth in housing construction from the mid-1920s occurred particularly in the private sector, as local authorities and the social housing sector played a modest role as a construction client.

After the “depression” the growth in housing construction developed during the early 1930s into a construction boom; however, this boom proved to be short-lived, ending that same decade as a result of a general global economic crisis. The expansion at the beginning of the decade was the result of a technological breakthrough and the consequent opportunity to construct buildings which made use of this new technology. Central heating and bathrooms with running hot water meant that buildings required less land for the same amount of housing. These factors meant that vacant housing appeared once again in urban areas, which in turn meant that it was not possible to charge the rents that were permitted under the legislation in force at the time. This applied in particular to older housing, for which it was difficult to find tenants. As a result, housing policy at this time was not focussed on regulating rents

³ Ellen Andersen, Poul Christian Matthiessen and Anders Ølgaard: *Boligmasse og boligbyggeri i første halvdel af dette århundrede*, Økonomi og Politik, no. 2, 1989, p. 6 onwards.

⁴ Betænkning 1331/1997 (Lejelovskommissionens betænkning) – Appendix 1.

for socio-political reasons, but on the opportunities to promote construction activity. After a period during which builders had no possibility to obtain public-sector support, it once again became possible to obtain a government loan to construct buildings for rental purposes.

The first actual Rent Act entered into force in 1937. Due to the outbreak of the Second World War, the regulation of rents again came into focus for socio-political reasons. There was a desire to avoid rent rises caused by the housing shortage, which was brought about by halted construction, rising prices, etc. As a result, from 1939, a series of temporary regulations were once again introduced into the rent legislation concerning the scope for setting and adjusting rents.

In terms of bombing and other war-related destruction, the Second World War did not have a significant effect on the housing market. Construction activity was low. The combination of low-standard housing and the high rate of population growth during the 1940s resulted in a considerable housing shortage. Therefore, by 1945 when the Second World War ended, there was widespread political agreement that large numbers of low-cost homes should be built.

The preconditions for Danish housing policy in the post-war years, and the housing policy reforms from the mid-1960s onwards in particular, can be traced back to the situation that resulted from the outbreak of the Second World War. When this war began, the political decision-makers presumably drew a parallel with the situation that developed during the First World War, and a cap on rents was introduced immediately, partly as a result of a shortage in construction materials. Although there were vacant apartments in most towns and cities at the outbreak of the war, it was foreseen that a housing deficit would quickly arise, particularly as a result of the shortage of construction materials. Housing production remained at a low level during the 1940s as a result of material shortages and building restrictions.

After the war, politicians agreed that the low rate of growth in construction activity combined with a high rate of population growth meant that low-cost housing should be constructed in order to avoid another housing shortage. As a result of inflation and consequent rising prices and rents, the rent cap meant that the rents being charged for older residential properties were considerably lower than general price developments, including those for newly constructed homes.

Efforts were being made to achieve the objective of maximising construction through a comprehensive subsidy policy in the Housing Support Act, which was adopted in 1946. The principal aim behind this was to ensure that housing costs relating to new construction did not greatly exceed the level of rent charged for older housing. One of the instruments used in this regard was government loans with favourable terms, which were also given for owner properties. The main instrument used in connection with this was low-interest loans.

Housing construction during the following years was increasingly stimulated through the interest allowance, and the construction of detached homes in particular began to increase sharply with the upturn in the general economic situation from this time.

As a result of the rise in interest rates, rents charged for new-build homes, not included in the rental cap, rose sharply compared with those charged for older housing. By 1965, the price of a new-build home had increased five-fold since 1939.⁵

A regulation on condominiums was introduced in 1965 after thorough debate in the Parliament from 1962 onwards.⁶ This was thought to be a liberalization of the housing market. The regulation included new building as well as some older buildings that could be divided into single property units. A condominium can be registered individually in the land register.

During the years the types of building where it might be possible to establish condominiums have been restricted. This was done because it was found that converting rented dwellings into condominiums would decrease the number of affordable rented dwellings for those in need. The regulation still exists.

At the same time (1960s) private co-operative ownership had become a more widespread form of ownership, and when allowing condominiums it was discussed whether a regulation of the private co-operative ownership market should be introduced. In 1967 a rate maximization was introduced (measures to calculate a fair (maximum) price for a share of the co-operative). The regulation regarding private co-ownerships was also enforced through the Housing Regulation Act.

In 1976 the first general regulation of private co-operative ownerships came into force. This legislation was expanded in the following years, and today it is completely separate from the Rent Act and the Housing Regulation Act.⁷

In the Rent Act, however, it is stated that in properties used wholly or in part for residential purposes, the landlord shall offer the property to the tenants on a co-operative basis before disposing of the property to a third party. The provisions on the obligation to offer a property to existing tenants applies to properties used exclusively for residential purposes, containing six or more flats, and other properties containing not less than 13 flats.⁸

Introduced in the 1970s, this legislation gave the tenants in a rental property a right of pre-emption if the owner wished to sell the property. The purchase could take place subject to the same conditions under which the property would otherwise have been purchased. During the 1990s, this resulted in many private-sector rental properties being taken over by housing cooperatives founded by the former tenants. As a result, the number of private-sector rental properties decreased.

At the start of the 1970s, difficulties in finding tenants were being experienced in the social housing sector. The main reason for this lay in an increase in construction costs and a sharp rise in interest rates, which in turn resulted in a considerable rise in rent levels, so that rents were too high for the people who wanted to (had to) live in social housing. As a result of these developments, it became possible for The National Social Housing Fund (*Landsbyggefonden*) to offer loans for specific

⁵ Betænkning 1331/1997 (Lejelovskommissionens betænkning) – Appendix 1.

⁶ Act on condominiums no. 199 of 6 June 1966. See historical information at Peter Blok: *Ejerlejligheder*, 3th edition, 1995.

⁷ See Mette Neville: *Andelsboligforeningsloven med kommentarer*, 4. udg., 2012.

⁸ Danish Rent Act chapter 16.

construction projects to alleviate the considerable letting difficulties being experienced during the early years after housing was brought into use (temporary support for running costs). Special legislation was also introduced which enabled the government to make loans available to the fund with the aim of performing the abovementioned tasks.

During the 1970s, Denmark also saw more construction activity than ever before. Construction in Denmark reached a peak in 1973 which has yet to be surpassed: Almost 56,000 new homes were completed mainly in the private sector. As a result of rising construction costs, the introduction of VAT on construction, rising interest rates and the oil crisis, new construction decreased from the mid-1970s. This downturn occurred predominantly within the private construction sector, and during the summer of 1974 the commencement of new-build projects virtually ceased.

The Danish home-ownership rate declined a bit after the mid-1980s due to a sharp reduction in the tax rebate on interest payments. The proportion of the total housing pool in Denmark made up of private-sector rental properties has more than halved during the past 40 years. From accounting for approx. 40 percent of dwellings during the 1960s, this form of housing today accounts for around 17 per cent. However, from the mid-1990s building of home owned dwellings picked up again and reached a peak around the turn of the century. Since then it has shown a downward trend.

Migration, immigration or emigration has no direct influence on the current general housing situation. However, foreigners' ability to purchase real estate in Denmark is restricted by statutes of law, although in respect of EU and EEA citizens rights according to EU legislation. Foreigners, who are not citizens in the EU/EEA, or companies from non-EU/EEA countries, are only permitted to purchase real estate in Denmark if the appropriate authorisation to do so has been obtained from the Danish authorities (Ministry of Justice). See Section 3.1 below.

1.3 Current situation

- *Give an overview of the current situation*
- *In particular: What is the number of dwellings? How many of them are rented vs. owner-occupied? What would be the normal tenure structure (see summary table 1)? What is the most recent year of information on this?*

Total population of Denmark (January 1 2012) 5,580,516 people.
130.1 inhabitants/km². Area km² 42,895.

The approximate number of households in Denmark today (2012) is 2.5 million. There were 465,210 private rented dwellings in 2010.⁹

⁹ Borg Kristensen: *Konsekvenser af huslejeregulering på det private boligudlejningsmarked - en mikroøkonomisk undersøgelse*, DREAM 2012. Statistics Denmark: January 1st 2012 the exact number was 2.593.553. January 1st 2011 2.735.486.

TABLE 1: APPLICATION OF RENT REGULATION ACROSS PRIVATE RENTED HOUSING STOCK, 2011

PRIVATE RENTED DWELLING TYPE	AGE	NUMBER (000S)	REGULATED?	% OF TOTAL
Dwellings in buildings with 3 or more units	Pre-1991	270	Most yes	66
	Post-1991	18	No	4
Single family houses or dwellings in two-unit buildings	Pre-1991	107	Most yes	26
	Post-1991	12	No	3
TOTAL		407		

Source: CCHPR estimates based on Danmarks Statistik – statistikbanken.dk Table BOL 101. Excludes non-self-contained and 'other' dwellings

TABLE 4: TENURE SINCE 1960 (%)

	1960	1970	1980	1990	2000	2004	2011
Owner-occupied	45.7	48.6	52.1	51.7	51.3	50.5	49.2
Co-operative*			2.1	4.5	6.3	6.7	7.3
Private rental	39.8	34.7	22.1	18.4	18.0	17.4	14.1
Social rental	9.8	14.5	14.4	16.8	19.1	19.0	18.9
Official housing	4.7	2.2	3.1	2.6	1.4	1.4	1.6
Not in use			6.2	6.1	3.9	5.0	6.4
Other or unknown							2.4
Total number of dwellings (000s)	1,463	1,743	2,109	2,353	2,489	2,561	2,745

Source: Lunde 2010; Danmarks Statistik – statistikbanken.dk Table BOL 101

* The co-operative tenure was created in the 1970s in order to allow tenants in private rented housing to buy their property (DECD 1999).

TABLE 5: DWELLING TYPES IN THE DANISH PRIVATE RENTED HOUSING STOCK, 2011¹

DWELLING TYPE	NUMBER OF UNITS	% OF PRS DWELLINGS
'Permanent' private rented units (in buildings with 3 or more units)	287,287	69
Rented single-family homes or units in two-family buildings	119,398	29
Not self-contained dwellings	2,922	0.7
Other	4,629	1.1
Total number of PRS dwellings	414,236	

Source: Danmarks Statistikbank Table BOL 101

The tables are copied from: Whitehead, Christine et al.: *The Private Rented Sector in the New Century: A Comparative Approach*. København: Boligøkonomisk Videncenter, 2012 with reference to original source.

Summary table 1 Tenure structure Denmark 2010

Home ownership	Renting			Intermediate tenure	Other	Total
		Renting with a public task, if distinguished	Renting without a public task, if distinguished	Co-operative ownership		
44 %		25 %	24 %	7 %		100%

The figures in Summary Table 1 do not correspond entirely with the figures that were given earlier in the text. This may be partly because the figures date from different years and partly because there are a number of sources of error in the various figures in relation to the subdivision of the various types of dwellings between owners and tenants and between private and social housing. For example, dwellings for young people may be both private and social. Properties that are owned as co-operative housing associations may be registered as homeownership. As stated above, approximately 82 per cent of Danish social housing consists of stock family dwellings, while 77,000 (12 %) and 30,000 (6 %) are dwellings for the elderly and dwellings for young persons, respectively. The latter two categories are probably the only categories in Denmark that can actually be characterised as having “a public task”.¹⁰

The construction of new-build private sector rental properties has generally been very limited since the 1970s, and many existing homes have either been sold as owner apartments or as cooperative housing. This development is largely due to the fact that, unlike other forms of housing in Denmark, new-build rental properties in the private sector are not generally subsidised; cf. below.¹¹

Building activity was low during the 1990s, but has picked up since 1995 to reach levels above normal; however, the economic crisis from 2007 onwards has negatively affected the activity. The drop in the 1990s was most pronounced for detached and semi-detached dwellings – typical for home ownership – where the number of completions dropped to only 25 per cent of the peak year completions, and compared to a drop to 50 per cent for multi-storey dwellings – typical for the rental market. The non-profit sector mentioned above is mainly in multi-storey buildings and the supply of new units requires building permits from the government. Hence, the relative supply swing towards rental housing in the mid-1990s can be said to be politically influenced. The dearth in the supply of typical homeowner dwellings is one factor behind the relative upswing in house user costs at the beginning of the new

¹⁰ More statistics available at <http://www.dst.dk/pukora/epub/upload/17952/dkital.pdf>.

¹¹ Sources for this section: Per Juul Larsen: *En analyse af de samfundsøkonomiske og fordelingsmæssige konsekvenser af den førte boligpolitik, med særligt henblik på den boligpolitiske målsætning og aktivitet i perioden 1966-76*, 1977, p. 62 onwards. Det økonomiske Råd – Formandskabet: *Boligmarkedet og boligbyggeriet – problemer og perspektiver*, 1970, p. 38 onwards. Boligministeriet: *Boligmætning og huslejespænd – et debatoplæg*, 1993, p. 105. Hedvig Vestergård: *”Boligpolitik i velfærdstaten”*, Den danske velfærdsstats historie, red. Niels Ploug, Ingrid Henriksen and Niels Kærgård (with references). Jakob Juul-Sandberg: *”Det lejedes værdi”*, 2. udg., 2010, kapitel 2 (with references). Betænkning 1331/1997 (Lejelovskommissionens betænkning) – Appendix 1.

century. However, the upswing could also be driven by an increased demand for ownership.¹²

During the mid-1990s, rents for buildings taken into use after 31.12.1991 could once again be set freely, as the rest of the private renting sector still was subject to rent control legislation. The aim of this initiative was to encourage construction and create jobs. This initiative was possible in political terms because the construction of rental property in the private sector had largely been stagnant for many years because of a smaller financial crisis in Denmark. Therefore there were no voters to take into consideration in connection with these initiatives. It was believed to be a decision that would have no real effect, because new dwellings with free-market rents would be unable to compete with rent-controlled dwellings. The fact that there was no major boom in construction as a result of the legislative changes focussed attention on the link between the setting of rents and the regulation of existing dwellings and new-builds. However, since then, new dwellings have been built and let at free-market rent rates, and today letting without rent control accounts for close to 10 per cent of the private rental market, which in turn comprises nearly half of the total rental market in Denmark.¹³

In 1983, it became possible to obtain support for the refurbishment of older rental properties in the private sector. This measure was designed to motivate property owners to convert their rented dwellings to a higher standard to ensure that tenants' homes measured up to the standards of newer properties. This was primarily intended for larger buildings in the largest cities, where a lot of turn-of-the-century buildings which had never been modernised. This initiative did not truly take effect until the 1990s in Copenhagen, when many older buildings were refurbished, with the result that many rental properties acquired central heating and a separate bathroom, among other things, as well as a modernised building envelope (roof, windows etc.). After the refurbishment rent increases were restricted to ensure that tenants could keep their dwellings. This also meant that this initiative did not have any direct effects on the movement of tenants from one area to another.

In 1994, rental legislation underwent a major revision, partly as a result of the above. As part of the adoption of the Act, a commission was appointed ("the Rent Act Commission"), which was to submit a report containing a re-evaluation of all legislation relating to the Rent Act with a view to simplification. In 1996, after the Rent Act Commission had been set up, the regulations concerning the setting of rents and the provisions in the Housing Regulation Act were subject to additional major and comprehensive revision. For example, the regulations concerning extensively improved rental properties were introduced, and the basis for setting rents in connection with the signing of tenancy agreements covered by the Housing Regulation Act was amended. Part of the aim behind these amendments was to put a temporary stop to the rise in rent levels for an ever-increasing number of rental properties with an "agreed rent" and the consequent rising costs associated with individual housing support.

¹² Morten Skak: *Projecting Demand for Rental Homes in Denmark*. European Journal of Housing Policy, Vol. 8, Nr. 3, 2008, s. 238-239.

¹³ Morten Skak, Gintautas Bloze: *Rent Control and Misallocation*. Discussion Papers on Business and Economics, No. 7/2009.

Prior to the recent financial crisis, the number of newly established housing cooperatives rose again due to the rising number of property purchases and the attractive financing opportunities available from 2003 onwards. The first decade of the 2000's once again saw an increase in the construction of rental homes in the private sector due to the attractive loans available and the general market conditions. This development continued until the financial crisis started in 2006-2007. It is not clear whether this had a direct effect on the demand for rental homes, but as construction of detached and terraced homes for private homeowners also increased in this period (and especially during 2005-2008), many new houses were built and the private-housing sector became overheated as the prices rose and demands for building materials and supplies kept increasing to meet the demand. Table x presents statistics regarding construction of single-family homes in the first decade of this century.

Year	2000	2005	2006	2007	2008	2009	2010	2013
Homes	5,331	7,639	8,999	9,772	9,371	6,629	4,463	3,434

Table x Number of single-family houses built in selected years, 2000-2013

Similar statistics for multi-storey blocks are shown in Table y.

Year	2000	2005	2006	2007	2008	2009	2010	2013
Homes	4,877	9,509	9,478	11,875	7,949	5,423	3,454	5,561

Table y Number of multi-storey blocks built in selected years, 2000-2013

The statistics on this subject do not tell us whether the buildings are rental homes; it is possible that some of them are condominiums. Many of these condominiums were not sold, and thus became part of the rental market.

As a result of the financial crisis and the issuing of high-risk loans, many of these housing cooperatives have experienced financial problems in recent years. This has resulted in the dissolution of a number of cooperatives. These properties have thus become private rental properties again following the dissolution of the housing cooperative. This has probably led to a slight increase in the number of private rental properties once again. In addition, some of the many private-sector apartments constructed in the mid-00's are currently being rented out because it is impossible to sell them.

Various political measures in recent years, including increases in public-sector support, have resulted in the construction of new social housing (which by definition means that they are based on subsidisation), and a major maintenance and improvement initiative has been carried out within existing social housing. This has also meant that once again it has become more attractive to some extent to live in these properties. As regards rent levels, rents for subsidised housing are in many cases as high as those for private-sector rental properties.

1.4 Types of housing tenures

- *Describe the various types of housing tenures.*
 - *Home ownership*
 - *How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)*
 - *How is the financing for the building of rental housing typically arranged?*

As a percentage of the dwelling stock, approximately 44% is home ownership. Social housing comprises approximately 55% of the rental market, with private – or for-profit – rental housing making up the rest.

According to the OECD, 98.4% of the dwelling stock in Denmark in 2004 was equipped with central heating, 94.6% with a fixed bath or shower inside the dwelling, 99.5% with piped water inside the dwelling and 97.1% with a kitchen. In 2009 96% of the dwelling stock had a bath and a shower. The number of homes with installation deficiencies (owner and tenant) has been halved, from around 423,000 in 1980 to 208,000 in 1999. Today, there are around 178,000 dwellings without a bathroom, 58,000 without a toilet, and 52,000 without contemporary heating. Dwellings with deficiencies are particularly prevalent in the municipalities of Copenhagen and Frederiksberg (a total of 71,000).

Average useful floor area per dwelling in Denmark in 2009 was 114.4 m². That equals 51.4 m² per person. This is probably a large area compared to other countries, but the Danes have been accustomed to living in large dwellings when possible, and because of this demand for larger apartments and houses, floor area in new-build houses has also increased. It is not uncommon that a family of two adults and two children have a house larger than 150 m². This development has continued through recent years. Of course, students and other persons with lower incomes do not have the possibility to rent or buy larger homes. Therefore smaller apartments are still being built.

The typical financing of home ownership is based on a down-payment of 5% (own equity or personal loan), 15% from loans based on a mortgage from a bank or other financing, and 80% from a mortgage-based loan from a mortgage bank. Financing is regulated by law; a mortgage bank can finance only up to 80% of the trading price through mortgage loans. The usual length of contracts on new mortgage loans is 30 years.

Building of “normal” private rental housing – without subsidies – is typically financed by loans based on mortgage from banks or other financing, e. g. mortgage banks. The law stipulates that a mortgage bank can finance only up to 80% of the trading price through mortgage loans.

“Social housing” is financed differently – and specifically regulated by law. Since 2008, the acquisition price for social housing to which the local council has committed

to granting loan repayment subsidies has been financed as follows: tenants' lease premiums: 2%, municipal basic capital: 14%, mortgage loans: 84%.

For social dwellings for young people, additional subsidies are granted to ensure that resident payments may be kept at a low level. For the service areas which are established in connection with housing for the elderly, the state provides subsidies amounting to DKK 40,000 per dwelling, with a maximum of 60% of the acquisition price for the service areas. Lease premiums are paid by tenants upon taking up residence, and are repaid to the tenants at the end of tenancy. The lease premium is not adjusted. Basic capital loans are provided by the municipality in which the dwellings are intended to be established. The loans are interest-free, and amortization-free up to 50 years after occupancy of the property commences, and cover 14% of the acquisition price of the dwellings. As a rule, the municipalities are not able to raise loans of their own to finance the basic capital. The type of loan which may be used to finance new construction is specified by the Minister for Social Affairs in collaboration with the Minister for Economic and Business Affairs, so that the mortgages may swiftly and flexibly be adapted to market conditions, for the purpose of minimizing state expenditures. At present new dwellings must be mortgaged with 30-year, adjustable rate mortgages, and the remaining balance is refinanced annually. The municipality must provide a guarantee for the mortgage loans. As a rule, resident payments amount to 2.8% annually of the property acquisition price, plus current contributions to mortgage loans, amounting altogether to 3% of the property acquisition price. Payments are due initially three months after the borrowing date and are adjusted annually for 45 years; for the first 20 years, they are subject to the entire increase in the net consumer-price index, and subsequently to 75% of this increase. The first adjustment is made one year after the first payment. The difference between the residents' payments and the total payments on the loan is paid by the state as loan repayment subsidies.

○ *Intermediate tenures:*

- *Are there intermediate forms of tenure classified between ownership and renting? e.g.*
 - *Condominiums (if existing: different regulatory types of condominiums)*
 - *Company law schemes: tenants buying shares of housing companies*
 - *Cooperatives*

In addition to conventional home ownership, Denmark has private co-operative ownership (*andelsboliger* in Danish) where owners buy a 'society owner share' from the former owner of the dwelling (most often an apartment), and pay the owner society a comparatively low rent for the right of occupation. The price of the society owner share is set according to rules that keep the share price growing over the years, but usually below the market price. The monthly rent covers, among other expenditures, debt servicing and exterior maintenance. When owners want to leave and sell their share, they are free to do this, but potential buyers must – in some cases may – be taken from a waiting list. The board is elected by the shareholders/owners of the co-operative. The legal relationship between the co-operative housing association and the individual shareowner is regulated by the association's articles of association and not by the rent legislation.

If the shareowner rents out his share – his apartment – to a tenant, the rent legislation will apply to the legal relationship between the shareowner and the tenant. Private cooperative ownership is sometimes counted as renting by Statistics Denmark. It covers approx. 17 per cent of the rental market. This could give rise to a number of statistical discrepancies, as a co-operative ownership could also be registered as an owner home, which is owned by a co-operative housing association. In 2010 there were 202,000 co-operative ownerships in Denmark in approximately 10,000 co-operative associations. This equals approximately 7.4 per cent of the total dwelling stock.¹⁴

- *Rental tenures*
 - *Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?*
- *Which actors own these dwellings (private persons, profit or non-profit organizations, etc.)?*

The terminology “with (or without) a public task” is not used in Danish rent legislation.

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 Housing Regulation Act does not apply in some Danish municipalities. The extent to which the Act applies is determined by the sitting municipal council. The Act applies in most municipalities across the country.¹⁵ The Housing Regulation Act is *lex specialis* in relation to the Rent Act within the areas that it regulates. These areas primarily concern rent determination and property maintenance. (The relationship between the Rent Act and the Housing Regulation Act is described in Part II.)

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 non-professional landlords
- 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.

In 2010, the number of tenancies according to rent regulation type (of which there are four main types in Denmark – not based on who owns the rented dwelling) was as follows: Housing with direct or indirect “cost-based rents”: 364,300; “value of the premises”: 67,800; and “market rent” (unrestricted rent setting): 63,700.

¹⁴ According to the Danish “BBR-register”. See “*Rapport afgivet af en arbejdsgruppe under Erhvervs- og Selskabsstyrelsen: Arbejdsgruppe om panthavers grundlag for at overtage en andelsbolig*”, 2011.

¹⁵ Today, most municipalities have a population of between 30,000 and 80,000 people. The local municipality can decide whether the Housing Regulation Act should apply in the municipality. No criteria for size of population (or other criteria) determine this.

TABLE 2: RENT CONTROL REGIMES IN DENMARK

RENT REGIME	LEGISLATION	DATE	APPLIES TO	APPROX NUMBER OF DWELLINGS
'Value of the rented dwelling' or 'value of the tenancy' <i>Det lejedes værdi (DLV)</i>	The Rent Act <i>Lejeloven</i>	1939 et seq	All private rented dwellings built before 1991, unless the Housing Regulation Law is in force in the municipality	55,200 as of 2003 (OECD 2006)
Cost-based rents <i>Omkostningsbestemt husleje</i>	Housing Regulation Law <i>Boligreguleringsloven</i>	1975	More than 6 units, built before 1991. Default form of regulation for rental-only buildings in larger communes (over 20,000 residents), although local authority may decide not to apply this law. Smaller municipalities may choose to employ this form of regulation	191,400 as of 2003 (OECD 2006)
Small buildings <i>Småhuse</i>	Housing Regulation Law <i>Boligreguleringsloven</i> The Rent Act <i>Lejeloven</i>	1975	In unregulated municipalities the Rent Act is in place. In regulated municipalities, the Rent Act is also in place if the building has 1-6 units, but in reality rents are determined by the Housing Regulation Law.	142,000 as of 2003 (OECD 2006)
Renovated dwellings	Paragraph 5.2 of Housing Regulation Law <i>Boligreguleringsloven</i>	1996	Dwellings previously subject to cost-based rents that have been the subject of major improvements (those costing more than 1,984 DKK/m ² or DKK 266,918 total; cost floor updated annually)	12,500 as of 2003 (OECD 2006)
New buildings		1991	Buildings constructed post-1991 are free from rent regulation if so stated in the lease	17,400 as of 2003 (OECD 2006)
Penthouses		2004	New rooftop apartments built on top of otherwise rent-controlled buildings	No information

Sources: Retssal.dk (2011) *Huslejeændringer* (Changes in rents) www.retssal.dk; accessed 18 Feb 2011; De Økonomiske Råd (2001) 'Chapter III: The housing market – skewed and inefficient' in *Dansk Økonomi Forår 2001* (Danish Economy Spring 2001); EUI Tenancy Law Project: Final Report Denmark; OECD (2006) 'Chapter 4: Housing: Less subsidy and more flexibility' in *OECD Economic Survey Denmark*

DETERMINATION OF INITIAL RENT	DETERMINATION OF SUBSEQUENT INCREASES	OVERSEEN BY	COMMENTS
NOT market rent, despite the name. Based on typical rents for similar units in the area, 'in terms of situation, type, size, quality, fittings and state of repair'	Lease to specify periodic rent increases (<i>trappeleje</i> – rent steps). If the rent is 'significantly' (10-15%) below 'the value of the rented dwelling', the landlord can demand an increase to that level. This can be done at the earliest 2 years after initial lease or preceding rent rise. Rents can be increased when taxes rise	Municipal Rent Board <i>Huslejenævnet</i> and Housing Courts (<i>boligretter</i>)	Tenancies governed by these provisions are confusingly known in Denmark as 'unregulated' (by comparison with cost-based rents, below) even though rents are not freely determined
Rents are 'freely agreed' but based on landlord's running costs + fixed amounts for yield (different formulas depending on age of building) and exterior maintenance. Lease cannot contain rents or conditions more onerous than for other tenants in the building	Lease to specify periodic rent increases. Tax increases can be reflected. For leases from before 1/7/96: Lease terms could not be more onerous than rents and conditions for other tenancies in the building. For leases after 1/7/96: Step increases can only be agreed if the initial rent was below the permitted cost-based rent	Municipal Rent Board <i>Huslejenævnet</i> and Housing Courts (<i>boligretter</i>)	These tenancies are known as 'regulated' rents. This regime applies in about six times as many communes as the <i>lejeloven</i> , including most of the larger municipalities – together they have about 87% of the housing stock. About 92% of all PRS dwellings are in municipalities that apply cost-based rents (<i>Folketingets Boligudvalg 2011b</i>). Calculation of yield for buildings built after 1964 gives cost-based rents higher than market rents in some cases
Rents based on 'value of the rented dwelling' but the relevant comparators are dwellings with cost-based rents	As above	As above	Cost-based rents considered inappropriate for smaller buildings
Free but cannot go substantially above 'the value of the rented dwelling'			As of 2010 about 28,000 dwellings (<i>Folketingets Udvalg 2011b</i>)
Freely agreed, but cannot be 'obviously unfair'	Lease to specify periodic fixed rent increases, or rent increases according to RPI		From 1991-2001, 14,000 private rental dwellings were built in cost-based rent municipalities
Freely agreed, but cannot be 'obviously unfair'			

The table is copied from: Whitehead, Christine et al.: *The Private Rented Sector in the New Century: A Comparative Approach*. København: Boligøkonomisk Videncenter, 2012 with reference to original source.

The following section concerns the private-sector rental market:

It is not possible to define or classify different types of quality in terms of rented or owner-occupied dwellings. The quality of the buildings and of their interior, e.g. kitchen facilities and bathrooms, may be of significance in the determination of the rent for certain types of tenancy. However, the method used to determine the rent is not directly dependent on how the building can be classified in terms of quality.

In order to encourage property owners to maintain and improve their properties and tenancies, it has been possible since 1 July 1996 under the Housing Regulation Act (Section 5 Subsection 2) to charge a higher rent (= "value of the premises")¹⁶ if a tenancy has been extensively improved for a given sum of money. This could apply for example if a new kitchen and/or bathroom has been installed in the rented premises or other major improvements have been carried out. A total of 10-12,000 private rented dwellings were extensively modernised during the period 2000-2006. The total investment during this period was between DKK 3 and 4 billion. It is estimated that as of mid-2006, a total of 17-20,000 homes were covered by the Housing Regulation Act's Section 5, Subsection 2.¹⁷ In 2006, average modernisation costs amounted to DKK 4,080 per m². The possibility of charging a higher rent can mean that some tenants cannot afford these apartments, but because the market share is still fairly small, this has not become a major problem and has not caused gentrification. As the improvements can be made only after one tenant has moved out, eviction is not an issue here.

In February 2014, a bill was presented which will mean that the letting of premises in accordance with Section 5 Subsection 2 of the Housing Regulation Act will be possible only after the entire property has achieved a certain energy classification (energy-saving measures). This will probably initially result in a stagnation in the number of tenancies that are modernised internally (e.g. with a new kitchen or bathroom).¹⁸

In addition to conventional home ownership, Denmark has private co-operative ownership (*andelsboliger* in Danish) where owners buy a 'society owner share' from the former owner of the dwelling (most often an apartment), and pay the owner society a comparatively low rent for the right of occupation. The price of the society owner share is set according to rules that keep the share price growing over the years, but usually below the market price. The monthly rent covers debt servicing and exterior maintenance. When owners want to leave and sell their share, they are free to do this, but potential buyers must – in some cases may – be taken from a waiting list. The board is elected by the shareholders/owners of the co-operative. The legal relationship between the co-operative housing association and the individual shareowner is regulated by the association's articles of association and not by the rent legislation. If the shareowner rents out his share - his apartment – to a tenant, the rent legislation will apply to the legal relationship between the shareowner and the tenant. Private cooperative ownership is sometimes counted as renting by Statistics Denmark. This type of ownership accounts for approx. 17 per cent of the rental market. This could give rise to a number of statistical discrepancies because a

¹⁶ This is (still) a form of rent control. The Rent control systems are described below.

¹⁷ "Anvendelsen af § 5, stk. 2, i boligreguleringsloven – resultater af en spørgeskemaundersøgelse" (Velfærdsministeriet, februar 2009).

¹⁸ LFF 2014 129.

co-operative ownership could also be registered as an owner home, which is owned by a co-operative housing association. In 2010 there were 202,000 co-operative ownerships in Denmark in approximately 10,000 co-operative associations. This equals approximately 7.4 per cent of the total dwelling stock.¹⁹

Social Housing sector:

Within the rented housing market, there are also a total of approx. 595,000 social rented dwellings (equivalent to approx. 20 per cent of all housing stock). These dwellings fall under a category of rented houses which can be called “social housing” by Danish definition. Social housing is the Danish non-profit rental housing sector (“*almennyttige boligselskaber*” in Danish) that amounts to approx. 55 per cent of the rental market (with private – or possibly for-profit – rental housing making up the rest as stated above).

In the 1940s and 1950s, social housing consisted of small, centrally located estates. From the 1960s to the end of the 1970s, larger estates, often with high-rise buildings, were constructed on the outskirts of cities. Many of these estates now have social problems. Since then, most new social housing has been created in smaller, low-rise estates. Since 1994, decisions about the construction of new social housing have been approved by local authorities. Previously, a national quota system managed by a single civil servant determined how many new social housing units could be built annually in each municipality. When he retired, an 'objective' model was developed. Under the new model-based system, for the first time, many rural municipalities were allocated small amounts of social housing (estates with 2-10 units). Housing associations in urban municipalities would often compete with each other for a share of the local quota. In some places, such as Aarhus, the associations would agree among themselves who could build, and then they informed the council.

The problem of concentrations of socially deprived and ethnic communities on social housing estates

has been on the political agenda for over 20 years. Solutions have included the following:

- Improvement of physical conditions by renovating and modernising buildings, in most if not all cases with a subsidy from the *Landsbyggefonden*.
- Social initiatives - employment creation, promotion of integration, crime prevention.
- Subsidies for rent reduction, to make high-cost estates more attractive to high-income groups/ tenants with high incomes.
- Sale of dwellings to achieve a better mix of residents
- Extending the right to demolish buildings to improve the general environment
- Letting local businesses rent premises as a way of creating more varied and interesting neighbourhoods.

¹⁹ According to the Danish “BBR-register”. See” “*Rapport afgivet af en arbejdsgruppe under Erhvervs- og Selskabsstyrelsen: Arbejdsgruppe om panthavers grundlag for at overtage en andelsbolig*”, 2011.

Various studies have found that municipalities are often reluctant to permit the construction of new social housing, because they do not want an influx of residents with social problems and who will cost them money. Currently they are often more willing to allow housing associations to build special-needs housing, such as dwellings for the elderly or handicapped - in fact, such special-needs housing now makes up more than 50% of new-build social housing.²⁰

However, non-profit housing covers more than “pure” social housing defined as homes for people in need. 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”, yet today not only people in need of a home are placed in social-housing rented apartments, and a lot of low- or middle-income groups do not want or need (for economic reasons) to live in social housing. Everybody in general can apply for a home in a social housing apartment.

The Danish social-housing sector comprises a total of approximately 700 social housing organisations with 7,500 divisions (estates) in total, all of which are run on a non-profit basis. Only this kind of organisation can own property in this sector.²¹

These organisations and divisions own and run the houses on the basis of a residents’ democracy. The sector can be divided into three different groups; in 2012, 488,000 social dwellings were family dwellings, 77,000 were dwellings for the elderly and approximately 30,000 were dwellings for young persons.

Social housing is covered by the Act on the renting of social housing. This Act is essentially identical to the Rent Act, but contains a series of special rules that apply only to social housing. These rules stem from the residents’ democracy that exists within social-rental housing, according to which tenants have a right of co-determination with respect to their dwellings. The tenants’ rights with regard to social dwellings are thus based on the view that, through a number of legal bodies, the tenants to a great extent are the landlords and take decisions as to how the dwellings in which they live should be managed. This residents’ democracy is governed by many rules. These rules are based on many laws, executive orders and guidelines linked to the Act on social housing and the Act on the renting of social housing.

As regards provisions concerning the legal relationship between the landlord and the tenant, the provisions in the Act on the renting of social housing follow the Rent Act, with a limited number of amendments where there are considered to be particular considerations relating to protection of the tenant in this type of tenancy and where the residents’ democracy is of importance. The Act on social housing contains special rules concerning rent determination, the maintenance of the rented property during the tenancy and the condition in which the rented property must be left upon vacating . For social housing, there is also a special dispute resolution body, called the Resident Appeal Board (*beboerklagenævnet*).

²⁰ *Social Housing in Europe*, 2007, Edited by Christine Whitehead and Kathleen Scanlon.

²¹ As described in Section 1 of the Act on the renting of social housing. Consolidated Act no. 961 August 11, 2010.

The rent determination rules are based on the principle that the property must be managed on a non-profit basis. According to the provisions of the Act on the renting of social housing, the total rent charged for the dwellings in a section must be determined so that it covers the running costs of the section at all times. This is called the self-supporting principle. Therefore, no profit is budgeted for in the running of the sections. However, in order to avoid frequent rent adjustments, some provision must be made for unforeseen expenses. The rent charged for an individual dwelling must be determined on the basis of an assessment of the homes' reciprocal utility value. This means that a distribution key is established according to the utility value of the homes. A budget for running costs is adopted at the section meeting every year. If the rent in question cannot cover the running costs – including due mortgage payments – it must be increased with three months' notice so that it once again covers the associated costs. If improvements are made to dwellings within a section, the associated expenses must be split among the dwellings to which the improvements are made, according to the increase in utility value.

Social housing for the elderly sector includes all housing for the elderly which is established in accordance with and has authority in Section 5 (1) of the Danish Consolidation Act on Social Housing etc. As regards equipment and design, the dwellings must be specifically adapted to meet the requirements of elderly people and people with disabilities, including wheelchair users, and for this purpose the dwellings must satisfy the requirements under Section 110 of the Consolidation Act on Social Housing etc. Social housing for the elderly must have easy access for those with impaired mobility. To this end, it is often necessary to install elevators in multi-storey buildings; however, in certain cases this can be avoided. Lastly, each dwelling must be equipped with a communication system from which prompt assistance may be called at any time of the day or night. Those entitled to social housing for the elderly are elderly persons and disabled persons with a special need for such housing.

The term "care home" includes all housing for the elderly that includes staffed care and service areas. This category encompasses all social-care homes, nursing homes (under the Danish Consolidation Act on Social Services), and sheltered housing with associated staffed care and service areas. The term social-care home is taken to mean social housing for the elderly that includes staffed care and service areas pertinent to the specific needs of the residents.

The difference between social housing for the elderly and social "care homes" does thus not concern the dwelling itself, but solely the attached service areas and service functions. Nursing homes and sheltered housing (Section-192 dwellings under the Consolidation Act on Social Services). Traditionally, nursing homes were meant for people with an extensive need for care. Since 1 January 1988, the Danish municipalities are no longer been allowed to establish nursing homes or sheltered housing (Section-192 dwellings under the Consolidation Act on Social Services). As a result of closures and conversions into social housing for the elderly and care homes, Section-192 dwellings have become less important in numerical terms. Private-care dwellings are rental dwellings, which do not belong to the municipal housing stock, but which have staff attached and a service area for people with a need for extensive service and care. These dwellings are run in accordance with the Danish Act on Private Care Dwellings, which came into force on 1 February 2007. In numerical terms, these dwellings so far have had limited significance.

Most homes for young people are constructed with public support, either as social housing for young people or as self-owning young persons' housing institutions. Currently, new self-owning young persons' housing institutions cannot be founded. Social housing for young people generally falls under broader social construction activity, which also includes family homes, etc. Homes for young people are let following an assessment of the applicant's housing needs. The homes must be let to young people receiving an education or other young people with special housing and social needs. This means that consideration must be given to financial, educational and social circumstances, for example. When the tenant has completed their education, they must vacate the property.

Social housing is regulated by the Consolidation Act on Social Housing etc. and the Consolidation Act on the Rent of Social Dwellings (as well as a number of executive orders). However, homes for young people may be subject to statutory regulation under the Rent Act depending on the ownership circumstances. Under the provisions of the Rent Act, the total rent charged for the dwellings in a particular section must be determined so that at all times the rent covers the running costs of the section concerned. The principle is known as the "self-supporting principle". Therefore, no profit must be budgeted for in the running of the sections. The rent charged for an individual dwelling is determined on the basis of an assessment of the dwellings' reciprocal utility values. This means that a distribution key is established according to the utility value of the dwellings. If improvements are made to the sections' housing, the associated expenses must be distributed among the homes to which improvements have been made, according to the increase in the utility value.

1.5 Other general aspects (of the current national housing situation)

- *Are there lobby groups or umbrella groups active in any of the tenure types? If so, what are they called, how many members, etc.?*

In the private rental-housing market, both landlords and tenants are well organised. The landlords' association is called "*Ejendomsforeningen Danmark*", and a high proportion of private landlords are members. The organisation advises its members and strives to put the interests of landlords on the political agenda. The largest tenants' association is called "*Lejernes Landsorganisation*". This association gives advice to tenants who are members of the organisation and seeks to influence the political agenda in favour of tenants. There are also many smaller umbrella organisations and associations for both tenants and landlords. Locally based tenancy organisations in some places have a very big influence on the local tenancy markets, because they have a lot of members and are very active – a lot of cases are brought before the rent committees. The tenants' associations provide extensive assistance to tenants who are experiencing problems with their landlords.

Historically the largest organisations have always been involved in political negotiations concerning major revisions to the rent legislation and have considerable political influence in relative terms.

“*Boligselskabernes Landsforening*” is the umbrella group for Danish Social Housing associations. Its website, www.bl.dk, provides much information (Danish only) about the sector.

- *What is the number (and percentage) of vacant dwellings?*

In 2011 approximately 187,246 households in Denmark were registered as vacant. That equals around 6.8 per cent of the total number of households.²² Vacant households in Denmark are registered as households in which no persons are registered with an address. This means that the number includes households without residence requirements.

This means that the figures do not actually show that there are many vacant dwellings that cannot be rented out or sold. For example, empty dwellings will be registered when tenants vacate properties, for new-builds or other interim circumstances. In 2007, there were 133,530 empty dwellings, a fact which reflects the high level of activity in the housing market at the time, with the result that dwellings did not remain vacant for long between old tenants moving out and new tenants moving in.

- *Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?*

No, there are no significant black-market problems on the Danish housing market in general or the rental market specifically. This is because there is no general housing shortage and because the system for buying, selling and renting of property appears to be fair and well balanced.

²² Statistics Denmark.

2. Economic urban and social factors

2.1 Current situation of the housing market

- *What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? What have been the effects of the current crisis since 2007?*
- *How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?*
- *What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?*

There is no general housing shortage in Denmark. In the major urban areas, particularly Copenhagen, there is strong demand for attractive rented housing and for low-cost rented housing, but there is no general shortage of housing. Studies say that in some areas there might be an increasing rental demand from older persons who need rental dwellings. Furthermore, increasing rental demand has emerged, caused by earlier departure of children from the parental home and an increasing tendency towards more single living. As a result there might be a demand for more rental housing in the future.²³ In the longer perspective, declining building activity in the recent years could also create demand for more rental housing in general.

Approximately 542,738 immigrants and/or their ancestors live in Denmark – 9.8 per cent of the total population (2010). The total population is expected to grow from 5.8 million today to 6.1 million people in 2050.²⁴

Fundamentally, it can be said that when the economy is strong, the Danish system makes the purchase of property attractive as an alternative to renting. As an owner of property, it is possible – if prices are rising – to earn a tax-free profit on the sale of one's property. In addition, the "tax-free value" that arises when the value of the property exceeds the amount for it was purchased can also be mortgaged, enabling the homeowner to release money to fund purchases, for example. A tenant does not have this advantage. On the other hand, the tenant would not be able to borrow large amounts of money from a bank or mortgage company and therefore would be subject to very little financial risk.

²³ Morten Skak: *Projecting Demand for Rental Homes in Denmark*. European Journal of Housing Policy, Vol. 8, Nr. 3, 2008, s. 258. Hans Skifter Andersen, Morten Skak: *"Privat boligudlejning - Motiver, strategi og økonomi"*, SBI 2008:01. Hans Skifter Andersen: *Private udlejningsboligers rolle på boligmarkedet – en registeranalyse*. Statens Byggeforskningsinstitut 2007.

²⁴ Statistics Denmark. <http://www.dst.dk/da/Statistik/emner/befolkning-og-befolkningsfremskrivning/befolkningsfremskrivning.aspx>.

During periods of economic downturn, the owner of a property will fall into negative equity if the value of the property he owns falls below the outstanding debt on the loans that he has taken out in order to finance the purchase of the home. This is a market effect of the crisis which has caused the housing market to stagnate for many years, so that many people have been unable to sell their homes due to lack of demand. The uncertainty in the housing market resulting from the financial crisis has led many potential buyers to decide that there is too much uncertainty at present to invest in property.

The large numbers of houses and owner apartments available on the market has also meant that many owners have decided to let their property instead of selling it. This has resulted in a rising number of rental properties. At the same time, the crisis has also made it more difficult to borrow money from the banks and mortgage companies in order to fund house purchases in recent years, and many people – particularly first-time buyers – have decided to delay any decision to purchase a property and rent for the time being instead. However, as rent levels in Denmark historically have remained low, it may still be attractive to invest in property – particularly in the longer term.

For the tenancies that are covered by the rent legislation, including social housing, the crisis has had only a very limited effect, as rents are not set according to market mechanisms. For the tenancies for which the rent can be set at the market level, the crisis has probably meant that the rent charged for these tenancies in some areas has not been much higher than the regulated rent level due to supply and demand. With regard to this, it can be said that the crisis has resulted in market rent levels stagnating or declining compared with the period prior to 2007.

For many years, the number of tenants who have been evicted from their homes as a result of the non-payment of rent has been rising. However, this was already becoming apparent before the crisis, and there is no documented evidence to indicate the extent to which the crisis is the cause of the rising number of evictions. Since 2007, legislative changes and measures have been implemented to limit the number of evictions due to the non-payment of rent.²⁵

2.2 Issues of price and affordability

- *Prices and affordability:*
 - *What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)? (Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).*
 - *To what extent is home ownership attractive as an alternative to rental housing*
 - *What were the effects of the crisis since 2007?*

²⁵ Statistics from the Courts of Denmark: 2849 evictions in 2006, 3377 in 2007, 3762 in 2008, 3912 in 2009, 4382 in 2010.

The average rent per square metre in 2012 was approximately DKK 1,000 (EUR 134) in Copenhagen (and Aarhus). See the remarks and Summary Table 1 above as well.

In general, approximately 29 per cent of disposable income is used to pay housing expenses.²⁶ According to *Housing statistics in the European Union 2010* housing consumption as a share of total household consumption in Denmark was 25.4 per cent (1980), 26.1 per cent (1990) and 26.6 per cent (2000). No more recent figures are available.

The average price for dwellings in Denmark (per square metre) in 2009 was EUR 1,839 according to *Housing statistics in the European Union 2010*.

It is not easy to define the relative financial attractiveness of owning or renting. For some groups of the population, the demand for a rented dwelling is high, even though owner occupation is affordable for these groups. This could be e.g. well-educated people who want to live in central Copenhagen. Other groups live in rented dwellings because they cannot afford to buy a house or an apartment. Because of tax regulation, housing support and other aspects (see Subsection 2.3 and 2.4), it is not easy to calculate in general whether it is more attractive to own or rent.²⁷

2.3 Tenancy contracts and investment

- *Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?*
 - *In particular: What were the effects of the crisis since 2007?*
- *To what extent are tenancy contracts relevant to professional and institutional investors?*

Investments in private rental properties will be determined by the extent to which the investors can expect a return which can compete with other investments. Prior to the financial crisis investments in rental property were generally attractive to investors. Historically, property investments in rental dwellings have had given high rates of return. The greatest risks associated with investment in residential property relate to developments in the price of the property and, to some extent, whether the rent has been determined on the correct basis and is optimised.

In the long term, property investments have not been adversely affected by inflation. If the property is also financed through a fixed-interest loan during a period with a low rate of inflation, a rise in inflation will reduce the investor's debt. Increased costs, also as a result of inflation, in some cases could be entirely or partly passed on to the tenants; hence the risk associated with rising inflation also remains minimal with this approach.

The total return on investments in residential property since 2007 has developed as follows: 2007: 2.5 per cent, 2008: -6.5 per cent, 2009: -1.8 per cent, 2010: 2.5 per

²⁶ Year 2005. Dan Andrews, Aida Caldera Sánchez and Åsa Johansson: *Housing markets and structural policies in OECD countries*, Economics Department working paper No. 836. See as well a Danish survey on demand for owner or rental dwellings: Hans Kristensen og Hans Skifter Andersen: *Befolkningens boligønsker*, Center for Bolig og Velfærd – Realdania Forskning, 2009. [http://boligforskning.dk/sites/default/files/Rapport.hsa-als\(5\).doc.pdf](http://boligforskning.dk/sites/default/files/Rapport.hsa-als(5).doc.pdf) .

²⁷ Hans Kristensen og Hans Skifter Andersen: *Befolkningens boligønsker*, Center for Bolig og Velfærd – Realdania Forskning, 2009. [http://boligforskning.dk/sites/default/files/Rapport.hsa-als\(5\).doc.pdf](http://boligforskning.dk/sites/default/files/Rapport.hsa-als(5).doc.pdf) .

cent and 2011: 1.7 per cent. The growth in value throughout the period has been negative. The figures must be viewed in light of the explosive increase in rental property prices during the period leading up to the financial crisis.

Since 2007, many property investors have gone bankrupt, which has meant that a high proportion of properties have been purchased at compulsory sale auctions or in connection with compulsory sales from bankrupt estates. This has had a negative impact on purchase prices, but could have a positive effect on the return in the long term.

- *In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?*
- *Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?*

This is not relevant in Denmark. These types of investment are not legal. It is not possible to dispose of tenancy contracts independently from the property and the financing of the property.

2.4 Other economic factors

- *What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)?*
- *What is the role of estate agents? Are their performance and fees regarded as fair and efficient?*

The insurance burden on a private rental property will usually be split between the landlord and the tenant. The landlord must insure the property itself against damage, e.g. fire, etc., if the property is mortgaged. If a cost-based rent is charged, the landlord can include the cost of insurance in the running costs budget, so that the cost is paid by the tenants as part of the rent.

The tenant must insure the items that she owns, including furniture. If the tenant installs his or her own domestic appliances on the rented property, he or she must insure these goods himself, e.g. to cover any damage that the installed goods may cause to the property. The tenant can choose the insurance company; the landlord has no say in this matter.

The role of estate agents is limited in relation to the letting of apartments. Under Section 6 of the Rent Act, 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 from or charge a fee to the tenant, nor to require the tenant to enter into another contract which is not part of the tenancy agreement. Any amount paid in contravention thereof may be required to be repaid.

The estate agent can charge the landlord in accordance with their agreement. No rules regulate the size of this fee, but the fee must be fair.

In some cases the agent will act as mediator for the landlord and charge the landlord for various services, e.g. advertising and drafting of tenancy agreements. The setting of the fee for this is limited only by the agreement between the parties. It is possible to appeal the amount of the fee to a professional appeal board. The number of appeal cases is limited in this regard.

In connection with the purchase and sale of property, estate agents are involved in the vast majority of purchases. Many agents work according to the principle of “no cure, no pay”.

2.5 Effects of the current crisis

- *Has mortgage credit been restricted? What are the effects for renting?*
- *Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?*
- *Has new housing or housing related legislation been introduced in response to the crisis?*

In the years before the financial crisis, Danish housing was characterised by very large increases in property prices. From 2000 until 2007, housing prices for single-family homes and condominiums rose by 85 per cent and 105 per cent, respectively, with the largest increases occurring in the Copenhagen area.

Housing prices are mainly powered by economic fluctuations and interest rates. Decreasing interest rates and new mortgage loan types had been introduced and property value taxes were frozen in 2002. These factors all contributed to rising prices. The introduction of amortisation-free loans (2003) is considered to be the main cause of rapid price increases in the period before the most recent financial crisis.

When the crisis developed, prices fell dramatically. This was not anticipated by the Government (or by anyone in the financial sector). The cause of this has been that many Danish households have a large debt because they cannot sell their property – or they cannot sell it without losing a larger amount of money.

In addition, prices on commercial buildings with rented dwellings increased rapidly – by approximately 200 per cent from 2000 until 2007. After 2007 the decrease in prices for these commercial properties has been even larger than for single-family homes and condominiums.

The banks have become reluctant to lend money for financing house purchases; banks and mortgage companies have become subject to stricter government control, but no restrictions have been introduced concerning loan types, etc.

For letting, the crisis has not had any direct effects in this regard. It is possible that the demand for rented dwellings has increased (or has not decreased at least) because some people cannot lend money to buy a house.

In 2012 there were 5,130 cases of repossession (where, in the event of default in payment or terms, property pledged for a debt is sold to (try to) pay the debt).²⁸ The number of repossessions has been steady from 2011–2013. From 2006–2010, repossessions increased from less than 100 per month to more than 400 per month.²⁹

Tenant's rights are ensured if the property is resold or in case of repossession. A new owner of the property must respect the general rights of the tenant under the tenancy laws. repossession has no direct effect on the rental market.

The legislation involving the relationship between a landlord and a tenant has not been changed after the financial crisis. With regard to the housing market in general, very few things have been changed. It is still possible to get an amortization-free mortgage loan.

2.6 Urban aspects of the housing situation

- *What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)*
- *Are the different types of housing regarded as contributing to specific, mostly critical, “socio-urban” phenomena, in particular ghettoization and gentrification*
- *Do phenomena of squatting exist? What are their – legal and real world – consequences?*

In Copenhagen, the proportion of owner dwellings is much lower than in the rest of the country. In 2000, the distribution in the cities of Copenhagen and Frederiksberg (the neighbouring municipality – geographically a part of Greater Copenhagen) was as follows: 34 per cent of the housing pool lived in private rental dwellings, 18 per cent in social housing, 30 per cent in co-operative housing, 13 per cent in owner apartments and 6 per cent lived in other owner dwelling types. In the suburbs of Copenhagen, the number of owner dwellings is higher, but not as high as in the rest of the country in percentage terms.

In Denmark as a whole, the proportion of owner dwellings (excluding owner apartments) on average accounted for 48 per cent of the housing stock.

In major towns and cities other than Copenhagen, the number of owner dwellings is also lower than the average, so there is a marked trend for a greater number of rental dwellings (both private and social) in urban areas. However, this trend is not as clear outside Copenhagen. Outside Copenhagen and the surrounding region (the capital region), the number of co-operative dwellings is also very limited. Only in certain major towns and cities are there co-operative dwellings. This is partly because there has been no tradition of founding co-operative dwellings and partly because the

²⁸ Figures from Statistics Denmark. They indicate all cases of repossession – including privately owned houses and apartments as well as commercial premises.

²⁹

http://www.realkreditraadet.dk/Statistikker/Generel_statistik/Tvangsauktioner_og_konkurserkl%C3%A6ringer.aspx

number of properties for which it has been possible to found co-operative housing associations has been limited because of the owner structure.

In Copenhagen, the proportion of co-operative dwellings rose from 4 to 30 per cent of the housing stock from 1982 to 2000. During the same period, the proportion of private rental dwellings fell from 65 to 34 per cent. The number of owner apartments is also limited outside Copenhagen.

There are owner apartments in most towns and cities with apartment blocks, but only to a limited extent. Outside the urban areas, there are virtually no apartment blocks and the number of social dwellings is also limited. Owner dwellings dominate here. Although the figures are more than 10 years old, they accurately describe the distribution of dwelling types in the country.

Due to the right of local authorities to set the rents charged for social housing and a generally lower rent level in these cases, there has been a tendency in some residential areas of Copenhagen, the surrounding area and in the major provincial towns and cities for “ghettos” to develop in residential areas dominated by social housing. These areas are often inhabited by a high proportion of tenants who cannot afford to live elsewhere and/or who have been “placed” there by the local authority, which has the right to allocate people to social housing.

In addition, these areas often have higher concentrations of tenants of non-Danish ethnic origin. Some of these tenants live in these areas precisely because there is a concentration of residents there with the same ethnic background as themselves. In Denmark, a ghetto is defined as a residential area with at least 1,000 inhabitants who fulfil three of the following five criteria:³⁰

1. The proportion of immigrants and descendants from non-Western countries exceeds 50 per cent,
2. The proportion of 18–64-year-olds without any link to the labour market or education exceeds 40 per cent (average for the last two years),
3. The number of people convicted of various offences per 10,000 inhabitants aged 18 or over exceeds 2.7 per cent (average for the past two years).
4. The proportion of 30–59-year-olds who do not have an education beyond compulsory school (9 years) exceeds 50 per cent.
5. Average income for 15–64-year-olds – excluding those attending schools or other educational programmes) is less than 55 per cent of the average income of the same group in the whole region.

In 2012, there were 33 such residential areas in Denmark.

In Copenhagen, there are a number of examples of “gentrification”, where former “workers’ districts” have been “adopted” by more affluent population groups after the dwellings and urban areas have been refurbished. This has resulted in developments in the urban environment and increasing housing prices in the areas concerned. However, this phenomenon has occurred only in very concentrated areas in Greater Copenhagen during the last decade, and it is not generally documented.

Apart from Christiania in Copenhagen (an independent community of approximately 900 people founded in 1971 on the site of an abandoned military zone), organized squatting does not exist. And Christiania cannot serve as a general example. Civic

³⁰ Section 61 a of the Social Housing Act. Consolidated Act no.1023 of 21 August 2013.

authorities in Copenhagen still regard Christiania as a large commune, but the area has a unique status in that it is regulated by the Christiania Law of 1989, a special law which transfers parts of the supervision of the area from the municipality of Copenhagen to the state.

In some cases, abandoned houses in Copenhagen have been occupied by squatters for a limited period of time. Possession of these properties has been returned to the owners with the help of the police. There is no specific legislation to cover squatting.

2.7 Social aspects

- *What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior or economically unsound in the sense of a “rental trap”?) In particular: Is only home ownership regarded as a safe protection after retirement?*
- *What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatized apartments in former Eastern Europe not feeling and behaving as full owners)*

Social housing generally has a lower status than any other type of housing in Denmark, particularly because of the many ghettos that have been created. In addition, social housing often has a less attractive location in the towns and cities, and (at least a few years ago) compared with other types of apartment/rental buildings, social housing properties were of lower quality and less “stylish” (e.g. because of the choice of building materials, architecture, etc.). Collectively, these factors have resulted in social housing generally being seen as less attractive. Some people find social housing attractive for the reason that it might be cheaper (in general) to live there than in rented apartments in the private sector.

Other types of rental housing do not have the same negative reputation. There may also be private rental buildings which, for one reason or another, are considered less attractive, e.g. because they have not been well-maintained or because of social problems among the tenants. However, this is due to specific circumstances rather than a general attitude among the population.³¹

There is no evidence to suggest that only owner dwellings are attractive to the population when they leave the labour market. It will often be the case that people who live in rented accommodation before they retire will continue to live in rented accommodation after they have retired.³²

³¹ See the Danish survey on demand for owner or rental dwellings: Hans Kristensen og Hans Skifter Andersen: *Befolkningens boligønsker*, Center for Bolig og Velfærd – Realdania Forskning, 2009. [http://boligforskning.dk/sites/default/files/Rapport.hsa-als\(5\).doc.pdf](http://boligforskning.dk/sites/default/files/Rapport.hsa-als(5).doc.pdf) .

³² Morten Skak: *Projecting Demand for Rental Homes in Denmark*. *European Journal of Housing Policy*, Vol. 8, Nr. 3, 2008, s. 258.

Summary table 2

	Home ownership	Renting with a public task	Renting without a public task
Dominant public opinion	Good	Problems with ghettos Lower standards	Problems with ghettos Lower standards
Tenant opinion	Good	Problems with ghettos Lower standards	Problems with ghettos Lower standards

3.1 Introduction

- *How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?*

In general the main aim of the housing policy is – through a comprehensive supply of housing – to ensure that good (and healthy) housing is available to all of the population.

In recent years, there has also been a focus on ensuring that greater consideration is given to the environment and energy efficiency in connection with new construction and refurbishment. The taxation of homeowners has been put on hold, and welfare in other areas is not being financed through the tightening of this taxation.

The special regulation regarding purchase of “summer cottages” (dwellings not intended for year-round use) could be a violation of the prohibition against discrimination on the grounds of nationality in the EC Treaty Art. 12, but Denmark has obtained a special right through an addendum to the Amsterdam Treaty continuing a corresponding provision in the Maastricht Treaty, which remains in force after adoption of the Lisbon Treaty.

Foreigners who are not citizens of the EU/EEA and companies from non-EU/EEA countries are only permitted to purchase real estate in Denmark if the appropriate authorisation to do so has been obtained from the Danish authorities.

In some situations, citizens and companies of EU (or EEA) countries need no authorisation, although certain requirements must still be complied with. In particular, purchase of real estate without authorisation is possible only under certain circumstances – for the purpose of serving as the purchaser’s year-round residence or if the purchase is necessary in order to perform independent business or to provide public services in Denmark.

Foreigners’ capacity to purchase real estate in Denmark is restricted by statutes of law, although in respect of EU and EEA citizens’ rights according to EU legislation.

The restrictions do not apply to individuals who have been residents of Denmark for a total of five years at the time of purchase, regardless of their nationality or where they are actually living.³³

- *What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)*

The right to private life, the protection of private property and the right to an adequate standard of living are all regulated through the national constitution and the European Convention of Human Rights. Based on this one can argue that the regulation

³³ Protocol (No 1) on the acquisition of property in Denmark, 1992 and as stated in Section 1 of the Consolidated Act no. 566, 28 August 1988 on purchase of property in Denmark. Confirmed in case law by the Supreme Court – Ugeskrift for Retsvæsen 1998 p. 588. Also Fuldmægtigen 2013.77 Western High Court.

constitutes a right to housing, but there is no direct or formal legislation on this issue in the Danish constitution.

Between landlords and tenants, no constitutional rights play a role, for instance if the landlord wants to evict the tenant because the tenant has not paid the rent. However, you can argue whether the state/the local authorities have an obligation to help the evicted tenant to get a new home. Public law measures for assigning housing to people in need are almost non-existent as far as the private housing sector is concerned. As for social housing, local authorities can freely dispose of at least 25% (in Copenhagen 33%) of the housing available.

3.2 Governmental actors

- *Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?*
- *Which level(s) of government is/are responsible for designing which housing policy (instruments)?*
- *Which level(s) of government is/are responsible for which housing laws and policies?*

Rules adopted by Parliament establish the legal framework of Danish housing policy. The Danish Parliament is responsible for designing housing policy which will to be carried out on all government levels.

At a lower level, the local authorities in some areas have the competence to make political decisions concerning the construction of social housing. However, these decisions must be made within the framework of the legislation that has been adopted by the Parliament. Nevertheless, it is the individual local authorities which are responsible for awarding housing support (but amendments to housing support schemes must be approved by the Parliament).

Neither the Danish constitution nor international obligations have had a significant role in the creation of the existing rules. National consumer protection legislation plays a significant role, because all the most important statutes are mandatory. If they are deviated from by agreement, this part of the contract will be void. The agreement must remain within the framework of the Acts. European consumer protection legislation has not influenced tenancy law because tenants have had better protection under the statutes for many years.³⁴

3.3 Housing policies

- *What are the main functions and objectives of housing policies pursued at different levels of governance?*
 - *In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation)?*
 - *Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?*

³⁴ Hans Henrik Edlund: *EUI Tenancy Law Project Final Report Denmark*, 2003.

- *Are there special housing policies targeted at certain groups of the population (e.g. elderly people, migrants, Sinti and Roma etc.)?*

Tenants in rented properties can be said to be favoured through the fact that many rented properties are subject to rent regulation, which keeps rent levels down. However, other than this, there are no special regulated schemes that work to the advantage of tenants. On the other hand, private homeowners are favoured through the tax allowances they receive for interest expenses related to financing of the purchase of their property. Furthermore, private homeowners can be said to be favoured through the many advantageous forms of loans that are available to finance the purchase of property. In addition, private homeowners are not taxed on the sale of property in which they themselves have lived.

Chapter VII of the Temporary Regulation of Private Housing Act contains rules to prevent dwellings from remaining empty. These rules apply in most major cities and make it illegal to use dwellings for other purposes, to let dwellings remain empty for more than six weeks and for people to occupy more than one dwelling inside the jurisdiction of a local government authority. Breaking the law can result in a fine and, if a rented flat is not occupied, the local authorities have the power to terminate the tenancy agreement between the landlord and the tenant. These rules are not used very often.

The initiative aimed at combating ghettoization (see immediately below) is partly justified based on the fact that large groups of immigrants and their descendants – ‘people of non-Danish ethnic origin’ – are becoming concentrated in certain residential areas. Part of the initiative aimed at ghetto development therefore represents an attempt to offer incentives to certain population groups to settle in other residential areas not characterised by ghettoization. However, the legislation is not directly aimed at any individual or specifically named population groups. The definition of whether a certain area is a ghetto is defined by law under certain criteria.³⁵

No party that wants to win an election dares to announce any change in housing policy. Politicians’ level of knowledge about social housing is generally low; it is an insider’s issue. This situation was fostered by many years of close direct co-operation between social democrats, trade unions and the national social housing organisation. However, after the 2001 election the power of this group dissolved, and social housing advocates have been looking for new ways of communicating with and influencing the government and the Parliament. They have found a partner in the right-wing Danish People’s Party (*Dansk Folkeparti*), which has strong support among residents of social housing and was a key political ally of the liberal-conservative government.³⁶

The current government is led by social democrats; this means that social housing is still a priority.

³⁵ A often used definition of ghetto is “an extreme form of residential concentration; a culture, religious or ethnic group is ghettoized when a high proportion of the group lives in a single area , and b) when that group accounts for most of that group in the area” (The Dictionary of Human Geography, 2000).

³⁶ *Social Housing in Europe*, 2007, Edited by Christine Whitehead and Kathleen Scanlon.

3.4 Urban policies

- *Are there any measures/ incentives to prevent ghettoization, in particular*
- *Mixed tenure type estates*³⁷
- *“pepper potting”*³⁸
- *“tenure blind”*³⁹
- *public authorities “seizing” apartments to be rented to certain social groups*

Other “anti-ghettoization” measures could be: lower taxes, building permit easier to obtain or requirement of especially attractive localization as a condition to obtain building permit, condition of city contribution in technical infrastructure.

- *Are there policies to counteract gentrification?*

Since the early 2000s, there has been a political focus on the increase (by Danish standards) in problems associated with ghetto development in certain residential areas in the country. The legislators have implemented many statutory regulations aimed at combating these unintended circumstances. The initiative is being implemented in a number of areas. The social sector has been allocated more funding to erect (and refurbish) buildings to meet a higher and more competitive standard of housing (compared with private rental housing) in order to make social housing more attractive for a broader group of tenants.

From 2006, it became possible to sell social dwellings, with the result that social rental properties could be converted to owner dwellings in residential areas. However, this possibility has been used in only a few cases.

In addition, the opportunities to allocate vacant social dwellings in residential areas with a particularly high proportion of residents outside the labour market have been reduced. To create a broader cross-section of people living in these areas, the housing organisations acquired the right not to allocate tenancies to applicants who are out of work or who were otherwise on the waiting list. In 2010, a new political agreement was established, according to which considerable funding was to be allocated to boosting the refurbishment of social housing areas with the aim of enhancing their competitiveness, alleviating the problems being experienced in the ghetto areas and combating new trends towards ghettoization.

As described above, gentrification exists only to a very limited degree in Denmark. The “phenomenon” has not created any need to introduce special legislation.

³⁷ Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenized communities, and to strengthen diversification of housing supply.

³⁸ This mechanism is locating social housing flats among open market ones, so as not to gather lowest income families in one place. The concept is quite controversial, however in English affordable housing system was used for a long time to minimize the modern city ghettos problem.

³⁹ This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable from outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.

- *Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms? (does a flat have to fulfil any standards so that it may be rented? E.g.: minimum floor area, equipment, access to technical and/or social infrastructure and/or public transport, parameters such as energy efficiency, power/water consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)*

There is no general legislation on this issue.

Measurable quality requirements concerning rented property standards are found only in connection with letting in accordance with Section 5 Subsection 2 of the Housing Regulation Act. In order for a rented property to be let in accordance with Section 5 Subsection 2 of the Housing Regulation Act, improvements with a value of DKK 241,506 (approx. EUR 31,800) or DKK 2,112 (EUR 292) per m² (2012 figures – the figures are index-linked every year) must be carried out. There is no requirement that the improvements must apply to only the rented property in question. A proportion of common improvements may also be included. Improvements inside the rented property are often a new kitchen, new (perhaps even larger) bathroom and bathroom facilities, new floors and new electrical appliances. Outside the rented property the improvements could be on fire security, energy efficiency etc. The interpretation of the extent to which the rented property must be “extensively” improved is not clear. However, provided the minimum limits are met, the fact that only certain rooms in the property have been improved will not disqualify the property concerned in relation to the provision. The improvements must raise the standard of the rented property for the tenants. There is currently no requirement for the improvements to result in the rented premises/property attaining a certain defined high standard, e.g. equivalent to new-build.

From July 1, 2014, a requirement will be introduced according to which the entire property must attain a certain energy classification before it can be let under the provision. If the rented property is let in accordance with Section 5 Subsection 2, the rent may be set at a higher level than that which was charged before the improvements were made. This is the incentive for the landlord. The incentive for the tenant is an improved standard in the property to be rented. The number of Section 5 Subsection 2 tenancies is rising. Although there is no supporting documentation, there is significant demand for high-quality rental properties, even though the rents charged for such properties are higher than those charged for unimproved properties.

Landlords wishing to refurbish a property, must carry out the refurbishment in accordance with general building legislation.

If a property is uninhabitable, e.g. because of extensive damage, the local authority where the property is situated may intervene and condemn the property, preventing it from being occupied. The legislation contains no specific minimum requirements regarding the condition that a property must be in before it can be let. It is possible for the local municipality to make a claim to the Rent Tribunal (not just on behalf of the tenant) if a property owner fails to maintain a property so that it is fit for habitation.

- *Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.: in order to prevent suburbanisation and urbanisation? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)*

No direct regional housing policies exist – on a national level. The local municipalities can decide whether they want to develop their local areas (e.g. make land available for building new houses) as long as it is not in conflict with national law on development etc. Some areas of Denmark have a low population density and, particularly since 2007, these areas have suffered from economic problems in industry, etc. As a result a rising number of people are leaving these areas. Property prices in these areas are generally lower than in other parts of the country with higher population density, closer to larger cities and with better infra-structure. Indirectly, this also has an impact on rent levels in connection with letting. Through various legislative initiatives, efforts have been made to combat this development. This has not involved any direct subsidising of the housing market, but private individuals for example have been able to obtain support for transportation to work from these areas, and a number of initiatives have started to encourage growth more generally in these areas. Every local and regional authority in the country is required to have a policy for development in these areas.

3.5 Energy policies

- *To what extent do European, national and or local energy policies affect housing?*

Some of this national-level legislation is based on EU Directives and other international obligations, and specific energy policies affect housing policies indirectly through legislation, e.g. by setting standards for construction of new buildings and obligations to calculate energy use for heating etc. for a house every 5 years or when selling the property.

The direct effect on tenancy law and relations between landlords and tenants is not significant. The tenant has no right to demand certain energy standards or energy-saving measures for a rented dwelling. Of course, heating systems etc. must fulfil the standards for which a contract has been agreed upon.

In February 2014, a bill was presented which will mean that the letting of premises in accordance with Section 5 Subsection 2 of the Housing Regulation Act will be possible only when the entire property has achieved a certain energy classification (energy-saving measures). The bill (and others will probably be introduced) is a result of the government's energy-saving policies with the goal to reduce energy usage for all buildings in general.

Summary table 3

	National level	2 nd level (e.g. federal or provincial)	Lowest level (e.g. municipality)
Policy aims			

1) Sufficient housing for everyone	X		
2) Energy efficiency and Environmental issues	X		
3) Consideration for peripheral areas		X	X
Laws			
1) All laws	X		
2) Etc.			
Instruments			
1) subsidisation	X		

3.6 Subsidization

- *Are different types of housing subsidised in general, and if so, to what extent? (Give an overview)*
- *Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a subjective right to certain subsidies or does the public administration have discretion over whom to assign the subsidy?*
- *Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?*

All tenants (either in private or in social rented housing) may be subsidised directly if their income does not exceed a certain level. Tenants can receive housing support to help them pay their running costs for housing. 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").⁴⁰ Housing security is paid only for rental properties, and these properties are generally required to have a separate kitchen. Housing security is also paid to non-pensioners and those granted an early retirement pension

⁴⁰ In accordance with Consolidated Act no. 1231 October 29, 2013.

in accordance with the regulations concerning early retirement pension, following the early retirement pension reform which entered into force on 1 January 2003.

Housing support for those on an early retirement pension is known as *boligyldelse* ("housing benefit").⁴¹ 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 only paid for social housing and certain older dwellings. For refugees and certain other groups, however, loans may also be granted for other dwellings.⁴²

A tenant must apply to get housing security or housing benefit. The local municipalities handle the applications.

Landlords are subsidised directly only when building new housing and are subsidised indirectly by some general tax allowances. It is not possible to determine whether national policy favours rented housing or housing ownership, because both rented housing and housing ownership are subsidised in many different ways.

Both tenants and landlords are therefore covered by the direct subsidisation of private rented housing. The aim may be to make dwellings and areas more attractive, to ensure that those on low incomes have reasonably priced housing options, to promote economic activity, etc.

A regulated and government-financed urban renewal programme can provide grants for selected maintenance and improvement purposes concerning private rental properties as well as support for the renewal of decaying urban areas and more recent residential areas with major social problems.

The Danish Act on Urban Renewal and Urban Development, which entered into force on 1 January 2004, serves as a tool for the Danish municipalities to make targeted efforts in urban and housing policy. To address this objective, the municipalities may make use of four initiatives: building renewal, closure/demolition, recreational areas and area renewal. In 2011, DKK 250 million was earmarked for urban development. The Government allocated DKK 50 million of the funds to area renewal, and the remaining funds were allocated to building renewal, improvement of recreational areas, closure/demolition, etc.⁴³ The Act on Urban Renewal and Urban Development allows for grants to private rental housing which lacks installations in the form of modern heating, toilet or bath, or which was built before 1950 and is considerably run down, or for which an energy rating has been drawn up, suggesting scope for improvements. Subsidies may be provided for maintenance or improvement works, demolition, any work mentioned in the energy rating, and the establishment of small extensions. The subsidy is calculated based on the total expenses eligible for subsidies. The subsidy will normally cover only a portion of the total expenses, as the municipality will normally require the owner to cover a portion of the cost.

Owner-occupied housing and cooperative housing meeting the requirements described above can get subsidies to make improvements. Subsidies may be

⁴¹ In accordance with Consolidated Act no. 1231 October 29, 2013.

⁴² <http://www.mbbi.dk/bolig/private-udlejningsboliger/boligstoette>.

⁴³

http://www.mbbi.dk/sites/mbblv2.omega.oitudv.dk/files/dokumenter/publikationer/information_note_on_urban_renewal-faerdig_kas.pdf.

provided for work on the building envelope, demolition, any work mentioned in the energy rating, and to remedy condemnable conditions. The subsidy may amount to a maximum of one-fourth of the expenses eligible for subsidies. The size of the subsidy will depend on the principles specified by the municipality, or it will follow a concrete evaluation of the need for support that must be met in order for the project to be implemented. If the building in question is listed or preservation-worthy, the subsidy may amount to up to one third of the expenses eligible for subsidies. Subsidies are tax exempted.

As a result of the programme, the number of dwellings lacking one or more installations (toilet, bath or central heating) has dropped from 324,000 to 138,000 between 1990 and 2010. This drop is a result of modernisations, conversions of two or more dwellings into one, demolitions of poor-quality dwellings and a targeted urban renewal effort. Since 1990, approximately 65,000 dwellings have been subject to public-sector urban renewal.⁴⁴

- *Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?*

This has not happened in recent years. There was one case in 1965 (U 1965.293/2 H). The case was brought with the claim that the current rent regulations resulted in an inability to cover increases in expenses in connection with the running of the property due to the provisions in the Rent Act concerning non-terminability and the obligation to re-let. The landlords claimed that the non-terminability and re-letting provisions of the Rent Act impacted on the owners' ownership rights and, according to Section 73 of the Danish Constitution, this could not take place without the payment of full compensation. They also claimed that such an impact contravened the principle of equal opportunities which applied under the Constitution and the Danish democratic form of government. The government was acquitted by the Supreme Court.

Summarise these findings in tables as follows:

Summary table 4

Subsidisation of landlord	Tenure private letting	Tenure social
Subsidy before start of contract (e.g. savings scheme)		Construction costs are partly financed by the public sector
Subsidy at start of contract (e.g. grant)		
Subsidy during tenancy (e.g. lower-than-market interest rate for investment loan,	Some tax allowances –to promote construction and investment	Lower-than-market interest rates for investment loans, subsidised loan guarantees –to

44

http://www.mbbi.dk/sites/mbblv2.omega.oitudv.dk/files/dokumenter/publikationer/information_note_on_urban_renewal-faerdig_kas.pdf.

subsidised loan guarantee)	Possibility of grants for the maintenance and improvement of older buildings –to improve the standard of the buildings	promote construction Possibility of grants for the maintenance and improvement of older buildings –to improve the standard of the buildings and attract tenants
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Summary table 5

Subsidisation of tenant	Tenure private letting	Tenure social
Subsidy before start of contract (e.g. voucher allocated before finding a rental dwelling)	Possibility of loan to pay deposit – to ensure that those on low incomes can rent a home	Possibility of loan to pay deposit – to ensure that those on low incomes can rent a home
Subsidy at start of contract (e.g. subsidy to move)		
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	Possibility of receiving housing security – to ensure that those on low incomes have access to acceptable rented housing	Possibility of receiving housing security – to ensure that those on low incomes have access to acceptable rented housing

Summary table 6

Subsidisation of owner-occupier	Tenure private home	Tenure ?
Subsidy before start of contract (e.g. savings scheme)	No direct subsidisation. Option to deduct interest expenses from taxable income – to promote investment in property	
Subsidy at start of contract (e.g. grant)		
Subsidy during tenancy (e.g. lower-than-market interest rate for investment loan, subsidised loan guarantee, housing allowances)	No direct subsidisation. There are a number of specific grant schemes, e.g. for solar power installation, tradesmen’s expenses for maintenance and improvements – to promote energy-saving measures in private homes and to promote employment.	

3.7 Taxation

- *What taxes apply to the various types of tenure (ranging from ownership to rentals)? In particular:*
 - *Tenants: Do tenants also pay taxes on their rental tenancies? If so, which ones?*
 - *Homeowners:*
 - *Income tax of homeowners: is the value of occupying a house considered as a taxable income?*
 - *Is the profit derived from the sale of a residential home taxed?*
- *Is there any subsidization via the tax system? If so, how is it organized? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)*
- *In what way do tax subsidies influence the rental markets?*
- *Is tax evasion a problem? If yes, does it affect the rental markets in any way?*
- *What taxes apply to the various types of tenure (ranging from ownership to rentals)?*

Tenants are not taxed in connection with rent expenses; nor are there tax allowances for maintenance expenses or other expenses relating to the rental property.

For landlords, the letting of property – regardless of the number of properties that are let – is generally considered a form of self-employment. For this reason, landlords are generally taxed on their running costs and on the profits they make from the sale of properties. The extent of the taxation will depend on whether the landlord is subject to the personal tax rules, corporate tax rules or special tax rules for pension institutions, i.e. the tax is determined by the “legal” basis under which the rental property is owned.

Any net profit on a property’s running costs is deemed taxable income for landlords who are subject to personal or corporation tax. This is calculated as the income from the operation (primarily rent income) minus expenses for administration, refurbishment, insurance, maintenance and property taxes, etc., as well as interest costs. The cost of improvements that raise the standard of the property relative to its standard at the time of purchase cannot be deducted.

Capital gains in connection with the relinquishment of property are considered taxable income.

Pension institutions in the form of life insurance companies and pension funds are taxed on an ongoing basis based on estimated property values. In the event of a property being sold, the profit made is determined as the cash value of the sale price minus the value of the property at the start of the year. There are relief rules for many properties which exempt the profits of pension institutions from taxation.⁴⁵

To some extent, landlords will be able to pass on their tax to tenants by including their expenses in the rent, and advance notice of rent rises can be given on the basis of certain taxes (when they increase).

Owners of properties pay direct taxes for their properties as property value tax (in relation to the value of the property), basic rent (municipal tax) and also a number of "green taxes" concerning, for example, systems for heating and utilities, etc.

Like other interest expenses, interest expenses relating to financing of the property can be deducted in the calculation of the owner's taxable income. Mortgage interest is currently deductible at a maximum rate of approximately 33 per cent. Years before, this rate was much higher (up to 60 per cent in the 1980's and around 45 per cent in the 1990's).

Any profit from the sale of a property in which the owners themselves have lived is not taxed.

- *In particular: Do tenants also pay taxes on their rental tenancies? If so, which ones?*

No. See answers above.

- *Is there any subsidization via the tax system? If so, how is it organised? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)*

See answers above.

- *In what way do tax subsidies influence the rental markets?*

There is no documentation of the direct effect tax subsidies have on the rental markets. Of course, if the subsidies described above were to be taken away, this could have a significant effect. In many cases, this would make investment in property much less profitable, thereby creating an impact on both investments in existing property and the incentives to construct new housing.

⁴⁵ Borg Kristensen: *Konsekvenser af huslejeregulering på det private boligudlejningsmarked - en mikroøkonomisk undersøgelse*, DREAM 2012.

- *Is tax evasion a problem? If yes, does it affect the rental markets in any way?*

In the case of property owners, tax evasion with respect to income for renting out the property cannot be documented as a significant problem. The possibility that some landlords do not declare their rental income cannot be ruled out, but the tax authorities can estimate taxable income on a discretionary basis if the property is being let. In the few cases where the landlord deliberately attempts to avoid tax, it will probably be of no direct consequence for the tenants, as they will be protected by the provisions of the rent legislation with regard to the payment of rent and the amount of rent that can lawfully be charged.

Summary table 7

	Homeowner		Landlord of tenure type 1	Tenant of tenure type 1		
Taxation at point of acquisition	-	-	-	-	-	
Taxation during tenancy	Payment of "green taxes" Property value tax Basic rent	Allowance for interest expenses – reduces the taxable income	Taxation of income concerning running costs Allowance for interest expenses and ongoing running costs – reduces the taxable income	-		
Taxation at the end of occupation	-	-	Taxation of any profit upon sale	-		

Table 3 summarises regulation and subsidies to housing in Denmark.

TABLE 3: REGULATION AND HOUSING SUBSIDIES

INSTRUMENTS	HOUSING TENURES			
	Owner-occupied	Private rental	Social housing	Co-operatives
Income tax	Mortgage interest tax deductible	Profits taxed at 28%	Exempt	Exempt
Real estate tax	Yes	Exempt	Exempt	Exempt
Land tax	Yes	Yes	Yes	Yes
Rent regulation	n/a	Yes for older dwellings	Yes	Yes
Character of housing support	Low real estate tax; subsidies from urban renewal scheme (as loans); exemption from capital gains tax	Insider advantage accruing from rent regulation; subsidies from urban renewal scheme	Exemption from real estate tax; insider advantages accruing from rent regulation; subsidised construction	Exemption from real estate and capital gains taxes; price cap on shares implies low second-hand prices; loans to finance new co-op dwellings guaranteed by municipality
Housing allowances for low income	No	Yes – about 35% of private renting households received in 2004	Yes	No
Housing supplement in state pension	Yes, as a loan	Yes	Yes	Yes, 40% grant 60% loan

Source: OECD 2006, Table 4.2; Lejernes Landsorganisation 2004, Table 5.2

The table is copied from: Whitehead, Christine et al.: *The Private Rented Sector in the New Century: A Comparative Approach*. København: Boligøkonomisk Videncenter, 2012 with reference to original source.

4. Regulatory types of rental and intermediate tenures⁴⁶

4.1 Classifications of different types of regulatory tenures

- *Which different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare summary table 1)?*

All privately owned rental property is covered by the Rent Act and/or the provisions of the Housing Regulation Act. Social housing is covered by the Act on the renting of social housing. With the exception of the provisions concerning the setting and adjustment of rent, the provisions in these two acts of legislation – concerning the legal relationship between landlord and tenant – are identical. Of the total rental housing stock, private rental housing amounts to approximately 496,000 units, while social housing amounts to approx. 595,000 units.

As stated above, some of the private dwellings may be rented co-operative dwellings. Co-operative dwellings occupied by the shareowner are not covered by the rent legislation.

There are four types of rent regulation for private rental properties, of which market rent is the only one which actually relates to market forces and therefore to supply and demand. The principal form of regulation is the cost-based rent. The value of the premises and the “regulated” value of the premises are also used, although statistically these are considered the part of a tenancy that is covered by the cost-based rent form of regulation (because the rent level should be fundamentally the same).

In 2010, the number of tenancies according to regulation type was thus as follows: Dwellings with direct and indirect cost-based rent (“regulated” value of the premises) 364,300; dwelling with rent based on the value of the premises 68,000; and market rent dwellings amounted to approximately 63,700.⁴⁷

4.2 Regulatory types of tenures without a public task

- *Please describe the regulatory types in the rental sector in your country that do not have a public task. This category may be called private or market rental housing.⁴⁸*

As stated above, all private tenancies are covered by the provisions of the Rent Act (and the Housing Regulation Act).

⁴⁶ I.e. all types of tenure except full and unconditional ownership.

⁴⁷ Statistics etc. also provided in Whitehead, Christine et al. (2012): *The Private Rented Sector in the New Century: A Comparative Approach*. København: Boligøkonomisk Videncenter.

⁴⁸ Market rental housing means housing for which the rent price determines the conclusion of contracts, and not social rules of allocation based on need.

As a general rule, all private rented properties are regulated by the Rent Act – and by the Housing Regulation Act in the municipalities in which this Act applies; cf. above. The distinction between when the Rent Act is to apply and when the Housing Regulation Act is to be used is the only immediate delimitation of the legal basis that applies to the regulation of a tenancy relationship.

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.

Only as regards the rent regulation are there other general distinctions which must be taken into consideration. However, these all follow the Housing Regulation Act and the Rent Act.

Four different rent control systems exist simultaneously. As a general rule all types of rented dwellings in Denmark are 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 to supply and demand.

The principal form of regulation is cost-based rent. The value of the premises and the “regulated” value of the premises are also used, although statistically these are considered the part of a tenancy that is covered by the cost-based rent form of regulation (because the rent level should be fundamentally the same).

The most important is the running-cost system (where the Temporary Regulation of Private Housing Act applies, i.e., in most major cities). Cost-based rent is basically determined on the basis of the running costs attributable to the property concerned. In addition, the owner can add a profit (determined by statute) and a surcharge for improvements made to the rented property since the property was originally constructed. The rent is therefore an estimate.

For properties situated in municipalities in which the Housing Regulation Act applies, which as of 1 January 1995 contained six or fewer residential apartments, the rent must be set at the “regulated” value of the premises. Due to the restriction on the size of the properties that are covered by this regulation, these are known as “småhuse” (literally “small houses”). Correspondingly for properties owned by co-operative housing associations, these rules will apply if there are six or fewer residential apartments in the property which are let by a co-operative housing association. In these cases, the rent must be determined (on a discretionary basis) through a comparison with tenancies concerning properties with seven or more tenancies and for which the rent has been regulated in accordance with the provisions concerning cost-based rent.

For tenancies situated in municipalities in which the Housing Regulation Act does not apply, the rent must be set on the basis of the value of the premises, i.e. the rent should be determined (on a discretionary basis) through a comparison with other similar tenancies in the same district or area.

The provisions of the Rent Act and the Housing Regulation Act concerning rent regulation may be deviated from when the tenancy concerns a tenancy agreement

which relates to a residential apartment in a property taken into use after 31 December 1991, or a tenancy concerning a residential apartment which as of 31 December 1991 was lawfully exclusively used for commercial purposes. The same applies if, since this date, the premises have lawfully been exclusively used for, or legally fitted out exclusively for, commercial purposes. The tenancy agreement must state that the tenancy is covered by this right of derogation. Furthermore, the rent regulation may be deviated from when the tenancy concerns a newly established residential apartment or a newly established single room in an attic, which as of 1 September 2002 was not used or registered as a dwelling. The same applies to apartments and single rooms on newly added floors, for which a building permit has been issued after 1 July 2004. As a requirement for validity, the tenancy agreement for these tenancies must state that the tenancy is covered by this right of derogation. The rent charged for these tenancies may be set at the market rent, i.e. according to supply and demand. The rent may only be set at a different level in accordance with the provisions of the Contracts Act.

Transitional legislation problems may also arise in connection with the assessment of which rules to apply when determining the rent for a given tenancy. The general rule in Danish legislation is that agreements which were valid at the time they were established do not become invalid because the legislation changes – see e.g. the case U 2007.2047 H. In addition, and on the other hand, agreements which were invalid at the time they were established do not become valid because the legislation changes. The rules concerning rent regulation have been revised on a regular basis. The rules that applied when the tenancy agreement was established will apply to the tenancy concerned, regardless of subsequent legislative changes. There are no special statutory provisions regulating this aspect.

- *Are there regulatory differences between professional/commercial and private landlords?*

No, there are no differences between private and professional landlords in the legislation. This is because private landlords are considered as professionals when renting out property to tenants, even if it is just one dwelling. They (private landlords) do not enjoy any consumer protection or equivalent right.

- *Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)*

Construction of “normal” rental housing – without subsidies – is typically financed by loans based on mortgages from banks or other financing, e.g. mortgage banks. The law stipulates that a mortgage bank can finance a maximum of 60 per cent of the trading price through mortgage loans.

- *Apartments made available by employer at special conditions*

If an employee has the use of an apartment as part of the employment agreement, this will generally not be covered by the rent legislation. However, this will depend on a specific assessment of the agreement that has been established, including whether it is the employment relationship or the renting of a dwelling that is the key content of

the agreement. There is no specific statutory regulation concerning this type of contract. Where the employee has the use of an apartment and the relationship is covered by the rent legislation, special rules may apply to the termination of the tenancy upon cessation of the employment.

- *Mix of private and commercial renting (e.g. the flat above the shop)*
 - *Cooperatives*
 - *Company law schemes*
 - *Real rights of habitation*
 - *Any other relevant type of tenure*

To some extent, rent legislation in Denmark contains special rules for this type of tenancy. They are known as “mixed tenancies”. According to Danish rent legislation, a mixed tenancy is a tenancy which, under the same contractual relationship, consists of both a residential apartment and premises that are being let for non-residential purposes. As a general rule, the rules concerning residential apartments also apply to mixed tenancies. This means that the rent regulation for a mixed tenancy must be based on the rules for residential apartments for the entire tenancy, i.e. the rules in the Rent Act and/or the Housing Regulation Act. However, if the premises which are exclusively used for non-residential purposes and the residential apartment are located in separate physical units (e.g. where there are separate entrances), the rent should be determined in accordance with the Commercial Lease Act as regards the premises that are exclusively used for non-residential purposes.

4.3 Regulatory types of tenures with a public task

- *Please describe the regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need) such as*
 - *Municipal tenancies*
 - *Housing association tenancies*
 - *Social tenancies*
 - *Public renting through agencies*
 - *Privatized or restituted housing with social restrictions*
 - *Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness*
 - *Etc.*

As a general rule, all private rented properties are regulated by the Rent Act – and by the Housing Regulation Act in the municipalities in which this Act applies; cf. above. The distinction between when the Rent Act is to apply and when the Housing Regulation Act is to be used is the only immediate delimitation of the legal basis that applies to the regulation of a tenancy relationship.

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.

Only as regards the rent regulation are there other general distinctions which must be taken into consideration. However, these all follow the Housing Regulation Act and the Rent Act.

Four different rent regulation systems exist simultaneously. As a general rule all types of rented dwellings in Denmark are 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 to supply and demand. It can be argued whether this is rent regulation, but it is still possible for tenants to file complaints with the Rent Tribunal regarding the amount of the rent. Therefore, market rent is also subject to some degree of control or even regulation.

The principal form of regulation is the cost-based rent. The value of the premises and the “regulated” value of the premises are also used, although statistically these are considered the part of a tenancy that is covered by the cost-based rent form of regulation (because the rent level should be fundamentally the same).

The most important is the running cost-system (where the Temporary Regulation of Private Housing Act applies, i.e., in most major cities). Cost-based rent is basically determined on the basis of the running costs attributable to the property concerned. In addition, the owner can add a number of statutory provisions, a profit (set by statute) and a surcharge for improvements made to the rented property since the property were originally constructed. The rent is therefore an estimate and it is not based on the actual costs. Because this system was not in place when the buildings that are controlled by this legislation were built, this could not be taken into consideration before construction started. This might illustrate in some way the complexity of the system.

For properties situated in municipalities in which the Housing Regulation Act applies, which contained six or fewer residential apartments as of 1 January 1995, the rent must be set at the “regulated” value of the premises. Due to the restriction on the size of the properties that are covered by this regulation, these are known as “*småhuse*” (literally “small houses”). Correspondingly, for properties owned by co-operative housing associations, these rules will apply if the property contains six or fewer residential apartments which are let by a co-operative housing association. In these cases, the rent must be determined (on a discretionary basis) through a comparison with tenancies for properties in which there are seven or more tenancies and for which the rent has been regulated in accordance with the provisions concerning cost-based rent.

For tenancies situated in municipalities in which the Housing Regulation Act does not apply, the rent must be set on the basis of the value of the premises, i.e. the rent should be determined (on a discretionary basis) through a comparison with other similar tenancies in the same district or area.

The provisions of the Rent Act and the Housing Regulation Act concerning rent regulation may be deviated from when the tenancy concerns a tenancy agreement for a residential apartment on a property taken into use after 31 December 1991, or a tenancy concerning a residential apartment which as of 31 December 1991 was lawfully, exclusively used for commercial purposes. The same applies if, since this

date, the premises have lawfully been exclusively used for or legally fitted out exclusively for commercial purposes. The tenancy agreement must state that the tenancy is covered by this right of derogation. Furthermore, the rent regulation may be deviated from when the tenancy concerns a newly established residential apartment or a newly established single room in an attic, which as of 1 September 2002 was not used or registered as a dwelling. The same applies to apartments and single rooms on newly added floors, for which a building permit has been issued after 1 July 2004. As a requirement for validity, the tenancy agreement for these tenancies must state that the tenancy is covered by this right of derogation. The rent charged for these tenancies may be set at the market rent, i.e. according to supply and demand. The rent may only be set at a different level in accordance with the provisions of the Contracts Act.

Transitional legislation problems may also arise in connection with the assessment of which rules to apply when determining the rent for a given tenancy. The general rule in Danish legislation is that agreements which were valid at the time they were established do not become invalid because the legislation changes – see e.g. the case U 2007.2047 H.⁴⁹ In addition, and on the other hand, agreements which were invalid at the time they were established do not become valid because the legislation changes. The rules concerning rent regulation have been revised on a regular basis. The rules that applied when the tenancy agreement was established will apply to the tenancy concerned, regardless of subsequent legislative changes. There are no special statutory provisions regulating this aspect.

- *Specify for tenures with a public task:*
 - *selection procedure and criteria of eligibility for tenants*
 - *typical contractual arrangements, and regulatory interventions into rental contracts*
 - *opportunities of subsidization (if clarification is needed based on the text before)*
 - *from the perspective of prospective tenants: how do I proceed in order to get “housing with a public task”?*

For ordinary social family dwellings, there are essentially no requirements set for tenants to be considered for allocation of such a dwelling. The dwellings are allocated on the basis of a waiting list held by the organisation which owns the building.

The majority of vacant units are assigned by the respective housing associations on the basis of time on the waiting list and household size. There are no restrictions on who may join a waiting list, apart from a minimum age of 15 years (in fact, until 1993, children could be signed up at birth). In pressure areas like Copenhagen and Aarhus waits can be long (10-20 years in the Copenhagen area), but this is not the case everywhere. Those on the waiting list pay a small annual fee, and when tenants move in they have to pay a deposit that corresponds to 2% of the original construction cost of their unit. Housing associations also maintain internal waiting lists, so tenants can move up the housing ladder within a housing association, from an expensive dwelling to a cheaper and more attractive one.⁵⁰

⁴⁹ Ugeskrift for Retsvæsen 2007 p. 2047 Supreme Court decision.

⁵⁰ *Social Housing in Europe*, 2007, Edited by Christine Whitehead and Kathleen Scanlon.

The general rule for the letting of social family dwellings is that they are let according to seniority (queue time) on the waiting list. Some groups of individuals have a right of priority on the waiting list: Families with children have a right of priority for larger apartments, and the elderly and disabled have a right of priority for certain dwellings that are suitable for the elderly and disabled. People who already have a dwelling in the housing organisation have a right of priority 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.

Social housing for the elderly is let on the direction of the local authority. This local authority has the right of allocation and determines the tenant housing the tenant shall receive. The care level required for the individual is the determining factor here; therefore, neither age nor seniority is decisive.

Social housing for young people is also let based on an assessment of the applicant's housing needs. The homes must be rented to young people currently attending educational institutions or programmes, or other young people with special housing and social needs. This means that consideration must be given to financial, educational and social circumstances, for example.

- *Are there regulatory differences between professional/commercial and private landlords?*

No. No such differentiation is made in the tenancy legislation.

- *Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)*

Buildings containing "normal" rental housing – without subsidies – are typically financed by loans based on mortgages from banks or other financing, e.g. mortgage banks. The law stipulates that a mortgage bank can finance only up to 60 % of the trading price through mortgage loans.

- *Apartments made available by employer at special conditions*

If an employee has the use of an apartment as part of their employment agreement, this will generally not be covered by the rent legislation. However, this will depend on a specific assessment of the agreement that has been established, including whether it is the employment relationship or the renting of a dwelling that is the key content of the agreement. There is no specific statutory regulation concerning this type of contract. Where the employee has the use of an apartment and the relationship is

covered by the rent legislation, special rules may apply to the termination of the tenancy upon cessation of the employment.

- *Mix of private and commercial renting (e.g. the flat above the shop)*
 - *Cooperatives*
 - *Company law schemes*
 - *Real rights of habitation*
 - *Any other relevant type of tenure*

To some extent, the rent legislation in Denmark contains special rules for this type of tenancy. They are known as “mixed tenancies”. According to Danish rent legislation, a mixed tenancy is a tenancy which under the same contractual relationship consists of both a residential apartment and premises that are being let for non-residential purposes. As a general rule, the rules concerning residential apartments also apply to mixed tenancies. This means that the rent regulation for a mixed tenancy must be based on the rules for residential apartments for the entire tenancy, i.e. the rules in the Rent Act and/or the Housing Regulation Act. However, if the premises which are used exclusively for non-residential purposes and the residential apartment are located in separate physical units (e.g. where there are separate entrances), the rent for the premises that are exclusively used for non-residential purposes should be determined in accordance with the Commercial Lease Act.

Summary table 9

Rental housing without a public task (market rental housing for which the ability to pay determines whether the tenant will rent the dwelling); for example different intertemporal schemes with different landlord types with different tenancy rights and duties	Main characteristics <ul style="list-style-type: none"> • Types of landlords • Public task • Estimated size of market share within rental market • Etc.
<ul style="list-style-type: none"> • 1) all private letting 	No subdivision according to ownership circumstances, property type or other factors in relation to the legislation that covers the legal relationship between the landlord and tenant.
Rental housing for which a public task has been defined (provision of housing that is not determined by the free market, but any form of state intervention)	

- *For which of these types will you answer the questions in Part 2; which regulatory types are important in your country?*

Rental housing without a public task is the regulatory type that is important in Denmark – because one can argue whether we in Denmark have rental housing “with a public task”. If we do have such housing, it is only a limited part of rental housing that one can define in this manner. In addition, the regulation in most private and social rental housing follows similar rules. It is possible to describe both regulations for the issues where they are not similar.

5. Origins and development of tenancy law

- *What are the origins of national tenancy law and where was and is it laid down (civil code, special statute, case law)?*

Until 1916, there were no specific statutory restrictions in Denmark on the right to freely establish conditions for an agreement concerning the renting of residential accommodation. The tenancy relationship was solely regulated through the individual agreement between the parties concerned. The lack of a political need to regulate this area up until this point was probably down to the fact that there was no shortage of housing, rising prices or other circumstances which created a great need to protect the parties in the tenancy relationship.⁵¹

The first Danish statutory regulation of tenancy relationships was introduced in 1916, as a result of a desire to accommodate a sharp increase in the number of tenancies brought about by a considerable increase in property running costs relating to the outbreak of the First World War. The regulation concerned solely a “rent freeze” or rent control, and restrictions to the landlord’s right to terminate the contract (otherwise the landlord would not be restricted by the rent control). Rent tribunals were established to ensure that the regulation was adhered to and the tenant’s right duly protected.

The first actual Rent Act was enacted in 1937.⁵² The act included all facets of the legal relations between the landlord and the tenant – from conclusion of contract to termination.

Due to the outbreak of the Second World War, the regulation of rents once again came into focus for socio-political reasons. There was a desire to avoid rent rises caused by the housing shortage, which in turn was caused by the cessation in construction, rising prices, etc. As a result, from 1939, a series of temporary regulations were once again introduced into the rent legislation concerning the scope for setting and amending rents.

- *Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of the tenant’s home as in Scandinavia vs. just a place to live as in most other countries)*

The Rent Act is not based on any particular political or legal philosophy – no person or political ideal functioned as a specific driving force.

The main aim of the first Rent Act was to protect the involved parties (both landlord and tenant) from undue economical influence of the reciprocal obligations between them.⁵³

⁵¹ Ellen Andersen, Poul Christian Matthiessen and Anders Ølgaard: *Boligmasse og boligbyggeri i første halvdel af dette århundrede*, Økonomi og Politik, no. 2, 1989, p. 6 ff.

⁵² Act no. 54 of 1937.

⁵³ Betænkning afgivet af Indenrigsministeriets Huslejeudvalg, 1934, p. 5.

The tenant is regarded as a consumer in most aspects, even though the definition of “consumer” is not used in the Rent Act. Most parts of The Rent Act also reflect consumer protection principles, as many of the rules cannot be derogated from if this would be to the detriment of the tenant. All private tenants (as opposed to tenants renting property for business purposes) are protected in the same way; no differentiations are made.

One cannot define this as a particular philosophy, and it would be wrong to say that the rules were made to protect a constitutional the right to a home. On the other hand a rented home is not regarded as “just a place to live” and the Rent Act does not reflect such a philosophy either (if such a philosophy exists).

The social housing system was originally supposed to be subsidised housing for low- and middle-income groups, and was one of the gems of the post-war “Danish Social Democratic welfare state”, but today not only people in need of a home are placed in a social-housing rented apartment, and a lot of low- or middle-income groups do not want to or have to (for economic reasons) live in social housing.⁵⁴

- *What were the principal reforms and their guiding ideas up to the present date?*

As stated above, the Rent Act has been revised throughout the years as a result of political agreements (not related to any specific political philosophy but as a result of a broad political majority in the Parliament, often after negotiations with landlord and tenants associations), and to some extent when case law found the statutes of the law could not be interpreted in accordance with the legislative history behind the act or certain conditions showed that the statutes were insufficient or difficult to interpret in other ways. Therefore, the Rent Act and the Housing Regulation Act have been reformed several times during the years, and it is difficult to identify who has been the principal actor or to state what (if any) guiding idea was behind these reforms, beyond what has been described above. The content and some of the major reforms are briefly described in the following.

In the years after the Second World War, various changes were made to the system though none of them could be characterised as principal. In 1966 a political agreement was reached about the desirability in principle of removing rent regulation as a whole, thereby allowing rent for all tenancies to be regulated by the market. However, there could not be an agreement to bring about a total change from “day one”, because this was considered too drastic. Instead a scheme was devised that was intended to bring rents gradually up to market level by the mid-1970s. The scheme was based primarily on fixed annual increases, but it did not anticipate the high inflation rates of the early 1970s and therefore it never came fully into force.

In 1975 the Housing Regulation Act was reformed, and the system of cost-based rent was introduced. It was estimated that in real terms the new system entailed an increase of about 30 per cent in rents from 1976, because the existing system had

⁵⁴ See Section 1.4 above.

even tighter regulation, that had not allowed rents to reach the level on which this new system was based.⁵⁵

In 1977 a commission was appointed to revise the Rent Act and the Housing Regulation Act. The commission's report formed the basis for a list of technical changes to both acts, which came in to force from 1 January 1980. These "1980 Acts" are still regarded as the principal Acts even though they have since undergone several changes.

From 1992 rents for buildings taken into use after 31 December 1991 could be set freely. The aim of this initiative was to encourage construction and create jobs. This initiative was possible in political terms because the construction of rental property in the private sector had been largely stagnant for many years. There were therefore no voters to take into consideration in connection with these initiatives. It was believed to be a decision with no real effect because new dwellings with free market rent would be unable to compete with rent-controlled dwellings. The fact that there was no major boom in construction as a result of the legislative changes focussed attention on the link between the setting of rents and the regulation of existing dwellings and new-builds. However, since then new dwellings have been built and let at free-market rent, and today letting without rent control accounts for close to 10 per cent of the rental market.⁵⁶

In 1994, rental legislation underwent another revision. As part of the revision of the Act, a new commission was appointed ("the Rent Act Commission"), which was to submit a report containing a re-evaluation of all legislation relating to the Rent Act, with a view to simplification.⁵⁷ In 1996, after the Rent Act Commission had been set up, the regulations concerning the setting of rents and the provisions in the Housing Regulation Act were subject to further major and comprehensive revision. For example, the regulations concerning extensively improved rental properties were introduced, and the basis for rent setting in connection with the signing of tenancy agreements covered by the Housing Regulation Act was amended. Part of the aim behind these amendments was to put a temporary stop to the rise in rent levels for an ever-increasing number of rental properties with an "agreed rent" and the consequent rising costs associated with individual housing support.

Since 1 July 1996, to encourage property owners to maintain and improve their properties and tenancies, it has been possible under the Housing Regulation Act (Section 5 (2)) to charge a higher rent⁵⁸ (= "value of the premises") if a dwelling has been extensively improved for a given sum of money. This could apply for example if a new kitchen and/or bathroom has been installed in the rented premises or other major improvements have been carried out. This reform has had some effect on private renting, so some effect was achieved even though the reform included only a smaller change in law statutes. A total of 10-12,000 private rented dwellings were extensively modernised during the period 2000-2006. The total investment during this

⁵⁵ *Policies for the Housing Market in OECD*. Chapter IV – Economic Surveys: Denmark. <http://www.oecd-ilibrary.org>.

⁵⁶ Morten Skak, Gintautas Bloze: *Rent Control and Misallocation*. Discussion Papers on Business and Economics, No. 7/2009.

⁵⁷ The report came out in 1997 – "Betænkning 1331/1997" (Lejelovskommissionens betænkning).

⁵⁸ In some areas up 50 per cent higher.

period was between DKK 3 and 4 billion. It is estimated that, as of mid-2006, a total of 17-20,000 homes were covered by the Housing Regulation Act's Section 5 (2).⁵⁹

In 2000 rent tribunals were established in all municipalities. Before 2000 only municipalities where the Housing Regulation Act applied had a rent tribunal. At the same time the jurisdiction of the tribunal was extended.⁶⁰ One of the aims of the revision of the act was to secure due-process protection for all tenants.

In 2012, a bill was presented which will mean that the letting of premises in accordance with Section 5 (2) will be possible only when the entire property has achieved a certain energy classification (energy-saving measures). The changes are part of a larger political agreement on energy savings.⁶¹ The bill was introduced again in spring of 2014 and it will come in to force by July 1, 2014.⁶²

Throughout the years there have been plans to rewrite the Rent Act and the Housing Regulation Act and combine them in one more simplified act. Historically, both landlords and tenants' organisations have always been involved in political negotiations concerning major revisions to the rent legislation; these organisations have considerable political influence in relative terms. Because these organisations cannot agree on the terms for a new Rent Act, it has not been possible to find the necessary political majority in the Danish Parliament to carry out a new major reform including a combination of the two acts. These discussions continue.

The renting of social housing is covered today by "the Act on the Renting of Social Housing".⁶³ This Act came in to force in 1997 and was based on recommendations in the Rent Act Commissions report.⁶⁴ With the exception of the provisions concerning the setting and adjustment of rent, the provisions in the act are essentially identical to the provisions of the Rent Act. The Act on the Renting of Social Housing also contains a series of special rules that apply only to social housing. These rules stem from the residents' democracy that exists within social rental housing, according to which tenants have a right of co-determination with respect to their dwellings.

The tenants' rights with regard to social dwellings are thus based on the view that, through a number of legal bodies, tenants as a whole are regarded to a great extent as their own landlords who take decisions regarding how the dwellings in which they live should be managed. For the individual tenant this does add any separate rights for how to manage the rented dwelling.

The residents' democracy is governed by many rules. These rules are based on many laws, executive orders and guidelines linked to the Act on Social Housing and the Act on the Renting of Social Housing. As regards provisions concerning the legal relationship between the landlord and the tenant, the provisions in the Act on the renting of social housing follow the Rent Act, but with a limited number of amendments containing specific considerations relating to protection of the tenant in

⁵⁹ Report called: "Anvendelsen af § 5, stk. 2, i boligreguleringsloven – resultater af en spørgeskemaundersøgelse" (Velfærdsministeriet, februar 2009).

⁶⁰ Jurisdiction is split between the Rent Tribunal and the Housing Court. See Section 6 below.

⁶¹ Act no. 109 in 2012.

⁶² Act no. 129 in 2014.

⁶³ Consolidated Act no. 961 of 11 November 2010.

⁶⁴ "Betænkning 1331/1997" (Report from the Rent Act Commission).

this type of tenancy and where the residents' democracy is of importance. The Act on social housing contains special rules concerning rent determination, maintenance of the rented property during the tenancy and the condition in which the rented property must be returned upon vacating the property. For social housing, there is also a special dispute resolution body, called the Resident Appeal Board (*Beboerklagenævnet*).⁶⁵

The rent determination rules are based on the principle that the property must be managed on a non-profit basis. According to the provisions of the Act on the renting of social housing, the total rent charged for the dwellings in a section must be determined so that it covers the running costs of the section at all times. This is called the self-supporting principle. Therefore, no profit must be budgeted for in the running of the sections. However, in order to avoid frequent rent adjustments, some provision must be made for unforeseen expenses. The rent charged for an individual dwelling must be determined on the basis of an assessment of the homes' reciprocal utility value. This means that a distribution key is established according to the utility value of the homes. A budget for running costs is adopted at the section meeting every year. If the rent in question cannot cover the running costs, it must be increased with three months' notice so that it once again covers the associated costs. If improvements are made to dwellings within a section, the associated expenses must be split between the dwellings in which the improvements are made, according to the increase in utility value.

On 1 January 2000, the Business Rent Act came in to force. This act was also based on recommendations from the Rent Act commission. With the exception of the provisions concerning the setting and adjustment of rent, the renting of business premises had been regulated until then by the Rent Act. The purpose of the new bill was primarily to deregulate the business renting market.

Human Rights

- *To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in*
 - *the national constitution*
 - *international instruments, in particular the ECHR*

- *Is there a constitutional (or similar) right to housing (droit au logement)?*

Danish tenancy law has not – since its origin – been influenced by either the national constitution or the ECHR directly. The ECHR was incorporated as a law in 1992,⁶⁶ but this has not affected trials regarding tenancy law-related issues. There is no case law on the subject. It is not easy to determine why this is so. One explanation can be that Danes find the regulation fair and that most lawyers do not have human rights in mind when trying tenant/landlord related cases. From a more general point of view it can be argued that the Danish housing policies have not been subject to any human rights discussion, resulting in that effect that no such issues have been reflected in case law. Homelessness is not a major concern in Denmark, though it exists on a minor scale, and evictions procedures etc. have never been the cause of any

⁶⁵ See also Section 1.4 above.

⁶⁶ Consolidated Act no. 750 of October 19 1998.

disputes from a human-rights point of view. This has also meant that case law from the ECHR Court in Strasbourg has not had any effect (or attention) in Danish courtrooms when it comes to housing policies and tenancy law-related issues.

So neither the Danish constitution nor international obligations have had a significant role in the creation of the existing rules. Tenancy law in Denmark has been influenced by fundamental rights only to a very minimal extent. The right to private life, the protection of private property and the right to an adequate standard of living are all regulated through the national constitution and the European Convention of Human Rights, but not in the Rent Act directly or other legislation concerning the relationship between a landlord and a tenant. You can argue that the regulation constitutes a right to housing, but there is no direct or formal legislation on this issue in the Danish constitution.⁶⁷ There is not a constitutional (or similar) right to housing (*droit au logement*) in the Danish Constitution.

In very few cases, constitutional rights have been mentioned in tenancy law-related disputes. In 1961 the Supreme Court found that a tenant's rights regarding termination of contracts were protected under the Danish Constitution Section 73 on compulsory purchase.⁶⁸ In 1965 the Supreme Court stated that the Danish system on rent regulation was not in conflict with the Danish Constitution.⁶⁹

It has been argued that the regulation in the Danish Rent Act on a tenant's right to place radio and television antennas on the property according to the landlord's instructions for the reception of radio and television programmes was in conflict with ECHR Article 10. Due to this the Rent Act was changed in 2000. There have been no conflicts regarding this matter since (and it was never stated by the Court that there was an actual conflict in the case).⁷⁰

Apart from these examples no constitutional rights play a direct or visible role in the relation between landlords and tenants – for instance if the landlord wants to evict the tenant, because the tenant has not paid the rent. However, you can argue whether the state or local authorities have an obligation to help the evicted tenant get a new home. Public-law measures for assigning housing to people in need are almost non-existent as far as the private housing sector is concerned. As for social housing, local authorities can freely allocate at least 25% of the housing available.⁷¹

Contracts between landlords and tenants must not violate the fundamental rights laid down by the Constitution, the Discrimination Act, the Equal Treatment Act or other international conventions. Violations of fundamental rights can be brought before the ordinary courts, as Denmark has neither a constitutional court nor special courts dealing with questions concerning human rights.

⁶⁷ The subject has been researched by Nikolaj Nielsen in his Ph.D. thesis: *Retten til et hjem*, 2011 (The Right to a Home). In the thesis the author argues that the legal framework of the Danish Constitution, ECHR etc. gives a tenant some basic rights for a place to live.

⁶⁸ Ugeskrift for Retsvæsen 1961 p. 337 Supreme Court decision.

⁶⁹ Ugeskrift for Retsvæsen 1965 p. 293 Supreme Court decision.

⁷⁰ Ugeskrift for Retsvæsen 1997 p. 490 Western High Court decision. Ugeskrift for Retsvæsen 1998 p. 15 District Court decision. Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 151.

⁷¹ In accordance with Social Housing Act section 59 (Consolidated Act no. 1023 of 21. August 2013).

6. Tenancy regulation and its context

General introduction

- *As an introduction to your system, give a short overview over core principles and rules governing the field (e.g. basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased))*

It is not easy to give a short, general overview in this regard. All “statements” in such an overview will be covered by the answers to the following questions. A few key points could be⁷²:

- Contract law applies to conclusion and interpretation of tenancy contracts. There are no special requirements for conclusion. This means that offers (and acceptance) will be binding without further requirements when negotiating, and oral contracts are also binding.
- The provisions of the Rent Act and the provisions of the Housing Regulation Act are mostly mandatory – they cannot be derogated to the detriment of the tenant. This is the way the tenant is protected as a consumer or as the weaker party to a contract. The term “consumer” is not used. Danish Consumer regulation applies to a limited extent to the tenants’ rights.
- A specific act – The Act on Renting of Social Housing – applies for “public task tenancies”. The rules are generally the same, however. Under the provisions of this Rent Act, the total rent charged for the dwellings in a particular section must be determined so that this rent covers the running costs of the section at all times. The principle is known as the “self-supporting principle”. Therefore, no profit must be budgeted for in the running of the sections. The rent charged for an individual dwelling is determined on the basis of an assessment of the dwellings’ reciprocal utility values. This means that a distribution key is established according to the utility value of the dwellings. If improvements are made to the section’s housing, the associated expenses must be distributed among the homes to which improvements have been made, according to the increase in the utility value.⁷³
- Rent regulation/control applies for almost all tenancies except for properties built after 1991. This means that a very large number of tenancies pay a rent below – or at least under no influence of – market rates. This has not been challenged on the constitutionality of the respective legislation, relying on the principle of equality.

⁷² There are no sources/literature on Danish tenancy law in the English language, with the exception of an unofficial translation of The Danish Rent Act (from 2001) and an English translation of the standard tenancy contract (most often used) with a translation of an instruction for how to fill out this contract – and what to be aware of when filling it out. Recent key literature on landlord and tenancy law in Denmark in general includes: Niels Grubbe, Hans Henrik Edlund: *Boliglejeret*, 2008 and Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejermål*, 2010. The Rent Act and the Housing Regulation Act are thoroughly commented on in KARNOV. KARNOV is a guide to Danish legislation with the text of all acts and comments for (almost) each section. The commentators are lawyers, professors of law and others with specific knowledge in the areas of law they have commented.

⁷³ See Homepage of the Ministry of Housing, Urban and Rural Affairs: <http://www.mbbi.dk/bolig/almene-boliger/regler-om-almene-boliger/lejefastsaettelse-af-almene-boliger/balanceleje>

- The rented property is owned by the landlord, and the landlord has the sole right (with very few exceptions) to make decisions about how to maintain or change the property. This means that in general the tenant cannot alter the rented property or add any new or different devices in the premises without the landlord's consent.⁷⁴ In all other respects, the tenant can live in the rented property as if he was the owner. The landlord is not permitted to enter the rented property without the tenant's consent or without valid reason (as stated in the Rent Act)
- The landlords' right to terminate contracts is (very) restricted. Only in cases specifically stated in the Rent Act can the landlord terminate the contract. Cases on rightful or wrongful termination are often tried before the Housing Court.
- EU or international regulation has no direct visible effect on Danish tenancy law (as stated above and further below). An example of indirect effect could be The Directive on Timeshare 94/47, which has been implemented in Danish Law – Consolidated Act no. 102 of 15 February 2011, or implementation in the Danish Contracts Act of Directive 93/13 (mentioned below in the text as well).
- *To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)*

All privately owned rental property is covered by the Rent Act and/or the provisions of the Housing Regulation Act. Social housing is covered by the Act on the Renting of Social Housing. This is state law. The legislative jurisdiction is not divided.

There are only a few exceptions to this. Under social legislation the state or the local municipality may allocate some properties which they own for the purpose of housing refugees or homeless persons. Such housing will not be regulated by the Rent Acts where there is a specific title for this.

- *Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?*

The position of the tenant is always considered as a personal right and tenancy law is therefore considered part of the Danish law of obligations (contracts and torts).

As an exclusion to this, The Rent Act Section 7 states that 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. A new owner of the property must respect the general rights of the tenant under the tenancy laws – a tenancy cannot be terminated because the property has been sold. The new owner has no right to do so. The same applies to changes of agreements on advance payment of rent, deposits, and the like within the terms of the law. This can be regarded as a real property right as defined in civil law systems.

The tenants are also protected in cases of compulsory purchase. Sections 85a and 85b of the Rent Act prescribe a right for the tenant to be given alternative housing and compensation for costs incurred as a result of compulsory purchase. On the

⁷⁴ See Section 6.5 below on alterations and improvements made by the tenant.

other hand, the right to the tenancy is not protected by the building insurance if the house is destroyed by fire or some other cause.

- *To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?*

General Danish contract law applies when entering into rental contracts, on questions about written authority/power of attorney and when determining whether the whole contract is invalid or whether specific terms are invalid.⁷⁵ This means e.g. – as described below – that oral contracts are binding as well as contracts in writing if it is possible to state that an offer has been given and that the offer has been accepted.

All privately owned rental property is covered by the Rent Act and/or the provisions of the Housing Regulation Act. This means that when there is a contract regarding a rented property, the Rent Acts regulates the legal frames of relationship between the landlord and the tenant.

Social housing is covered in the same way by the Act on the Renting of Social Housing.

These laws contain regulation on some specific topics regarding contract formation and these laws are regarded as *lex specialis* on these matters.

The provisions of the Rent Act and the provisions of the Housing Regulation Act are mostly mandatory – they cannot be derogated to the detriment of the tenant. At the end of each chapter of the Rent Act there are sections stating which the rules in the chapter are mandatory. The Housing Regulation Act is mandatory in itself. The provisions of the Act on the Renting of Social Housing are mandatory.

The relationship between general and special rules in the Rent Acts is generally effective, and is not a cause of legal uncertainty, but the legal framework (the Rent Act as a whole) leaves a lot of questions unanswered. Sometimes even the rules themselves can create problems.

The rules on rent regulation/rent control are especially difficult to understand and interpret in many ways, for both landlords and tenants. It is not possible for lay people to properly calculate the maximum rent applicable to a particular tenancy, which means that in many cases the rent is unintentionally set too high. 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.

- *What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?*

The Danish Courts are composed of the Supreme Court, the two high courts (Eastern and Western), the Maritime and Commercial Court, the Land Registration Court, 24 district courts, the courts of the Faroe Islands and Greenland, the Appeals

⁷⁵ Danish Contracts Act – Act no. 781 of 26. August 1996.

Permission Board, the Special Court of Indictment and Revision, the Danish Judicial Appointments Council and the Danish Court Administration.

Civil and criminal cases are tried by the district courts (first tier). Appeals from a district court are sent to the high courts. Only under certain conditions may a civil case be referred to a high court. The Supreme Court is the final court of appeal in Denmark and is situated in Copenhagen. The Supreme Court reviews judgments and orders delivered by the High Court of Eastern Denmark, the High Court of Western Denmark and the Copenhagen Maritime and Commercial Court.

The Supreme Court reviews both civil and criminal cases and is the final court of appeal (third tier) in probate, bankruptcy, enforcement and land registration cases. In criminal cases, the Supreme Court does not review the question of guilt or innocence. There are no lay judges on the Supreme Court panel. Only in exceptional cases is there a right of appeal (third tier) to the Supreme Court.⁷⁶

District courts hear civil, criminal, enforcement, probate and bankruptcy cases. Notarial acts also fall within the jurisdiction of district courts. Disputes arising from tenancy agreements are brought before special divisions of the District Courts called the Housing Courts (*boligretten* in Danish).⁷⁷ The only difference between the Housing Court and an “ordinary” district 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. The Rent Tribunal is part of the public administration – an administrative body – and it is run by the authorities in the municipalities around the country. Where 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 (within four weeks after the Tribunal’s decision has been announced to the parties involved). If the decision not appealed it is enforceable as a court decision.⁷⁸

The Bailiff’s courts and probate courts are departments of the district courts. Bailiff’s court helps enforce claims, such as evictions of tenants, or claims for payment according to a ruling or an instrument of debt. The Bailiff’s court also convenes compulsory sale of real estate.

- *Are there regulatory law requirements influencing tenancy contracts E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)*

⁷⁶

<http://www.domstol.dk/om/otherlanguages/english/thedanishjudicialsystem/Pages/TheDanishJudicialSystem.aspx>

⁷⁷ Rent Act Section 107. Jakob Juul-Sandberg: *Boligrettens saglige kompetence* in Tidsskrift for Bolig- og Byggeret, 2012 p. 591.

⁷⁸ See Section 6.8 below as well.

There have not been and there are no such regulatory law requirements in Denmark. The landlord does not have an obligation to register a tenant or that the property is being rented out. Because of taxation the landlord will have to report income from renting out property, but does not have to report the names etc. of the tenants.

Nor do tenants have an obligation to register. Where a tenant acquires more extensive rights than those that follow from the Rent Act by agreement, e.g. contractual security of tenure, the tenant may demand registration of such agreement in the land register.⁷⁹

- *Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.*

No such regulation exists in Denmark. There is no general shortage of housing, and in general it is not possible to rent out homes of low standard or otherwise very poor quality. There is a regulation on overcrowding in the Housing Regulation Act (section 52a-c) but it is very seldom used (if at all).

If a rented-out property turns out to be of a very poor standard, this might constitute a breach of contract, so that the tenant can make a claim for damages if the property is not maintained.

Property in very poor condition can be condemned by the local municipal authorities,⁸⁰ or the local authorities (or the tenant) can bring a case before the local Rent Tribunal with a claim for proper maintenance being carried out.⁸¹

If a building or part of a building used for residential and other purposes constitutes a health or fire hazard for its occupants, the building is considered condemnable. In accordance with Part 9 of the Act on Urban Renewal and Urban Development, the local council must inspect properties used for residential or other purposes, if due to their location, fitting-out or other conditions, constitute a health or fire hazard. Where the use of a building is assessed to constitute a health or fire hazard, the local council is required to condemn the building, i.e. to prohibit the building or part thereof from being used for residence or other occupancy. Such closures do not give access to compensation.

Where residence has been prohibited, the local council must allocate another dwelling to the household. All re-housing expenses are shared equally between the central government and the municipality.

At the same time or after a prohibition has been made pursuant to the Act on Urban Renewal and Urban Development, the local council may order the owner of the building to remedy the condemnable conditions.⁸²

The Danish Act on Urban Renewal and Urban Development also serves as a tool for the Danish municipalities to make targeted efforts in urban and housing policy. The Act on Urban Renewal and Urban Development allows for grants to private rental housing which lacks installations in the form of modern heating, toilet or bath, or

⁷⁹ Rent Act Section 7, subsection 2 and above on property rights.

⁸⁰ Building Act Section 18 – Consolidated Act no. 1185 of 14. October 2010.

⁸¹ Rent Act Section 113.

⁸² Regulations regarding the closure/demolition of dwellings which constitute a health or fire hazard are found in the Act on Urban Renewal and Urban Development, Part 9, Sections 75-83. The purpose of the regulations is to ensure that action is taken against hazardous conditions in dwellings.

which was built before 1950 and is considerably dilapidated, or for which an energy rating has been drawn up, suggesting scope for improvements. Subsidies may be provided for maintenance or improvement works, demolition, any work mentioned in the energy rating, and the establishment of small extensions. Owner-occupied housing and cooperative housing which lack installations in the form of modern heating, toilet or bath, or which were built before 1950 and are considerably dilapidated, or for which an energy rating has been drawn up, suggesting scope for improvements, can get subsidies to make improvements. Subsidies may be provided for work on the building envelope, demolition, any work mentioned in the energy rating, and to remedy condemnable conditions.⁸³

Regulation on energy saving

All new buildings in Denmark must have an energy performance certificate. This describes how effective a building is from an energy consumption point of view. It also makes it possible to compare it with similar buildings. In connection with the certification, the owner will also find out whether the building can be improved, how to reduce energy consumption, and how to decrease operating costs.

When letting out (or selling) a (used) property, the owner has an obligation to allow of the property to determine the building's use of energy and any energy-saving measures which could be carried out. A certificate must be drawn up (*energimærke* in Danish).⁸⁴

It is the landlord's duty to make sure that the tenant gets a copy of the certificate before the contract is signed. If the tenant does not get a copy of the certificate it does not invalidate the contract. The only consequence is that the landlord may receive a fine.

6.2 Preparation and negotiation of tenancy contracts

Freedom of contract

- *Are there cases in which there is an obligation for a landlord to enter into a rental contract?*

In the private sector there are no obligations for the landlord to enter into a rental contract.

For social housing other rules apply.⁸⁵ As regards ordinary social family dwellings, there are essentially no requirements on tenants for them to be considered for allocation of such a 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

⁸³ See Section 3.6 above.

⁸⁴ In accordance with Act no. 585 of 24 June 2005. See Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p. 10-11 and p. 415-17.

⁸⁵ Social housing is regulated by the Consolidation Act on Social Housing (Consolidated Act no.1023 of 21 August 2013) and the Consolidation Act on the Rent of Social Housing (Consolidated Act no. 961 of 11 November 2010) – as well as a number of executive orders. Recent key literature: Jakob Juul-Sandberg, Martin Birk, Marianne Kjær Stolt: *Kommenteret Lov om leje af almene boliger*, 2008. Both Acts are thoroughly commented on in KARNOV.

priority on the waiting list: Families with children have a right of priority to larger apartments, and the elderly and disabled have a right of priority to certain dwellings that are suitable for the elderly and disabled. People who already have a dwelling in the housing organisation have a right of priority 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.

Social housing for the elderly is let on the direction of the local authority. The local authority has the right of allocation and determines the housing to be allocated to the tenant. The level of care required by the individual must be assessed. Therefore, neither age nor seniority is decisive.

Social housing for young people is also let based on an assessment of the applicant's housing needs. The homes must be rented to young people attending educational institutions or programmes, or other young people with special housing and social needs. This means that consideration must be given to financial, educational and social circumstances, for example.

Matching the parties

- *How does the landlord normally proceed to find a tenant?*

Some private landlords use waiting lists, others advertise on Internet and/or in newspapers. Advertising on Internet is the most common method today. Some landlords use their own website; others use websites specifically designed for advertising of rental homes.

In social housing the dwellings are allocated on the basis of waiting lists (as mentioned above).

- *What checks on the personal and financial status are lawful and usual? In particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?*

There are no rules regulating this. 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, but it is not common at all. Most tenants would find it intimidating. See next question/answer as well.

- *How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of “bad tenants”? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protection grounds?*

The landlord can gather and keep information about tenants until they move. It is not legal to share information about tenants or former tenants electronically or otherwise. This is due to data protection regulations.⁸⁶

In some situations the Rent Act provides for a right for another person to be substituted for the tenant. The landlord must have substantial grounds not to accept this person to be substituted to reject the substitution of tenants. One substantial ground can be that the new potential tenant has previously breached a contract with the landlord. This example illustrates how a landlord can keep a record of former tenants who are still in arrears.

- *What checks may and does the tenant carry out on the landlord (e.g. to avoid being trapped by a swindler landlord)*

In general, tenants have only way to get knowledge about landlords: word of mouth. There are no registrations of (former) “swindler” landlords. If a tenant becomes a member of a tenants’ association, the association will give the tenant advice regarding known bad landlords, but the association does 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 have had good or bad experiences with their (former) landlords.

The owner of a property containing no fewer than two rented flats may be disqualified by court order from administering properties containing rented flats or from appointing administrators of the owner's properties containing rented flats, e.g. if on multiple occasions the landlord failed to comply with a final Rent Tribunal decision within a period of two years – Danish Rent Act Section 113 a. An administrator will be appointed in this case.

Disqualification will not be announced in public, however. The Rent Tribunal cannot offer advice on which landlords are “good” or “bad”. If a potential tenant is a member of a tenant’s association, the tenant could seek advice from the association about landlords who are unscrupulous.

⁸⁶ The Act on Processing of Personal Data - Act no. 429 of 31 May 2000. An organisation for the protection of landlords’ rights (SAPU) have made a members-only “blacklist” of tenants on their websites. The principles for this current blacklisting of tenants have been approved by the Danish Data Protection Agency (*Datatilsynet*). The original list made by SAPU was found invalid on ground of data protection. See Danish Data Protection Agency Journal 2011-43-0031 (in Danish only) e.g. on <http://www.datatilsynet.dk/afgoerelser/seneste-afgoerelser/artikel/register-over-lejere-der-har-misligholdt-lejemaal-eller-lejefattale/>.

Services of estate agents

- *What services are usually provided by estate agents?*
- *To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?*
- *What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?*

The role of estate agents is limited in relation to the letting of apartments. In some cases, however, the agent will act as mediator for the landlord and charge the landlord for various services, e.g. advertising and drafting of tenancy agreements and conducting negotiations with potential tenants.

Some landlords advertise through estate agents and in such cases, the tenant can contact the estate agent, who will most likely be interested in helping the tenant. However, the tenant must be aware that the estate agent is representing the landlord, and that the agent will therefore attempt to conclude a contract that is attractive for the landlord.

Some websites are financed by 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 about vacant apartments and it is not expensive.

Under Section 6 of the Rent Act, it is not permitted in connection with the letting of premises for residential purposes, the provision of such tenancies or the exchange of flats, to receive or charge a fee to the tenant, nor to require the tenant to enter into another contract which is not part of the tenancy agreement. Any amount paid in contravention hereof may be required to be repaid. This applies for estate agents' services as well.

The estate agent can charge the landlord in accordance with their agreement. No rules regulate the amount of this fee, although it must be fair.

- *Ancillary duties of both parties in the phase of contract preparation and negotiation ("culpa in contrahendo" kind of situations)*

No ancillary duties for either party in the phase of contract preparation and negotiation are regulated in the Rent Act. As to conclusion of contracts between landlords and tenants, current contract law applies. The rules for entering into rental agreements in Denmark do not differ from the rules for the formation of most other kinds of contract. The basic rules are found in the Contracts Act.⁸⁷

Offers and acceptances are binding, and when an offer is accepted (orally or in writing) the contract is concluded – unless grounds of invalidity are found. An offer can be revoked only if the revocation reaches the other party, before or at the same

⁸⁷ Consolidated Act 781 of 26 August 1996.

time as the offer, if the contract is valid. The tenant must give (3 months) notice if he has entered into the contract, even if he never moves in.⁸⁸

6.3 Conclusion of tenancy contracts

As to conclusion of contracts between landlords and tenants, current contract law applies. The rules for entering into a tenancy contract agreement in Denmark do not differ from the rules for the formation of most other kinds of contract.

This means that there are no formal requirements – e.g. that the contract must be in writing – for determining whether a contract is binding. If it is possible to determine that an offer has been made, and this offer has been accepted, there is a binding contract. Of course it is not common at all that tenancy agreements are not in writing, but in theory documentation of the contract is not a requirement.⁸⁹

In 2001 the (former) Ministry of Social Affairs (*By- og Boligministeriet*) issued the latest in a succession of standard contracts (tenancy agreements) for private rented properties “*Typeformular A*”.⁹⁰ This type of contract is used for the majority of all agreements in the private rented sector – and the latest standard contract equivalent for social housing under the Act on the Renting of Social Housing the is “*Typeformular B 1998*”.⁹¹

These contract forms cannot be used to conclude other types of contracts not concerning rented properties. The forms contain everything needed, including space for individual terms and explanatory text to help parties fill in the fields in the contract.⁹² These forms can be used for contracts on furnished apartments; student apartments; contracts for renting of room(s) only (e.g. student rooms); and contracts for rooms or apartments located in the house in which the landlord lives as well.

The standard agreements are formulated in co-operation with tenants’ and landlords’ associations, but it is evident that they need to be updated because of changes in the Rent Act.

It is permissible not to use the standard tenancy agreement, but if landlords use other agreements which are not authorised,⁹³ Section 5 of the Rent Act applies (Section 6 of the Act on the Renting of Social Housing). According to this rule, even if standard terms are not mandatory and can be altered by agreement between the two parties,

⁸⁸ Case law references on this topic: Tidsskrift for Bolig- og Byggeret 2014 p. 7 District Court decision, Tidsskrift for Bolig- og Byggeret 2007 p. 275 District Court decision, Tidsskrift for Bolig- og Byggeret 2004 p. 201 Eastern High Court decision.

⁸⁹ Case law references on this topic: Tidsskrift for Bolig og Byggeret 2004 p. 201 Eastern High Court decision – the tenant could not prove that an oral agreement had been made even though he had paid a deposit to the landlord and the landlord had drafted a contract (not signed by any of the parties). Tidsskrift for Bolig- og Byggeret 2010 p. 317 Eastern High Court decision. An oral agreement on rent increases was binding.

⁹⁰ On this issue, see e.g. Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p.52 ff., Niels Grubbe, Hans Henrik Edlund: *Boliglejeret*, 2008, p. 57 ff.

⁹¹ Jakob Juul-Sandberg, Martin Birk, Marianne Kjær Stolt: *Kommenteret lov om leje af almene boliger*, 2008, p. 62 ff.

⁹² This text has been the inspiration to some of the answers in this questionnaire, because in brief terms the text explains the tenant’s legal position.

⁹³ The only authorised contract form today is “*typeformular A*”, 8th edition of 3 September 2001.

parts of the agreement are void if they are more burdensome to the tenant than the rules of the law. More burdensome terms are highlighted in the authorised standard tenancy agreement.⁹⁴

Requirements for a valid conclusion of the contract

- *Formal requirements*
- *Is there a fee for the conclusion and how does it have to be paid? (e.g. “fee stamp” on the contract etc.)*
- *Registration requirements; legal consequences in the absence of registration*

A tenancy agreement does not require a specific form – as stated above it can be oral and still binding – even though this is not very often the case, because it excludes the possibility of making individual agreements and fulfilling some formal requirements described in the following.

If sufficient evidence is given of the existence of a tenancy agreement, nothing else is required. Section 4 of the Rent Act states that a tenancy agreement and any other agreements concerning the premises shall be executed in writing, if either party requires it. 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. Oral or unfinished written agreements are therefore valid and the Rent Act will apply.

No fee for the conclusion has to be paid. 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 to the tenant, nor 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 Section 7(1) of the Rent Act, a tenant's rights stated in the Rent Act are enforceable against anyone without registration. This means that if the (former) landlord has charged a higher rent than allowed, the tenant can make his or her claim against the new landlord – even if the landlord is in good faith. It makes no difference whether the tenant has moved away before the property is sold. However, on termination of the tenancy, any proceedings to enforce the tenant's claims shall commence 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 – he has to register the tenancy agreement in order to be protected against any new owners and the creditors of the landlord.

Restrictions on choice of tenant – antidiscrimination issues

- *EU directives and national law on antidiscrimination*

⁹⁴ Recent case law references on this topic: Ugeskrift for Retsvæsen 2012 p. 1024 Western High Court decision, Ugeskrift for Retsvæsen 2013 p. 2881 Eastern High Court decision, Ugeskrift for Retsvæsen 2013 p. 2234 Eastern High Court decision.

The landlord in the private renting sector is free to choose whoever she prefers as a tenant. She can reject anybody as a tenant out of a general antipathy towards the person in question, his or her choice of domestic animals, appearance etc., provided that the rejection cannot be qualified as discrimination. The problem is that 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.

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 a potential tenant is not to answer the questions (and find another place to rent).

If the landlord rejects any tenant e.g. because of religion or ethnic origin, this may constitute a breach of the Discrimination Act and in addition may be contrary to the act on equal treatment of persons irrespective of racial or ethnic origin. Agreements between landlords and tenants must not violate the fundamental rights laid down by the Constitution, the Discrimination Act or the Equal Treatment Act.

Violations of fundamental rights can be brought before the ordinary courts, as Denmark has neither a constitutional court nor special courts dealing with questions concerning human rights.⁹⁵

There is no case law on the specific issue of rejection resulting from discrimination issues. This is probably because it is not easy for a potential tenant to prove that the rejection was caused by discrimination. The landlord can always find a reason to reject the potential tenant – he does not even have to give a reason.⁹⁶

Limitations on freedom of contract through regulation

- *Mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract*

See the answers above regarding the use of standard contracts.

An oral contract can be binding. The only formal (mandatory) requirements are found in the Rent Act Sections 4 to section 7, and some of the rules apply only to contracts for certain premises. This also means that if a contract is oral only, the tenancy agreement will be deemed to have been concluded subject to the provisions of the Rent Act, unless otherwise provided in the agreement – the landlord must be able to prove this. If the Rent Act gives the opportunity to choose between different possibilities or if the Rent Act (or the Housing Regulation Act) demands certain

⁹⁵ Discrimination Act - Consolidated Act no. 626 of 29 June 1987. This Act implemented the UN convention on abolition of racial discrimination of 21 December 1965. The Act on equal treatment of persons irrespective of racial or ethnic origin - Act no. 374 of 28 May 2003. This Act implemented Directive 2000/43/EC.

⁹⁶ Case law has dealt with the rules on a more general basis – see: Ugeskrift for Retsvæsen 1975, p.438, Western High Court Decision: An easement stating that summer cottages could not be let out to foreigners was overruled. Ugeskrift for Retsvæsen 1991, p. 358, Eastern High Court Decision: A local government authority was not allowed to recommend to the organisations running the Social Housing sector that they should give preference to persons of Danish origin as tenants rather than foreigners.

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.

There are no sanctions if a party does not wish to execute the agreement in writing. It will not be considered a breach of contract. Only if the other party can prove that damages have been caused (because the contract is not in writing) can this party make a claim against the other party involved. Such damage could be caused if the tenant e.g. is denied housing security because she has no documentation for the conditions of the rental agreement.⁹⁷

Control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms

The basic rules are found in the Danish Contracts Act⁹⁸, which is based on a Nordic cooperation – and in general the same rules on contract formation apply in all Nordic countries. This means e.g. that oral contracts are as binding as written contracts and general rules on contract interpretation and invalidity apply.

The Danish rules on formation of contract are largely in accordance with the principles stated in Chapter 2 of PECL (Principles of European Contract Law), but under Danish law offers can be revoked only if the revocation reaches the other party, before or at the same time as the offer. Directive 93/13/EC has been implemented as a part of the Danish Contracts Act. The rules of the Directive apply, but in this respect they are without effect because of the existence of Section 5 of the Rent Act.

The tenant does not have a right of withdrawal as in consumer transactions. Only in the case of “distance selling” does the tenant have a right of withdrawal for 14 days after signing the contracts. In this Act, parts of the EU directive 93/13 on interpretation of terms in contracts with consumers have been implemented.

If a tenancy agreement is found invalid under the regulation in the Danish Contracts Act, the agreement is not binding for either party, e.g. in the case of fraud. This means that the contract is a nullity and the tenant will have to move; there might be a claim for damages from the party who has not caused the invalidity.

If a contractual term is not in accordance with the mandatory sections of the Rent Act or the Housing Regulation Act, the terms will be set in accordance with this Act. This will not cause the whole contract to be set aside.

Statutory pre-emption rights of the tenant

In properties used wholly or in part for residential purposes, the landlord shall offer the property to the tenants on a co-operative basis before disposing of the property to a third party in accordance with Chapter 16 of the Rent Act. The same goes for properties under the Act on the Renting of Social Housing if, after the disposal of the properties to a third party, the properties would no longer be covered by this act.

⁹⁷ Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p. 28 ff., Niels Grubbe, Hans Henrik Edlund: *Boliglejeret*, 2008, p. 55.

⁹⁸ Danish Contracts Act – Act no. 781 of 26. August 1996.

The offer obligation is discharged by an offer from the owner addressed to all tenants of flats to the effect that a housing co-operative established by the residents may acquire the property subject to the price, cash down-payment, and other terms and conditions obtainable by the owner on a sale to a third party. The terms and conditions shall be of such a nature that the housing co-operative is in a position to honour them. The owner may refuse the acceptance from the housing co-operative unless at least 50% of the tenants of flats at the date of acceptance are members of the co-operative, or if the co-operative fails to prove upon demand its ability to pay the cash down-payment required. If the owner's offer is not accepted, the property may be transferred to a third party by sale, subject to the terms and conditions offered, or by gift, exchange of properties or appropriation from the estate of a deceased person, provided the title document is filed for registration within one year from the offer to the tenants.

- *Are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?*

There are no provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions. The tenant's rights still exist.

6.4 Contents of tenancy contracts

- *Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)*
- *Allowed uses of the rented dwelling and their limits*
- *In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)*

As stated above, standard contracts are often used, and these do not provide the possibility to describe the dwelling in detail. Often the contract will only state whether the dwelling is an apartment, a house or a single room, as well as the amount of floor space and how many rooms are included. The difference between a single room and an apartment is that an apartment has a kitchen with drains (from a proper sink or similar). Whether or not the apartment has its own bathroom is not substantial for this distinction. A single room can have its own bathroom without being regarded as an apartment (in tenancy law terms).⁹⁹

A description of the interior will not normally be included in the contract. However, the standard contract provides the possibility for the landlord to document whether some of the interior belongs to him or her (especially appliances), and note whether the dwelling has been renovated before the tenant moves in.

In accordance with Section 9 of the Rent Act, as from the agreed commencement of the tenancy and throughout the term thereof, the landlord shall make the premises

⁹⁹ Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemaal*, 2010, p. 15, Niels Grubbe, Hans Henrik Edlund: *Boliglejeret*, 2008, p. 33. In the Act on the Rent of Social Dwellings a single room is defined in Section 1 subsection 4 as "one or several rooms without separate kitchen..."

available to the tenant in a reasonable state of repair and condition. As at 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. Section 9 is not mandatory. This will mean that the landlord and the tenant can agree on other terms, e.g. that the premises are not maintained and that the tenant must renovate the premises himself.

In a case where the actual floor space of the premises is not in accordance with what has been described in the contract, it may be a breach of contract, but only if the tenant suffers a loss which is not likely for this reason alone. If the rent is set based on square meters of floor space (which is often the case), the tenant may get a reduction in the rent. If the premises are larger than what is stated in the contract, this cannot lead in and of itself to an increase to the rent. The rent can be increased only as stated in the Rent Act or the Housing Regulation Act, after the landlord gives the tenant notice of the increase.

The same rules apply to residence contracts and mixed (residence/commercial) contracts. Often the same type of standard contract is used. Of course, most landlords will describe in the contract the area used for residence and the area to be used for commercial purposes.

Parties to a tenancy contract

- *Landlord: who can lawfully be a landlord?*

If a person, some sort of company or other legal entity can buy a property, they will at the same time be the landlord if the premises are rented out. There is no legislation stating that someone/anyone cannot lawfully be a landlord.

Under Section 113a of the Rent Act, however, the owner of a property containing no fewer than two rented flats may be disqualified by court order from administering properties containing rented flats or from appointing administrators of the owner's properties containing rented flats.

This does not mean that the owner of the property is no longer the landlord if the property is rented out. It only applies to the right of administering properties.¹⁰⁰

- *Does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?*

No. The Rent Act Section 7 states that 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.

¹⁰⁰ Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemaal*, 2010, p. 1112 ff. Statutory Order No. 682 of 20 June 2007.

The same rules apply if the landlord goes bankrupt.

- *Who can lawfully be a tenant?*

Legally incompetent persons – e.g. minors, who are persons below the age of 18 – or persons defined as insane cannot lawfully be tenants (without consent from a legal guardian). These persons cannot enter into a legally binding contract. All other persons, companies etc. who may enter into a legally binding contract can do so.¹⁰¹

- *Which persons are allowed to move in an apartment together with the tenant (spouse, children etc.)?*

The tenant shall not allow any third party who is not a member of his household to use the premises or any part thereof without the landlord's consent (Rent Act Section 26 (1)).

A “household”¹⁰² can consist of the tenant's spouse, girlfriend/boyfriend if not married, children and in some cases other persons as well – e.g. cousins or other family members who have not got their own household, and close friends.¹⁰³ The term “household” is not precisely defined 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. If they share rooms, if they cook and eat together and if they have some sort of joint economic relations, in most cases this will be sufficient to state that there is a “household”. A guest or a sub-lessee is not a member of the household.

- *Changes of parties: in case of 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 by motion of the other students); death of tenant*

The regulation on this topic in the Rent Act concerns the situation where a tenant – who has signed the tenancy agreement – no longer lives in the rented apartment. The person who can take over is not a tenant, who has signed the contract. The regulation is meant to protect the home of persons living with each other no matter whether or not they both formally are tenants. If two persons have signed the contract, and one of them dies, the other person can continue living in the apartment nevertheless because he or she has the rights of a tenant.

¹⁰¹ In recent case law it has been discussed whether a tenant can become legally incapable because he or she is mentally ill. The consequence would be that the tenant could not be a party in a legal dispute and it would not be possible to evict this tenant. See Fuldmægtigen 2013.625 Western High Court decision, Tidsskrift for Bolig- og Byggeret 2012.349 Western High Court decision and a legal article on the subject in Tidsskrift for Bolig- og Byggeret 2013, page 3.

¹⁰² On use of this expression in the Rent Act see: Anne Louise Husen, Tove Flygare: *Lejemålets ophør og brugsrettens overgang*, 2. udg., 2011, p. 481 f., p. 519 ff., Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 111-114 and e.g. Ugeskrift for Retsvæsen 2004 p. 156 Supreme Court decision.

¹⁰³ E.g. Ugeskrift for Retsvæsen 2011 p. 3164 Supreme Court decision.

The regulation in the Rent Act is divided into sections which address the different “types” of dissolution of relationships between people living together in a rented apartment:

Death (Sections 75-76 of the Rent Act regulate these cases):¹⁰⁴

On the death of a tenant, the surviving spouse is entitled to continue the tenancy. Where the tenant of a flat dies without leaving a spouse behind, any other person with whom the deceased tenant had cohabited for a period of two years or more preceding the death may continue the tenancy.

On the death of a tenant who maintained a business for which the continued location in the property is of essential importance and value to the business, and without leaving a spouse behind, any issue of the tenant or any son- or daughter-in-law may take over the tenancy, unless the landlord objects on substantial grounds. It is a condition that the person taking over the tenancy has the required knowledge of the line of business conducted by the deceased tenant, and that the said person intends to continue operating the business, whether alone or with his or her spouse. If the person in question does not take over the tenancy, the landlord shall not let the premises to a third party on more lenient terms than those offered to the aforesaid party.

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.

If the premises are let as a care home, and where a tenant dies without leaving a surviving spouse or any other person with whom he or she had been cohabiting, the tenancy may be terminated with one month's notice.

If the tenant of a flat moves to a nursing home, sheltered housing or a similar dwelling due to old age or illness, or to a care home provided for under specific law regulation, the same rules apply correspondingly.

Divorce (Rent Act Sections 77 and 77 a):¹⁰⁵

In case of the tenant's separation or divorce or annulment of the tenant's marriage, the grant or decree shall specify, if necessary, which of the spouses shall be entitled to continue the tenancy. The spouse whose business is connected to business premises shall enjoy priority rights in respect of such premises and any connected dwelling.

Where two parties (only one of them having entered into the tenancy contract), have lived together for two years or more in the same household and then separate, these two parties may agree upon 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

¹⁰⁴ Anne Louise Husen, Tove Flygare: *Lejemålets ophør og brugsrettens overgang*, 2. udg., 2011, p. 517 ff., Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p. 773 ff.

¹⁰⁵ Anne Louise Husen, Tove Flygare: *Lejemålets ophør og brugsrettens overgang*, 2. udg., 2011, p. 534 ff., Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p. 767 ff. Louise Faber: *Ægtefællens ret til lejemålet: samspillet mellem familie- og lejeretten* – in *Tidsskrift for Familie- og Arveret* 2013, p. 415

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 adult children living at home “separate”, they are not protected by Section 77 a.¹⁰⁶

Where the tenant has deserted his or her spouse, the abandoned spouse is entitled to continue the tenancy as provided for by Section 75(1), above.

- *Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?*

The tenant of a house or an apartment (not a single room) is entitled to sub-let up to one-half of the rooms of the flat for residential purposes – Rent Act Section 69.¹⁰⁷ The total number of occupants of the house or apartment shall not exceed the number of rooms. This rule regulates only sub-letting and not rented apartments or owned occupied homes in general.

A tenant is also entitled to sub-let a house or apartment for a period not exceeding two years, when the property is let exclusively for residential purposes and where the absence of the tenant is temporary and 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 when the property comprises less than 13 apartments; when the total number of persons in the flat will exceed the number of rooms; or when the landlord may object to the sub-letting on any other reasonable grounds.

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.¹⁰⁸ This also means that the sub-lessee will have to move out.¹⁰⁹

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 that in general there are no grounds for speculation about offering the tenant only a sublease contract and not an ordinary lease contract.

¹⁰⁶ Ugeskrift for Retsvæsen 2004 p. 156 Supreme Court decision. The same rules apply for homosexual couples.

¹⁰⁷ Anne Louise Husen, Tove Flygare: *Lejemålets ophør og brugsrettens overgang*, 2. udg., 2011, p. 479 ff., Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p. 748 ff., Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 116 f.

¹⁰⁸ Rent Act Section 69, subsection 3 and Section 70, subsection 4 and Rent Act Section 93, subsection 2 *litra* f.

¹⁰⁹ E.g. Grundejernes Domssamling 1995 no. 22 District Court decision.

If an apartment was let out to a company exclusively for residential purposes before 13 June 2010, the contract will be regulated by the Business Rent Act. The tenant who actually lived in the apartment, e.g. a shareholder or an employee, was considered a sub-lessee. The relation between the company (tenant) and the sub-lessee was regulated by the Rent Act. This could be legal, but in some cases this “construction” could be made only because the regulation in the Business Rent Act is not so radical. After 13 June 2010, letting apartments to a company exclusively for residential purposes is regulated by the Rent Act as well.¹¹⁰

The sub-lessee will not be protected by Section 7 of the Rent Act. This is the major difference between the tenant’s and the sub-lessee’s right.¹¹¹

- *Is it possible and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?*

This is possible. No special rules apply. All persons who have signed the contract will be considered as tenants. If some of the tenants move (consecutively) they will still be jointly liable for the rent until the landlord accepts otherwise – even when another tenant moves in.¹¹²

Duration of contract

- *Open-ended vs. limited in time contracts*

- *For limited in time contracts: is there a mandatory minimum or maximum duration?*

- *Other agreements and legal regulations on duration and their validity: periodic tenancies (“chain contracts”, i.e. several contracts limited in time among the same parties concluded one after the other); prolongation options; contracts for life etc.*

Tenancy contracts can be entered into for a limited or unlimited period. There is no mandatory minimum or maximum duration (nor has there ever been such a period stipulated in the Rent Act) for limited periods of a tenancy contract.

This could be a way for the landlord to set tenancy protection aside, but the Housing Court may set aside any provision for a fixed term, where such provision is not found to be warranted by the landlord's own situation – Rent Act Section 80, subsection 3. This means that the landlord – at the time when the contract is concluded – must have reasonable grounds to make the contract for a limited period only.¹¹³

The grounds are not described in the Rent Act, but for example, if the landlord will be working abroad or in another part of the country for a limited period, setting a time

¹¹⁰ Rent Act Section 1, subsection 1 changed by Act no. 632 of 10 June 2010.

¹¹¹ As described in Louise Faber: *Fremlejetagerens retssikkerhed – in Retssikkerhed i konkurrence med andre hensyn*, Carsten Munk-Hansen og Trine Schultz (red.), 2012, p. 95-117.

¹¹² See Claus Rohde: *Lejemål med flere lejere, herunder udlejning til boligkollektiver og interessentskaber* – in *Tidsskrift for Bolig- og Byggeret* 2006 p. 123 – with references to prior literature.

¹¹³ On the history of Section 80, see Anne Louise Husen, Tove Flygare: *Lejemålets ophør og brugsrettens overgang*, 2. udg., 2011, p. 17 ff.

limit on a tenancy contract will be considered as warranted by the landlord's own situation. The period after (under) the financial crisis has also been found to be a condition that warrants such limitations, as a result of the landlord's own situation – when after numerous attempts the landlord has not been able to sell a house or apartment. In this situation the landlord may let out an apartment or house for a limited period until it might be possible to sell the property.¹¹⁴

It is possible to prolong a limited contract if it is warranted by the landlord's own situation at the time of the prolongation. Automatic renewals without due course will almost certainly be overruled by the Housing Court in accordance with Section 80 (3) of the Rent Act as mentioned above. In addition, with regard to prolongations the Housing Court may set aside any provision for a fixed term, where such provision is not found to be warranted by the landlord's own situation (at the time of prolongation).

In principle, a fixed-term tenancy agreement implies less extensive rights for the tenants than under the general rules in the Danish Rent Act, and regardless of whether the landlord has 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 which apply to other tenants in the same property.

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.

It is possible to make contracts "for life". Unless otherwise agreed by the parties, such a contract cannot be terminated before the tenant dies. The tenant may register the tenancy agreement with such a right to be protected against any new owners and the creditors of the landlord.¹¹⁵

Unlimited tenancies may normally be terminated by the tenant giving three months' notice,¹¹⁶ while the landlord can give notice only if certain indispensable conditions laid down in the Rent Act Sections 83 and 84 are met.¹¹⁷

¹¹⁴ E.g. Tidsskrift for Bolig- og Byggeret 2012 p. 176 Eastern High Court decision. Anne Louise Husen, Tove Flygare: *Lejemålets ophør og brugsrettens overgang*, 2. udg., 2011, p. 27 ff., Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p. 804 ff. Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 208, p. 380.

¹¹⁵ Section 7(2) of the Rent Act: "Where a tenant acquires more extensive rights by agreement, e.g. contractual security of tenure, a right of assignment or a right to compensation upon vacation under section 63, below, the tenant may demand registration of such agreement. The agreement so registered shall be subject to the largest possible public loans and any other charges and encumbrances on the register at the time of application for registration of the said agreement".

¹¹⁶ It is not legal to agree on at shorter term. Agreements on longer terms are legal. See e.g. Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 362.

¹¹⁷ See Section 6.6 on termination of contracts below.

In general, immediate termination of the contract is possible only if one of the parties has committed a fundamental breach of contract. This is regulated in the Rent act Section 93.¹¹⁸

Rent payment

- *In general: freedom of contract vs. rent control*
- *Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent*

The rules about determining and adjusting the rent are found mainly in the Rent Act and the Housing Regulation Act. The rules governing rent determination and regulation depend on the type and location of the property. There are rules about rent determination and regulation in other pieces of legislation, including the laws on urban renewal. For determination of rent at the commencement of the tenancy in municipalities where Parts II-IV of the Housing Regulation Act are valid – the so-called “regulated municipalities” – special rules apply concerning the amount of the rent payable at the time of the signing of the agreement.

There are four types of rent regulation for private rental properties, of which market rent is the only one which actually relates to market forces and therefore to supply and demand. The principal form of regulation is the cost-based rent. Cost-based rent is determined on the basis of the running costs attributable to the property concerned.¹¹⁹ In addition, the owner can add a number of statutory provisions, a profit and a surcharge for any improvements made to the rented property since the property was originally constructed. The rent is therefore an estimate.

An exception to this is the case of “thoroughly improved” apartments under the Housing Regulation Act Section 5 (2) and this section also contains a definition of “thoroughly improved properties”.¹²⁰ The question of the degree to which the rent may substantially exceed the value of the premises depends on a comparison with the rent in similar properties in the municipality, with reference to location, type, size, quality, amenities, and general condition of the property.

Moreover, where properties are located in regulated municipalities, it is not possible, at the commencement of the tenancy, to set the rent or terms and conditions for the rent which, based on an overall assessment, are more onerous for the tenant than the terms and conditions which apply to other tenants in the property.¹²¹

In municipalities where Parts II-IV of the Housing Regulation Act do not apply – the so-called “unregulated municipalities” – no special rules apply regarding the amount of the rent at the time of the signing of the agreement, but following the commencement of the agreement, the tenant may demand that the rent be reduced if it substantially exceeds the value of the premises.

¹¹⁸ See Section 6.6 below for further comments on this topic.

¹¹⁹ Housing Regulation Act Sections 7-9.

¹²⁰ Jakob Juul-Sandberg: *Det lejedes værdi*, 2. udg., 2010, p. 187 ff. with references.

¹²¹ Housing Regulation Act Section 5, subsection 8. E.g. Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 185, Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p. 48.

The rent for properties in unregulated municipalities can be regulated during the period of tenancy in accordance with the rules on the value of the premises, while the rent for properties situated in regulated municipalities is regulated in accordance with the rules on rent not exceeding the amount required to cover the necessary operating costs for the property.

As an exception to those rules on the determination and regulation of the rent mentioned above, special rules apply to tenancies in small properties in regulated municipalities, i.e. to tenancies in properties which, as of 1 January 1995, comprised six or fewer residential apartments (not including single rooms).¹²² Correspondingly, for properties owned by co-operative housing associations, these rules will apply if there are six or fewer residential apartments in the property which are let by a co-operative housing association, for as long as the property is owned by the co-operative.¹²³

In these cases, the rent must be determined (on a discretionary basis) through a comparison with tenancies concerning properties on which there are seven or more tenancies and for which the rent has been regulated in accordance with the provisions concerning cost-based rent.

For separate residential rooms in regulated municipalities, where the rooms form a part of the landlord's flat or of a single- or double-occupancy house occupied by the landlord, the rules about determination and regulation of the rent in accordance with the value of the property apply. For separate residential rooms in unregulated municipalities, where the rooms form a part of the landlord's flat or of a single- or double-occupancy house occupied by the landlord, the rules about determination and regulation of the rent in accordance with the value of the property also apply.

For separate rooms, where a separate room is a room that does not form part of the landlord's flat, or of a single- or double-occupancy house occupied by the landlord, and when the property is located in unregulated municipalities, the rent is determined and regulated in accordance with the value of the property, while the rent for such rooms in regulated municipalities is determined and regulated in accordance with the rules on rent not exceeding the amount required to cover the necessary operating costs for the property.

The rent for mixed properties – i.e., properties which are used for both residential and non-residential purposes – is regulated in the same way as for tenancies used exclusively for residential purposes. Therefore, in principle there is no difference in the actual level of rent due to indirect factors, such as higher property taxation etc. on commercial premises. This applies only when the premises are let under the same contract and the premises are not divided into two separate buildings or in other ways so that one cannot enter the residential premises from the commercial premises (or the opposite). If the premises are divided, it is possible to charge rent for the commercial premises in accordance with the regulation in the Business Rent Act.

¹²² Housing Regulation Act Part IV A. See Jakob Juul-Sandberg: *Det lejedes værdi*, 2010, p. 221 ff.

¹²³ Ugeskrift for Retsvæsen 2013 p. 2157 Western High Court decision. The case has been appealed to the Supreme Court.

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. A rent increase may be demanded notwithstanding any contractual security of tenure, as long as the landlord has reserved the right to adjust the rent.¹²⁴

After the contract is concluded, the tenant – if he or she wishes – can go to the Rent Tribunal the day after the contract is signed and obtain the rent level which has been agreed upon and regulated 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 initiate proceedings in these cases in time, he or she may lose the right to a rent decrease.

The provisions of the Rent Act and the Housing Regulation Act concerning rent regulation may be deviated from¹²⁵ when the tenancy concerns a tenancy agreement which relates to a residential apartment on a property taken into use after 31 December 1991, or a tenancy concerning a residential apartment which, as of 31 December 1991, was lawfully exclusively used for commercial purposes. The same applies if since this date, the premises have lawfully been exclusively used for, or legally fitted out exclusively for, commercial purposes. The tenancy agreement must state that the tenancy is covered by this right of derogation. Furthermore, the rent regulation may be deviated from when the tenancy concerns a newly established residential apartment or a newly established single room in an attic, which as of 1 September 2002 was not used or registered as a dwelling. The same applies to apartments and single rooms on newly added floors, for which a building permit has been issued after 1 July 2004. As a requirement for validity, the tenancy agreement for these tenancies must state that the tenancy is covered by this right of derogation. The rent charged for these tenancies may be set at the market rent, i.e. according to supply and demand. The rent may only be set at a different level in accordance with the provisions of the Contracts Act.

Transitional legislation problems may also arise in connection with the assessment of which rules to apply when determining the rent for a given tenancy. The general rule in Danish legislation is that agreements which were valid at the time they were established do not become invalid because the legislation changes.¹²⁶ In addition, and on the other hand, agreements which were invalid at the time they were established do not become valid because the legislation changes. The rules concerning rent regulation have been revised on a regular basis. The rules that applied when the tenancy agreement was established will apply to the tenancy concerned, regardless of subsequent legislative changes.¹²⁷ There are no special statutory provisions regulating this aspect.

¹²⁴ Rent Act Sections 47-49, Housing Regulation Act Sections 12-13.

¹²⁵ Rent Act sSection 53, subsection 3-6, Housing Regulation Act Section 15 a.

¹²⁶ Ugeskrift for Retsvæsen 2007 p. 2047 – Supreme Court decision.

¹²⁷ In general on this topic – Claus Rohde: *Intertemporal kontraktsret*, 2009.

- *Maturity (fixed payment date); consequences in case of delayed payment*

The landlord decides where and how the rent and related bills shall be paid. However, payment can always be made to a bank, including (if applicable) 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 following weekday.¹²⁸

A number of payments from the tenant to the landlord fall under the heading “monetary liability”, meaning that the landlord can terminate the tenancy agreement without further notice under observation of certain terms and conditions, if such payments are not made. Such payments include rent, deposit and advance payment of rent and regulations thereof, heating payment, antenna costs, on-account payments for water, if applicable, and payment of claim fees.¹²⁹

The landlord may terminate the tenancy agreement without notice in case of default in the punctual payment of rent or other monetary liability. The landlord shall not terminate the agreement without notice, except due to late payment, when the tenant has not paid the arrears within 14 days from delivery of written notice to the requiring such payment. The landlord's notice shall be given three days after the last due date for payment and shall state explicitly that the tenancy may be terminated if the back rent is not paid within the time limit.¹³⁰

If the tenant does not move immediately the landlord can initiate enforcement proceedings.¹³¹

- *May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it when the landlord does not respect his contractual duties, e.g. does not repair a defect);*

In principle this is possible and legal. If, at the time of possession or during the continuance of the tenancy agreement, the premises are not in the state of repair and condition as the tenant is entitled to expect due to the nature of the legal relationship with the landlord, and if 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. This is stated in the Rent Act (Section 11 subsection 1), but it is not described in this section (or anywhere else in the Act) that the tenant may exercise set-off and withhold the amount spent on the remedies.

Case law shows that there is a large potential risk that a court will not find that the tenant is entitled to withhold the rent or parts of it in such or any other situation. If the tenant wants to remedy the defect at the landlord's expense, the tenant has the

¹²⁸ Rent Act Sections 32-33.

¹²⁹ Leading case: Ugeskrift for Retsvæsen 2000 p. 905 Supreme Court decision.

¹³⁰ Rent Act Section 93 subsection 1, *litra a* and subsection 2. Niels Grubbe, Hans Henrik Edlund: *Boliglejemaal*, 2008, p. 420, Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemaal*, 2010, p. 890. Anne Louise Husen, Tove Flygare: *Lejemålets ophør og brugsrettens overgang*, 2. udg., 2011, p. 191 f.

¹³¹ See answers regarding termination of contract without notice below in Section 6.6.

burden of proof as to whether the premises are in a state of repair and condition to which the tenant is entitled.¹³² The most secure method for the tenant is to engage legal proceedings against the landlord instead of withholding rent.

Where the 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.¹³³

May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)

The landlord may assign claims to a bank, but the tenant cannot be forced to make payments to the bank (instead of the landlord).

It is not possible for a third party to execute rent claims. The mortgage in the property includes due rent payments. If the mortgage creditor wants to gain possession of the rent payments, the creditor must force the sale of the property on a foreclosure auction or take possession of the property according to directions stipulated in the Administration of Justice Act.¹³⁴

- *May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)? Does the tenant have a statutory right to this effect? Could a lien of the “tenant-contractor” create problems in that case? (a lien is a statutory right of a contractor to ensure his being paid for his performances, e.g. improvements to the house, e.g. § 648 BGB)*

The Rent Act applies whether rent is payable in money or otherwise, e.g. by way of work or services rendered (Rent Act Section 1 (2)). If it is specified in the contract how the rent has to be paid, the landlord can terminate the contract even if the rent is not paid in money. No special rules apply and such agreements are very rare. There is no statutory right for the tenant to replace a rent payment with a performance.

- *Does the landlord have a lien on the tenant’s (movable) property in the house (Vermieterpfandrecht as in § 562 BGB, which functions as a guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?*

No such rights exist. If the tenant has been evicted of the rented dwelling by enforcement proceedings, the landlord must remove the tenant’s property from the rented dwelling and place it out in front of the dwelling (“to the pavement”). The police must then ensure that the property is taken care of – e.g. placed in a storage building. The landlord can demand payment from the removed tenant for the expenses incurred in this case, but the landlord may not sell the tenant’s movable

¹³² Ugeskrift for Retsvæsen 2005 p. 668 Supreme Court decision. Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 446 ff. And in general Lars Henrik Gam Madsen: *Modregning med uklare krav*, 2009.

¹³³ Rent Act section 11, subsection 1, last paragraph.

¹³⁴ Consolidated Act no. 1134 of 24 September 2013. Bo von Eyben & Peter Møgelvang-Hansen: *Kreditorfølgning – materiel foged- og konkursret*, 7. udgave, 2013, p. 82.

property and keep the money to cover these expenses. The tenant cannot claim the property without paying the expenses incurred for storing it.¹³⁵

Clauses on rent increase

- *Open-ended vs. limited in time contracts*
- *Automatic increase clauses (e.g. 3% per year)*
- *Index-oriented increase clauses*

As far as tenancies to which the Housing Regulation Act applies are concerned, the rent can be raised when the running costs exceed the existing rent and when improvements have been made. 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.

As an exception to those rules on regulation of the rent described above, rent increases by specific amounts at specific dates – a so-called “stepwise rent increase”¹³⁶ – may be agreed upon in both regulated and unregulated municipalities. The period in which an agreement on stepwise rent increases 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 exceed the said amount at any time. For other tenancies the stepwise rent increase, as a principal rule, must not substantially exceed the value of the property at any time.¹³⁷

In regulated municipalities a mutually agreed regulation of the stepwise rent increase may be set aside in properties comprising at least seven flats if, based on an overall assessment, the terms and conditions of the stepwise rent increase imply that the overall terms and conditions for the tenancy agreement are more onerous for the tenant than the terms which apply to the other tenancies in 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.

Utilities

- *Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation*

¹³⁵ Michael Kistrup, Peter Møgelvang-Hansen, Lars Lindencrone Petersen: *Fogedsager*, 4. udg., 2009, p. 729.

¹³⁶ Rent Act Section 53 subsection 2.

¹³⁷ Jakob Juul-Sandberg: *Det lejedes værdi*, 2. udg., 2010, p. 144 ff.

- *Responsibility of and distribution among the parties:*
 - *Does the landlord or the tenant have to conclude the contracts of supply?*
 - *Which utilities may be charged from the tenant?*
 - *What is the standing practice?*
- *How may the increase of prices for utilities be carried out lawfully?*
- *Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?*

The landlord may (only) make the tenant pay for power, heating, water, wireless services and cable TV. No other utility falls under the authority of the Rent Act.¹³⁸ As a principal rule, 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 pays an amount on account to cover the landlord's expenses. The costs of the heating and hot-water supply for 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.

It is sometimes arranged for the tenant to pay the supplier directly. This may be possible when the rented property is an independent house or a condominium. If so the supply of utilities does not form part of the tenancy agreement. It is legal to make such an arrangement if it is possible. This will primarily be in single-family houses and not in larger dwellings with multiple 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. The accounts concerning the expenses for the property's heating and hot-water supply must reach the tenants no later than four months after the expiry of the accounting year for heating consumption. If supplies are provided by a shared heating system, however, the account is considered punctual, if it has reached the tenants no later than three months after the landlord has received the final statement of the account from the heating supplier. If supplies are provided by a shared heating system, the accounting year for heating consumption shall follow that of the heating system.

The accounts for water consumption must reach the tenants no later than three months after the landlord has received the final statement of the account concerning the supply of water from the municipal authority or the waterworks.

If the contribution paid on account by the tenant is too low, the landlord may claim additional payment in connection with the first rent payable, if this date is one month after the tenant's receipt of the accounts. However, if an additional payment for heating exceeds the amount of three months' rent, the tenant may choose to make payments of three equal monthly rates. If the contribution for water or heating paid on account by the tenant is too high, the excess amount shall be refunded to the tenant in cash or be deducted from the first payment of rent following the submission of the

¹³⁸ Ugeskrift for Retsvæsen 2009 p. 2497 Supreme Court decision.

water accounts. If the heating and/or water account reaches the tenant too late, the landlord cannot insist on additional payment following the accounts. If the heating and/or water account has not been submitted within another two months after the mentioned notification periods, the tenant may wait to make payments on account until the tenant has received the account and has received, if applicable, the excessive amount paid for heating and/or water in the completed accounting period. Lastly, appropriate answers in the contract shall be ticked concerning the supplier of electricity to the property. 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. on the premises, the tenant may gain access to the installations with assistance from the bailiff in order to remedy the defect.

Where a landlord who is required to supply heat and hot water, cf. Section 36 in the law cited above, fails to supply the property with energy for heating purposes, and where the landlord fails to remedy such failure forthwith upon receiving notice requiring such remedy, the municipal authority shall at the request of any tenant of a flat supply the property with energy for heating purposes at the landlord's expense.¹³⁹

Deposit

- *What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?*
- *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?)*
- *What are the allowed uses of the deposit by the landlord?*

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 may correspond to up to three months' rent.

At the time of the signing of the agreement, the landlord may also demand an advance payment of rent equivalent to up to three months' rent. Such advance payment of rent can cover the rent of the three 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.

¹³⁹ On the topic of supplies: Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, Chapter 8.

Repairs

- *Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)*

In Denmark (2009), eight per cent of the population declared that the dwelling in which they were living had a problem with a leaking roof or damp in the walls .¹⁴⁰

It is specifically 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 good and serviceable repair. The landlord shall likewise be responsible for keeping the premises clean and for usual lighting outside and inside the property, as well as the means of access to the premises; also, the landlord shall be responsible for cleaning of the pavement, courtyard and other communal facilities.

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 necessary amounts for this are specified in Sections 22 and 23 of the Rent Act and the amount shall be registered in a "maintenance account" for each apartment. 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. When the landlord has paid the cost of whitewashing, painting and papering and any other maintenance and repairs as provided for under Section 23 of the Rent Act, the landlord may deduct the said cost from the maintenance account. The landlord shall not pay more than the amount available in the maintenance account at any time. The tenant may also require that any balance in the maintenance account exceeding an amount corresponding to total deposits into the account over the past three years be applied for other reasonable and appropriate maintenance and repair works to the flat. These conditions apply, as always, provided that the flat shall at all times appear in good repair and condition in respect of whitewashing, painting and papering.

In case of a change of ownership, the new landlord shall assume the repair obligations and shall manage the maintenance account.

It is legal to make an agreement stating that the tenant is responsible for whitewashing, painting and papering. The tenant and the landlord may mutually agree on a different distribution of the maintenance obligations, so that the tenant assumes e.g. 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.

Where the tenant has agreed to assume responsibility in part for maintaining papering, whitewashing and painting, the amount to be deposited on the

¹⁴⁰ http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-23022011-BP/EN/3-23022011-BP-EN.PDF

maintenance account shall be reduced accordingly. If the tenant and the landlord have mutually agreed on a different distribution of the maintenance obligations, the tenant shall, during the period of the tenancy, carry out maintenance work so often that the installations mentioned are always in good condition.

If the landlord is responsible for carrying out the internal maintenance of the property, the tenant shall only receive demands to paint etc., if the tenant has caused damages to the property. The tenant, then, shall not make good any damage caused by reasonable wear and tear and the passage of time. If the tenant, in accordance with the agreement, has assumed the responsibility to carry out the internal maintenance, the tenant must, upon vacating the property, return the property to the same condition it had when the tenant took possession. This means that before moving out the tenant must carry out the maintenance of the surfaces of ceilings, walls, floors etc. in the property, if circumstances demand it.

During the term of the tenancy the tenant shall maintain and, where required, replace locks and keys unless otherwise agreed. Locks and keys and, if applicable, other objects which in accordance with the agreement are included in the tenant's external maintenance obligation, shall, at the termination of the tenancy, be surrendered in the same condition as at the commencement of the tenancy, with the exception of the diminution of value caused by fair wear and tear and passage of time, presupposed, however, that the objects have been maintained throughout the tenancy. 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.

For social housing, other, more strict rules based on mandatory provisions apply.¹⁴¹

Connections of the contract to third parties

- *Rights of tenants in relation to a mortgagee (before and after foreclosure)*

The Rent Act Section 7 states that 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 and both before and after foreclosure. 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. Where a tenant acquires more extensive rights by agreement, e.g. contractual security of tenure, the tenant may demand registration of such agreement. When registered, the extensive rights will also have validity against the landlord's creditors and assignees in good faith and in case of foreclosure.

6.5 Implementation of tenancy contracts

- *Disruptions of performance (in particular "breach of contract") prior to the handover of the dwelling*
- *In the sphere of the landlord:*
 - *Delayed completion of dwelling*

¹⁴¹ The Act on the Rent of Social Housing Chapter 6 and "Bekendtgørelse om vedligeholdelse og istandsættelse af almene boliger", Statutory order no. 640 15 June 2006.

- *Refusal of handover of the dwelling by landlord (in particular: case of “double lease” in which the landlord has concluded two valid contracts with different tenants over the same house)*
- *Refusal of clearing and handover by previous tenant*
- *Public law impediments to handover to the tenant*

Where the premises have not been completed at the time of the tenancy agreement, and where the date of possession has not been agreed upon, the tenant may terminate the agreement at any time until possession.¹⁴²

Where the former tenant has not vacated the premises by the agreed date of possession, the new tenant is entitled to claim a proportionate reduction of the rent for the period during which the tenant is not given vacant possession of the premises or any part thereof. Unless the situation is remedied without undue delay upon notification of the landlord, the tenant may terminate the tenancy agreement without notice. In addition, the tenant may claim damages unless the landlord shows that the delay was beyond his or her control.

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.

If the tenant knew that the use of the premises was wrongful, nor were any ignorance thereof is due to gross negligence on the tenant's part, no breach of contract will be stated. Where the wrongful use has not restricted the tenant's right of use, and the landlord repairs the defect upon demand, there is no breach of contract either.¹⁴³

- *In the sphere of the tenant:*
 - *refusal of the new tenant to take possession of the house*

This would be a breach of contract (if the tenant does not pay the rent). In most cases the tenant's private home will not be a part of the estate if the tenant goes bankrupt.¹⁴⁴ This means that the tenant does not have to move and the tenancy contract remains valid if the rent is still being paid.

If the former tenant has not vacated in due time – see the answer above. The tenant who does not move out can be removed through the Bailiff's Court – see the answers below.

¹⁴² Rent Act Section 10.

¹⁴³ Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p. 113 ff., Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 94.

¹⁴⁴ Bankruptcy Act (Consolidated Act no. 217 of 15 March 2011) section 37.

Disruptions of performance (in particular “breach of contract”) after the handover of the dwelling

- *Defects of the dwelling*
- *Notion of defects: is there a general definition?*
- *Examples: Is the exposure of the house to noise from a building site in front of the house or are noisy neighbours a defect? What about damages caused by a party or third persons? Is the occupation of the house by third parties such as squatters considered as a defect in the legal terms?*
- *Discuss the possible legal consequences: rent reduction; damages; “right to cure” (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies*

The remedies for breach of contract are stated in the Rent Act Chapter 3. They are not different remedies which would apply to other contracts (this means that the same rules would apply even if the remedies were not listed in the Act.) If either the landlord or the tenant fails to fulfil a contract, the other party will normally be entitled to terminate the contract immediately when the breach of contract is considered fundamental.

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, 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.

Where the defect relates to the supply of light, gas, heating, cooling, etc. for the premises, the tenant may gain access to the installations with assistance from the bailiff in order to remedy the defect.

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. This could be relevant e.g. when the premises are exposed to significant noise or other inconveniences caused by a building site in front of (or inside the house in other apartments). Noisy neighbours could also be a defect in this way 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. terminating the contract of the tenant who 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.¹⁴⁵

Where the premises are defective¹⁴⁶, and where the landlord fails to repair the effect immediately, or where it cannot be repaired within a reasonable time, the tenant may

¹⁴⁵ Rent Act Section 27 and Sections 11-13. Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 131 f.,

¹⁴⁶ As described in Section 11 of the Rent Act: “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, and where the

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 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.

If upon possession the property is not in such a state of repair and condition as the tenant is entitled to in accordance with the agreement, the tenant must hold the landlord responsible for defects within two weeks from the commencement date of the tenant's intention to rely on the defect, to prevent the lapse of that right. This is provided always that this shall not apply where the defect is not ascertainable when exercising reasonable care, or where the landlord has acted fraudulently. If the property is subsequently brought into a state of repair and condition, that does correspond to the agreement between the landlord and the tenant, the tenant must hold the landlord responsible within a reasonable time after the defects have become visible to the tenant.

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 hazards 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.

In case of destruction of the premises by fire or accident the agreement shall lapse.¹⁴⁷ If the apartment is rebuilt, the tenant has a right to resume habitation. The tenant can claim damages only if the landlord is liable. The tenant cannot claim coverage under the landlord's fire insurance policy.

landlord fails to remedy the defect upon being given notice requiring such remedy, the tenant may remedy the defect at the landlord's expense. Where the 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".

¹⁴⁷ Rent Act Section 17. The apartment must be totally destroyed so that it is not possible to reconstruct the apartment – e.g. Tidsskrift for Bolig- og Byggeret 2007 p. 599 Eastern High Court decision. Anne Louise Husen, Tove Flygare: *Lejemålets ophør og brugsrettens overgang*, 2. udg., 2011, p. 351.

If a building or part of a building used for residential and other purposes constitutes a health or fire hazard for its occupants, the building is considered condemnable.

In accordance with Part 9 of the Act on Urban Renewal and Urban Development, the local council must inspect properties used for residential or other purposes if, due to their location, fitting-out or other conditions, these buildings constitute a health or fire hazard. Where the use of a building is found to constitute a health or fire hazard, the local council is required to condemn the building, i.e. to prohibit use of the building or part thereof for residence or other occupancy. Closure does not provide a right to compensation.

Where residence has been prohibited, the local council must allocate another dwelling to the household. All re-housing expenses are shared equally between the central government and the municipality. At the same time or after a prohibition enters into force pursuant to the Act on Urban Renewal and Urban Development, the local council may order the owner of the building to remedy the condemnable conditions. Regulations regarding the closure of dwellings which constitute a health or fire hazard are found in the Act on Urban Renewal and Urban Development, Part 9, Sections 75-83. The purpose of the regulations is to ensure that action is taken against hazardous conditions in dwellings.¹⁴⁸

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 the premises as and when the situation so requires. This means that the landlord must have a specific reason to obtain admission, e.g. if the landlord is selling the property and 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 that there might be something wrong in the premises (odours, noise etc.).

The landlord is entitled to six 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 needs to enter each apartment to change pipes, windows, heating systems etc.

The tenant is entitled to three months' prior notice before the start of any additional work – always provided that the landlord may carry out urgent repairs to the premises without notice. For instance, this would apply if a leak in the tenant's apartment is 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.

148

http://www.mbbi.dk/sites/mbbi.dk/files/dokumenter/publikationer/information_note_on_urban_renewal-faerdig_kas.pdf

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

No – under no circumstances can this be done. That would be considered as unlawful self-help. On termination of the tenancy 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 evict the tenant through this method.

Rent regulation (in particular implementation of rent increases by the landlord)

- *Ordinary rent increases to compensate inflation/ increase gains*

There is contractual freedom in connection with the establishment of tenancy agreements as stated above. 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. Only as regards the rent regulation are there other general distinctions which must be taken into consideration. However, these all follow the Housing Regulation Act and the Rent Act. In general the landlord and tenant may expressly agree on rent increases by making contractual amendments. This would be regulated primarily by general contract law. A clause in the amendment stating that the tenant will be excluded from the protection of the rules of tenancy law is void. The tenant can bring a claim before a Rent Tribunal at any time for a decrease in rent.

During the term of the tenancy, increases by specific amounts may be agreed, becoming effective on specific dates – but only if, after the increase, the rent does not exceed a level which is in accordance with the legislation.

Rent increases for properties covered by Section 53 subsection (3)-(5) of the Rent Act and The Housing Regulation Act Section 15a may be demanded on the basis of an agreement regulating the rent by certain amounts at certain dates or of the net retail-price index, and may be implemented by the landlord's written notice thereof to the tenant – but only if, after the increase, the rent does not exceed a level in accordance with the legislation. The provisions of the Rent Act and the Housing Regulation Act concerning rent regulation may be deviated from when the tenancy concerns a tenancy agreement which relates to a residential apartment on a property taken into use after 31 December 1991, or a tenancy concerning a residential apartment which as of 31 December 1991 was lawfully exclusively used for commercial purposes. The same applies if, since this date, the premises have lawfully been exclusively used for, or legally fitted out exclusively for, commercial purposes. The tenancy agreement must state that the tenancy is covered by this right of derogation. Furthermore, the rent regulation may be deviated from when the tenancy concerns a newly established residential apartment or a newly established single room in an attic, which as of 1 September 2002 was not used or registered as a dwelling. The same applies to apartments and single rooms on newly added floors, for which a building permit has been issued after 1 July 2004. As a requirement for validity, the tenancy agreement for these tenancies must state that the tenancy is covered by this right of derogation. The rent charged for these tenancies may be set

at the market rent, i.e. according to supply and demand. The rent may only be set at a different level in accordance with the provisions of the Contracts Act.¹⁴⁹

It is possible to announce increases in the rent as a consequence of increases in the property taxes. If taxes are eliminated or reduced, the landlord shall, effective from the time of reduction or elimination, reduce the rent by a corresponding amount for the flats and premises whose rent has included this expense.

- *Is a rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?*

Where the landlord has improved the premises, the landlord may demand a rent increase by an amount corresponding to the increase of the value of the premises.

The terms “improvement” and “increase of the value of the premises” in the Rent Act are not defined or described further in the Rent Act.¹⁵⁰ This means that in many cases it is not possible for lay persons to properly calculate the rent increase applicable to a particular tenancy. For instance, if the landlord decides to change the kitchens in all the apartments in a property, the rent increase which will be possible will depend on the existing state of the kitchens in the apartments (the newer or better the existing kitchen, the smaller the scale of the improvement), which will mean a deduction in the amount on which the calculation of the improvement can be based. The final decision on the size of the deduction will be made by the Rent Tribunal or the courts if the landlord and the tenant disagree.

Generally, such rent increases shall generate a suitable rate of interest on expenditure properly incurred and shall cover depreciation and normal costs of maintenance, administration, insurance, etc. This is carried out by calculating an instalment rate on the basis of a mortgage loan at the time when the improvements are carried out. The result of the calculation will equal the rent increase.¹⁵¹

- *Rent increases in “housing with a public task”*

The Danish social housing sector comprises approximately 700 social housing organisations with 7,500 divisions (estates) in total, all of which are run on a non-profit basis. Property under this sector can be owned only by such housing organisations.

The rent determination rules in the Act on the Renting of Social Housing are based on the principle that the properties must be managed on a non-profit basis. According

¹⁴⁹ The answer to this part is basically the same as the answer to the question on “clauses on rent increase” above.

¹⁵⁰ Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, Chapter 10, Jakob Juul-Sandberg: *Forbedringer – energibesparende foranstaltninger i lejeretlig belysning*, 2009 with references.

¹⁵¹ Simplified example: The landlord spends EUR 1,000 on new windows for an apartment. From this, 75 per cent or EUR 750 could be regarded as an improvement under the Rent Act Section 58. The calculated instalment percentage may be set to 5 per cent. The calculated rent increase would then be EUR 37.50 per year for the apartment.

to the provisions of the Act on the renting of social housing, the total rent charged for the dwellings in a division of the social housing organisation must be determined so that this rent covers the running costs of the section at all times. This is called the self-supporting principle. Therefore, no profit must be budgeted for in the running of the sections. However, in order to avoid frequent rent adjustments, some provision must be made for unforeseen expenses. The rent charged for an individual dwelling must be determined on the basis of an assessment of the homes' reciprocal utility value. This means that a distribution key is established according to the utility value of the homes. A budget for running costs is adopted at the section meeting every year. If the rent in question cannot cover the running costs, it must be increased with three months' notice to the tenants, so that it once again covers the associated costs. If improvements are made to dwellings within a section, the associated expenses must be split between the dwellings to which the improvements are made, according to the increase in utility value.¹⁵²

- *Procedure to be followed for rent increases*
- *Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel [= rent statistics for a certain area])?*

A demand for a rent increase under the Rent Act or the Housing Regulation Act must be made in writing. The increase cannot come into effect until three months after the tenant has received the demand; the demand must state the reasons for the increase; and lastly the demand must 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.¹⁵³

The provisions of the Rent Act and the Housing Regulation Act concerning rent regulation may be deviated from when the tenancy concerns a tenancy agreement which relates to apartments in specific properties. The rent charged for these tenancies may be set at the market rent, i.e. according to supply and demand. The rent may be set at a different level only when this is in accordance with the provisions of the Contracts Act.

No statistical devices are used. The tenant can use the rent stated in other tenancy agreements to try to prove that the rent for the current dwelling is too high; however, such information is not publicly available. The involved parties will have to find the information themselves. This is done by contacting other tenants (through an association or directly). This goes for landlords as well. Often it is the attorneys involved who use their network to find comparable agreements.

The landlord cannot raise the rent in these apartments directly according to inflation or increase in market value. Rent increases may be demanded only on the basis of an agreement regulating the rent by certain amounts at certain dates, or the basis of the net retail-price index, and may be implemented by the landlord's written notice thereof to the tenant.

¹⁵² <http://www.mbbi.dk/bolig/almene-boliger/regler-om-almene-boliger/lejefastsaettelse-af-almene-boliger/balanceleje>

¹⁵³ Rent Act Section 48 and Sections 12-14 of the Housing Regulation Act.

- *Possible objections of the tenant against the rent increase*

When a tenant does not intend to accept the demand for a rent increase, the tenant shall object to the demand within six weeks of receipt. The landlord shall then bring the matter before the Rent Tribunal within six weeks from the expiry of the time limit applicable to the tenant, if the landlord intends to carry out the demand. The tenant does not have to give a reason for the objection. The tenant must pay the contested amount until the decision comes from the Rent Tribunal.

When the rent increase is tried before the courts the landlord bears the burden of proof – even when the Rent Tribunal has already permitted an increase. Under several of the rent regulation “regimes”, demonstrating the burden of proof can be difficult, and tenants are largely aware of this.

Alterations and improvements by the tenant

- *Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?*

As a general rule, the tenant shall not alter the premises or place any new or different objects or devices in the rented premises without the landlord’s consent. If the tenant makes any changes it can be considered a breach of contract – e.g. tearing down a wall or part of the kitchen, or removing carpets and thus creating a risk for damage to the floor.

In most agreements the tenant will be entitled to paint and change the colours of the walls – but it is the tenant’s responsibility that it is done properly. If a tenant uses dark or odd colours, the landlord can demand that the walls be repainted in “ordinary” (white) colours when the tenant moves out. The tenant must leave the apartment in the same condition as when moving in, unless otherwise agreed upon. However, the tenant may not be ordered to leave the premises in a better state of repair than upon taking possession.¹⁵⁴

Aside from these restrictions the tenant is entitled to carry out ordinary installations on the premises, unless the landlord proves that the property does not have sufficient electricity and drainage capacity for the installation in question.¹⁵⁵ The tenant shall notify the landlord prior to any such installation. “Ordinary” installations can be dishwashers, washing machines, tumble driers or other household “appliance” that would normally be installed in an apartment. Saunas or a solarium do not count as ordinary installations. The tenant shall be liable for any damage caused by any such installation. The landlord may require the tenant to provide adequate security for such liability, by way of insurance or otherwise.

- *Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?*

¹⁵⁴ Rent Act Section 98 subsection 1, 3rd paragraph. Ugeskrift for Retsvæsen 1993 p. 844 Supreme Court decision.

¹⁵⁵ Rent Act Section 29.

The tenant of a flat is entitled to carry out specified improvements etc. to the flat, and to be reimbursed upon vacating the dwelling for the expenses incurred for the improvements.¹⁵⁶ This shall not apply to sub-lessees or to tenants in fixed-term tenancies under Section 80 of the Rent Act.

The tenant shall give advance notice to the landlord of any contemplated improvements etc. The tenant shall also be responsible for obtaining any necessary building permits and paying all costs incidental thereto. The tenant shall be liable for any damage caused by any such installation. The landlord may require the tenant to provide adequate security for such liability, by way of insurance or otherwise.

The improvements etc. should be reasonable and appropriate. The landlord may refuse the tenant the right to improve the premises on substantial grounds, including inappropriate works, e.g. especially luxurious or excessively energy-consuming works. If the landlord does not object within six weeks after the tenant's advance notice of the works, the tenant may commence the said works. The landlord's objection shall be in writing, specifying the works objected to and the grounds for such objection.

The amount reimbursed shall be calculated on the basis of expenses incurred, subject to documentation after completion of the works and endorsement on the tenancy agreement. The landlord may reduce the basis of calculation by the value of any existing installations and building parts, etc., comprised by the improvements. The landlord may further reduce the basis of calculation if the expenses are estimated to be excessive.

Reimbursement shall be available for several improvements etc. carried out for the same flat, even if the works are not carried out at the same time.

The amount of the reimbursement first calculated shall be written down by 10% for each year in which the improvement etc. has been in use, but not beginning until two years after the starting date of possession and use of the improvement, unless otherwise agreed between the landlord and tenant in view of the special character of the works. The date of possession of the improvement etc. shall be endorsed on the agreement, along with any agreement providing for the write-down of the amount of reimbursement.

¹⁵⁶ As incurred under the provisions of Section 62 a subsections (4)-(8) of the Rent Act. The amount of reimbursement shall equal the amount of any expenses incurred, calculated as above, in excess of DKK 10,000 (subject to the deduction of any subsidies pursuant to any other statutes of the Rent Act). The amount reimbursed shall not exceed DKK 30,000. Reimbursement of less than DKK 2,000 shall not be payable. Only expenses for businesses registered under the Act on Value Added Tax (the VAT Act), engaged in building and construction shall be included, subject to documentation. The amounts are calculated in 1994 figures and shall be adjusted once a year by 2.0% plus an adjustment percentage for the current financial year, cf. the Act on a Rate Adjustment Percentage. As from 1998, the amount will be adjusted according to the movements of the net retail-price index calculated by Statistics Denmark over a 12-month period ending in June of the previous year before the financial year to which the adjustment relates. The amount shall be rounded to the nearest full figure. At 1 January 2012, the amounts were: DKK 14,776; DKK 43,629; and DKK 2,995.

Reimbursement shall be payable by the landlord at the time when the tenant vacates the dwelling, if the works have been completed. The landlord may set off an amount corresponding to the tenant's liabilities vis-à-vis the landlord against the amount of reimbursement. When a tenant who has paid the written-down amount of reimbursement to the landlord vacates the premises during the writing-down period (the 10-year period), the tenant is entitled to reimbursement of an amount corresponding to the written-down amount setting off any liabilities to the landlord.

In case of re-letting during the write-down period, the new tenant may choose to pay either the written-down amount of the reimbursement to the landlord or a rent increase corresponding to the increase in the value of the premises. In case of re-letting after the expiry of the write-down period, the landlord may demand a rent increase corresponding to the increase in the value of the premises.

- *Is the tenant allowed to make other changes to the dwelling?*
- *In particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc.)?*

The tenant of a flat or a room for year-round 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 when the tenant vacates the dwelling. The tenant shall notify the landlord prior to any such installation.¹⁵⁷

- *fixing antennas, including parabolic antennas*

The tenant is entitled, on the property and according to the landlord's instructions, to receive transmission 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 when the tenant vacates the premises. If 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 when the tenant vacates the property.¹⁵⁸

The tenant's right to place radio and television antennas etc. shall not apply when the landlord can prove that such installations would damage the property or the tenants. In addition, the right shall not apply if the tenant can gain access to a desired program, either through the landlord's common television supply or through a shared antenna system established by the tenants.

If several tenants wish to establish the same program package or access to electronic communication services, they may decide to install the antenna or provide

¹⁵⁷ Rent Act Section 29, subsection 9. Ugeskrift for Retsvæsen 2006 p. 745 Eastern High Court decision.

¹⁵⁸ Rent Act Section 29.

access to electronic communication services by way of a shared system. The landlord may require the tenants involved to form an antenna society to be in charge of the establishment and operation of the shared antenna system. The antenna society shall be liable for any damage caused by the system. The by-laws shall provide for a liability insurance to be taken out in addition to an insurance against loss or damage to the system as well as for the society to pay the cost of removal of the system and reinstatement upon discontinuance. The landlord may require the society to pay a reasonable deposit by way of security for the cost of removal and reinstatement.

- *Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord*
- *What kinds of maintenance measures and improvements does the tenant have to tolerate?*

The landlord is not allowed to change the identity of the dwelling, so that it no longer corresponds to the tenancy agreement.¹⁵⁹ This means for example that the landlord cannot force the tenant to accept any changes to the size of the apartment, e.g. making one apartment into two (or two into one). The landlord cannot tear down a wall or put up a new wall without the tenant's permission.

As stated above the landlord is entitled to make improvements to a property and e.g. change the heating system or put in new windows, when the landlord wishes to do so. The tenant must tolerate such improvements and e.g. accept that the dwelling cannot be used for a period of time during works – as long as the property is not altered as described in this section.

- *What conditions and procedures do a landlord who wants to make renovations need to respect (e.g. giving adequate [i.e. sufficiently long] notice; offer an alternative dwelling; offer a rent reduction to compensate for disturbances)?*

The landlord is entitled to six weeks' prior notice to start work on the premises, where such work does not constitute a major inconvenience to the tenant. As there is no shorter notice stated in the Rent Act, this will include all types of access on the part of the landlord to the rented premises, if the tenant will not allow the landlord access on shorter notice.

The tenant is entitled to three months' prior notice before the start of any additional work. However, the landlord may always carry out urgent repairs to the premises without notice, but only in cases where there could be severe damage to the property itself and/or other tenants' premises.

Any work started by the landlord shall be carried out without interruption, with due consideration for the tenant's interests. The landlord shall carry out any post-completion repairs without delay.¹⁶⁰

¹⁵⁹ Halfdan Krag Jespersen: *Lejeret 2*, 1989, p. 70. Jakob Juul-Sandberg: *Forbedringer – energibesparende foranstaltninger i lejeretlig belysning*, 2009, p. 111 with more references.

¹⁶⁰ On the notice periods see Rent Act Section 55.

If the tenant has to move out of the rented dwelling for a period of time while the repairs are being carried out, the landlord must offer temporary rehousing to the tenant.

Uses of the dwelling

- *Keeping animals; producing smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.*

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.

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 other than fish in smaller fish tanks or other small animals that do not make noise or cause odours.

The tenant shall use the premises in a proper and reasonable manner. The tenant shall be liable for any damage caused by improper conduct on his or her part, by any member of his or her household or by any third party he or she has admitted to the premises. The question of admittance is vital. The tenant shall not allow any third party who is not a member of the tenant's household to use the premises or any part thereof without the landlord's consent, unless sub-letting is allowed.¹⁶¹

The tenant must not use the property for other purposes than those 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 partly for any other purpose, e.g. business purposes. If the premises are being used in other ways 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.

Changing the dwelling – e.g. by removing an internal wall – would also be considered as 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.

- *Is there an obligation of the tenant to live in the dwelling? Are there specificities for holiday homes?*

As a general rule, the tenant has an obligation to fulfil the tenancy agreement by living in the rented premises. The tenant cannot leave the dwelling empty permanently (even though the tenant is still paying the rent) or let someone else move in to the rented dwelling without permission from the landlord.

¹⁶¹ Rent Act Section 26. Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 109 f.

The landlord may terminate the tenancy agreement without notice where the tenant has vacated the premises ahead of time without any agreement with the landlord.¹⁶² The tenant is not obligated to live in the dwelling at all times year-round, but if leaving the dwelling permanently may constitute a breach of contract.

There are no specific rules regarding holiday homes. Tenancy agreements regarding holiday homes will most often be fixed-term agreements. If they are not (fixed-term) the same rules apply in principle as for permanent homes.

- *Video surveillance of the building*
- *Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?*

Video surveillance of public areas in connection with private property is not allowed (by law).¹⁶³ The main argument for this is the protection of privacy.

A landlord can get permission from the police to install surveillance equipment for a limited time in certain areas to prevent crime, but only if the police find that crime is a major problem in the area. Even in these cases the surveillance must be kept to a minimum on account of the right to privacy for the tenants.

6.6 Termination of tenancy contracts

- *Mutual termination agreements*
- *Notice by the tenant*
- *Periods and deadlines to be respected*

Where a tenancy agreement is not entered into for a fixed term, or where the duration of any such term cannot be established, the tenant may give notice to terminate the agreement. The period of notice shall be three months – that is, if no other period has been agreed upon, and expiring on the first working day of a calendar month, when this day does not precede a public holiday.¹⁶⁴

The notice from the tenants does not have to be in writing (but normally it is, so that the tenant can prove that notice has been given).

- *May the tenant terminate the agreement before the agreed date of termination (in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?*

¹⁶² Rent Act Section 93 subsection 1 *litra* d. See below on termination without notice.

¹⁶³ Consolidated Act no. 1190 of 10. November 2007 on video surveillance.

¹⁶⁴ Rent Act Section 86. Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 315, Mogens Dürr, Timmy Witte and Kristin Jonasson: *Boliglejemål*, 2010, p. 789. Anne Louise Husen, Tove Flygare: *Lejemålets ophør og brugsrettens overgang*, 2. udg., 2011, p. 45 f.

The tenant may terminate a fixed-term agreement before the end of the fixed term only if such an agreement to terminate the contract during the term has been made. The tenant may then terminate the contract with notice without it being a breach of contract. When such an agreement has been made, the landlord does not have a right to compensation (or other sanctions) if the tenant exercises his or her right.

- *Are there preconditions such as proposing another tenant to the landlord?*

No. If the tenant proposes another tenant the landlord is not obligated to enter into a new contract with the proposed tenant. The landlord decides who shall live in the landlord's own properties. As mentioned above, other rules apply in social housing (obligatory waiting lists).

If the tenant vacates the 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 the landlord's claim against the tenant. If the tenant has proposed a new tenant to the landlord, and the landlord does not enter into a contract with this tenant, this can be taken into consideration when stating which amounts the landlord could have recouped through re-letting.

- *Notice by the landlord*
- *Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)*

Ordinary period of notice also for the landlord shall be three months (expiring on the first working day of a month, which is not a day preceding a public holiday). This is always provided that the period of notice shall be one month for separate rooms for residential purposes, where the room forms part of the landlord's flat or a single- or double-occupancy house occupied by the landlord, and for flats in buildings in which only two flats exist at the time of the tenancy agreement and where the landlord occupies one of these two flats. This rule applies even in cases where the owner is using one or more rooms in the house for non-residential purposes, and even where one or more rooms in the property are let for residential purposes.

Fixed-term tenancies shall expire without further notice at the end of the fixed term. A fixed-term agreement shall not be terminated by notice during the fixed term, except by agreement between the parties or in case of breach by the other party. Where the landlord knowingly accepts that the tenant remains in occupation of the premises for more than one month after expiry of the term, without requiring the tenant to vacate the premises, the tenancy shall continue indefinitely.¹⁶⁵

There is no separate regulation in the Rent Act regarding extraordinary termination (with notice). In terms of breach of contract, the landlord may terminate the contract without notice in accordance with Rent Act Section 93.

¹⁶⁵ See Rent Act Section 80.

- *Statutory restrictions on notice:*
 - *For specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.*
 - *in favour of certain tenants (old, ill, in risk of homelessness)*
 - *or certain periods*
 - *after sale including public auction (“emptio non tollit locatum”), or inheritance of the dwelling*
- *Requirement of giving valid reasons for notice: admissible reasons*

Tenancies shall not be terminated with notice by the landlord except in the circumstances mentioned in the Danish Rent Act Section 83 (see immediately below on admissible reasons). The conditions under which such termination may be allowed are stated in Section 84.¹⁶⁶ This means that the landlord cannot terminate the contract for any other reasons, even if they seem fair or even if they are included in the tenancy contract signed by the tenant.

No specific restrictions in general are given in favour of certain tenants or for a certain period, or after sale, including public action or inheritance. However, if one reviews the admissible reasons given immediately below here, it will become clear that in some cases the specific reason for termination creates some restrictions which are to the tenant's advantage.

If the landlord intends to use the premises for his or her own purposes, the landlord can terminate the contract, with one year's notice. Where the tenancy relates to a flat, this is on the condition that only the landlord (and not the landlord's adult children, for example) intends to occupy the flat. 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 and similar factors may be taken into consideration. This rule also applies where the landlord has inherited the dwelling or bought it after sale, including public auction.¹⁶⁷

Where the tenancy relates to a flat, it is a condition that the landlord intends to occupy the flat. Where the flat is owner-occupied and not previously occupied by the landlord, an additional condition stipulates that the tenancy agreement was entered into prior to 1 July 1986 (the date relates to the point in time when changes of the

¹⁶⁶ The same rules apply for Social Housing – Act on Renting of Social Housing Section 84.

¹⁶⁷ Case law examples: Tidsskrift for Bolig- og Byggeret 1998 p. 264 Eastern High Court decision: a landlord wanted to use a condominium after his divorce. The termination was found reasonable even though the tenant was old, living alone and suffering from some serious health and mental problems. Ugeskrift for Retsvæsen 2006 p. 79 Eastern High Court decision: A landlord sold his single-family home to his daughter. The daughter terminated the contract with the tenants. The termination was found reasonable because of the daughter's relation to the house, her difficulties in finding proper mortgage funding, and the fact that a tenant would not normally be able to rent such a home without a fixed-term contract. Other decisions on the topic e.g. Tidsskrift for Bolig- og Byggeret 2000 p. 325 Eastern High Court decision, Grundejernes Domssamling 2009 no. 59 District Court decision.

Rent Act came into force).¹⁶⁸ If the landlord is occupying a flat in the property when giving notice of termination, the landlord, at the time of such notice, shall offer the tenant the possibility to take over this flat. If the property is jointly owned by several persons, the owners may only give a residential tenant notice of termination.

Where the landlord shows that the property is to be demolished or where the landlord shows that the premises must be vacated due to rebuilding of the property, and that the property, following such rebuilding, will be comprised by the Act on Social Housing and Subsidized Private Co-operative Housing, or the rebuilding takes place due to compulsory acquisition or for a specific purpose qualifying for compulsory acquisition, the contract can be terminated with notice.

Where a tenant is given notice of termination for this reason, the landlord shall at the time of the notice of termination offer to let a flat or other premises of the same category¹⁶⁹ as those to be vacated where flats or premises are re-let after the reconstruction or rebuilding. If condominiums are built, the landlord can sell these – he does not have to offer them to the (former) tenants.

Where the tenant of a flat has been employed as a property manager or in any other capacity for which it is of essential importance¹⁷⁰ that the tenant is a resident of the property, and the landlord establishes that the tenant's work has not been satisfactory, the contract can be terminated. The tenancy shall not be terminated except in cases where the flat is to be re-let to the tenant's successor.

In cases where a flat is let as a dwelling and is associated with the tenant's employment, and the tenant resigns or has resigned from employment and the flat is required for another employee, the landlord can terminate the contract as well.

This is also the case where the tenant has failed to comply with the rules of proper conduct,¹⁷¹ and the non-compliance is of such severity that the tenant must vacate the premises. Where the tenant has failed to fulfil the conditions of a conditional tenancy,¹⁷² and the non-fulfilment is such that the tenant must vacate the premises, the same applies.

Tenancies of business premises shall not be terminated by the landlord with a view to conduct business within the same line as the tenant.

A tenant who is a residents' representative shall not be given notice of termination.

In some cases the landlord is particularly anxious to be released from the tenancy on other substantial grounds – not only breach of contract. It is not easy to determine when “substantial grounds” exist, and this reason for terminating a contract is rarely

¹⁶⁸ Martin Birk: *Opsigelse af lejemål i ejerlejligheder* in Tidsskrift for Bolig- og Byggeret 2001 p. 173-76.

¹⁶⁹ This means approximately the same size, same area in the city (or similar), and same utilities.

¹⁷⁰ If the property manager manages several buildings or does not need to be at the building almost every day, it is not of “essential importance” that the property manager lives in said building. See e.g. Grundejernes Domssamling 1993 no. 20 Eastern High Court decision.

¹⁷¹ Cf. Section 79a(1)(i)-(viii) or (xi), cf. section 79b(2) of the Rent Act.

¹⁷² (Cf. Section 79b(1)(i)).

used. It can be used e.g. if a mortgage bank is forced to take over the property and the rent income does not cover the expenses for the bank.¹⁷³

- *Objections by the tenant*

The landlord's notice of termination (under Section 83 of the Rent Act) shall be in writing, specifying the tenant's right to object. This is usually done by referring to the words of Section 87 of the Rent Act in the written notice.

The landlord's notice of termination should specify further, in words (and not by referring to Sections of the Rent Act), the grounds for termination. If the notice does not state clearly the said particulars, it shall be void.¹⁷⁴

If the tenant refuses to accept the notice of termination, he or she shall object, in writing, within six weeks from the date of receipt of the notice. The objection does not have to be specific. In that case, the landlord shall commence proceedings before the housing tribunal within six weeks from the expiry of the time limit applicable to the tenant if the landlord insists on the termination.

- *Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?*

No. There is no statutory right to stay for an additional period of time. If the termination is found valid (in court), and the tenant does not move out at the end of the given notice period, the landlord may proceed and evict the tenant without further notice or delay. It is not possible for the tenant to stop the eviction proceedings when there is a final judgment stating that the termination stands.

- *Challenging the notice before court (or similar bodies)*

As stated in Section 87 (2) of the Danish Rent Act, the landlord shall commence proceedings before the Housing Court within six weeks from the expiry of the time limit applicable to the tenant if the landlord insists on the termination, and if the tenant refuses to accept the notice of termination and has objected in due time.¹⁷⁵

After the six weeks have passed, the landlord will have to give notice again if he or she insists on the termination.

This means that there is no reason for the tenant to challenge the notice separately during the six-week period (or after).

¹⁷³ Margrete Pump og Martin Preisler Knudsen: *Opsigelse og ophævelse af andre væsentlige grunde* in Tidsskrift for Bolig- og Byggeret 2001 p. 131 ff.

¹⁷⁴ E.g. Ugeskrift for Retsvæsen 2005 p. 2648 Eastern High Court decision.

¹⁷⁵ E.g. Jakob Juul-Sandberg: *Lejers indsigelse i lejeforhold – form, indhold og retsvirkning* – in Festskrift til Nis Jul Clausen, 2013, p. 261-274.

- *In particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law*

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.

The tenant shall pay rent for as long as he or she is living in the premises and until the expiry of the usual period of notice after moving out – if the termination proves to be valid.¹⁷⁶ In addition, the tenant shall indemnify the landlord for any loss, including the cost of recovering possession of the premises. This means that there is a potential economic risk for the tenant if he or she chooses to stay in the premises throughout legal proceedings. On the other hand, the tenant cannot get the apartment back if he or she has moved out and then wins the case – if in the meantime another tenant has moved in.

- *Termination for other reasons*

No other reasons than those stated in Section 83 of the Rent Act are admissible. Termination for other reasons is not valid, regardless of whether or not the tenant objects in due time.

- *Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)*

The tenancy contract cannot be terminated as a result of court proceedings against the landlord. 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 reposessed. A new owner of the property must respect the general rights of the tenant under the tenancy laws.

- *Termination as a result of urban renewal or expropriation of the landlord, in particular:*
- *What are the rights of tenants in urban renewal? What are the rules for rehousing in case of demolition of rental dwellings? Are tenant's interested parties in public decision-making on real estate in case of urban renewal?*

Where the tenant of a flat is given notice of termination due to compulsory acquisition, the tenant is entitled to be allocated alternative accommodation; the same shall apply where termination is due to demolition or rebuilding for a specific purpose, qualifying for compulsory acquisition. The tenant of a room not forming part of the landlord's flat or a single- or double-occupancy house occupied by the landlord enjoys the same rights as the tenants referred to in the first and second sentences hereof.

The municipal council shall allocate alternative accommodation; such accommodation shall be of suitable size, location, quality and facilities. A dwelling is

¹⁷⁶ Rent Act Section 95.

of a suitable size where it has either one room more than the number of members of the household or has the same number of rooms as the dwelling formerly occupied by the household.

Tenants to whom the municipal council has a duty to allocate alternative accommodation are entitled to reimbursement of reasonable removal costs, as long as these costs are appropriately documented.

The planning authority shall reimburse the municipal council's costs of providing and allocating alternative accommodation and any removal allowance and compensation as mentioned above.

Where the use of a building is assessed to constitute a health or fire hazard, the local council is required to condemn the building, i.e. to prohibit the building or part thereof from being used for residence or other occupancy. Closures do not give the property owner the right to compensation. Where residence has been prohibited, the local council must allocate another dwelling to the household. All re-housing expenses are shared equally between the central government and the municipality.¹⁷⁷

Tenants are not directly interested parties in public decision-making on real estate in the case of urban renewal.

6.7 Enforcing tenancy contracts

- *Eviction procedure: conditions, competent courts, main procedural steps and objections*
- *Rules on protection (“social defences”) from eviction*
- *May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?*

The landlord may terminate the tenancy agreement without notice in the case of default in the punctual payment of rent or other monetary liability. This is the main breach of contract that occurs on the part of the tenant, and the most frequently used method to terminate a tenancy contract without notice.¹⁷⁸

There are some formal restrictions on this right, however. The landlord cannot terminate the contract (without further notice), except due to late payment, and if the tenant has not paid the arrears within 14 days from the tenant's receipt of a written notice requiring such payment.¹⁷⁹ This notice shall be given after the last due date for payment and shall state explicitly that the tenancy may be terminated if the back rent is not paid within the time limit. Some cases are dismissed because the notice has

¹⁷⁷ Regulations regarding the closure/demolition of dwellings which constitute a health or fire hazard are found in the Act on Urban Renewal and Urban Development, Part 9, Sections 75-83 (Consolidated Act no. 504 of 16 May 2013). The purpose of the regulations is to ensure that action is taken against hazardous conditions in dwellings.

¹⁷⁸ All of the reasons for terminating a contract without notice are stated in the Rent Act Section 93.

¹⁷⁹ Rent Act Section 93 subsection 2.

not been explicit enough, thus making it impossible for the tenant to determine exactly what amount must be paid to avoid eviction.¹⁸⁰

If the premises are being used for a purpose other than that agreed upon, and the tenant fails to discontinue such use despite the landlord's objection, the contract can also be terminated without notice. An example of this is the use of a residential dwelling for business purposes.

If the tenant objects to allowing the landlord or any third party to enter the premises – in cases where these parties are entitled to do so according to Sections 54, 62 and 97 of the Rent Act – the contract can be terminated without further notice. This is to protect the landlord's right to make repairs or improvements or to inspect the premises e.g. before selling the property. In most cases the landlord must give notice before requesting entry. It is only when the tenant refuses the request that the contract can be terminated.

As a general rule the tenant has an obligation to fulfil the tenancy agreement by living in the rented premises. The tenant cannot leave it empty permanently (even though the tenant is still paying the rent) or let someone else move into the rented dwelling without permission from the landlord.¹⁸¹

The landlord may terminate the tenancy agreement without notice where the tenant has vacated the premises prior to expiry of the tenancy agreement and without any agreement with the landlord to do so. The tenant is not obligated to live in the dwelling at all times year-round, but permanently leaving the dwelling may be a breach of contract.

There are no specific rules regarding holiday homes. Tenancy agreements regarding holiday homes will most often be fixed-term agreements. If they are not (fixed-term), in principle the same rules as those for permanent homes apply.

Where the tenant neglects the premises and fails to repair the premises without delay – upon notice by the landlord requiring the tenant to do so – the contract can be terminated without notice.¹⁸²

Where the tenant transfers the use of the premises to a third party, and where the tenant is not entitled to do so by e.g. subletting or in accordance with the regulation in the Rent Act on letting a spouse take over the contract, and the tenant fails to terminate such transfer despite the landlord's objections, the contract can be terminated without further notice.¹⁸³

Termination without notice is also possible where the tenant has failed to comply with the rules of proper conduct, cf. Section 79a(1)(i)-(viii) or (xi), cf. Section 79b(2) of the Rent Act, and the non-compliance is such that the tenant must vacate the premises.

¹⁸⁰ Recent examples from case law: Ugeskrift for Retsvæsen 2006 p. 1864 Supreme Court decision, Ugeskrift for Retsvæsen 2010 p. 88 Western High Court decision.

¹⁸¹ E.g. Grundejernes Domssamling 2001 no. 46 Western High Court decision, Tidsskrift for Bolig- og Byggeret 2003 p. 458 District Court decision.

¹⁸² E.g. Ugeskrift for Retsvæsen 2002 p. 1899 Western High Court decision.

¹⁸³ E.g. Tidsskrift for Bolig- og Byggeret 2009 p. 501 Eastern High Court decision, Tidsskrift for Bolig- og Byggeret 2012 p. 290 Eastern High Court decision.

This also applies where the tenant has failed to fulfil the conditions of a conditional tenancy, cf. Section 79b(1)(i), and the non-fulfilment is such that the tenant must vacate the premises.¹⁸⁴

Where a person has been punished pursuant to Section 4 of the Act on the Prohibition of Guests in Certain Premises, for having received guests in or about the premises in contravention of a statutory injunction, the contract can be terminated without notice. This is a seldom-used special regulation that should prevent tenants from conducting illegal activities from the rented premises – e.g. smoking and selling hashish/marijuana.

Where, despite the landlord's warnings, the tenant of a shop or a bar fails to comply with the duty to keep the shop open and in proper operation, the contract can be terminated without notice. This applies only to rented business premises.

In cases where a tenant paying rent by way of work or services rendered neglects duties in the performance of such work or services, and as a result the employment is terminated, the contract can be terminated without notice.

The same goes for situations in general where the tenant is otherwise in breach of his or her obligations in such a way as to require this tenant's removal; however, it is not easy to determine when there is such a breach and this reason for terminating a contract is rarely used. It can be used e.g. if a mortgage bank is forced to take over the property and the rent income does not cover the expenses for the bank.¹⁸⁵

Under Section 94 of the Rent Act, the only case where the landlord is not entitled to terminate the tenancy agreement without notice is one where the matter for which the tenant is blamed is deemed to be immaterial. This could be e.g. if the amount that the tenant has not been paid is very small or if the tenant is not to blame for the delay.¹⁸⁶

On termination by the landlord, the tenant shall vacate the premises immediately. If this does not happen, the landlord may start proceedings at the Bailiff's Court at once and evict the tenant through this procedure. This applies when rent or another monetary 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.

In connection with any other reason for termination without notice, the landlord may start proceedings in 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.

¹⁸⁴ Recent examples from case law references on this topic: Tidsskrift for Bolig- og Byggeret 2011 p. 253 Western High Court decision, Tidsskrift for Bolig- og Byggeret 2011 p. 280 Eastern High Court decision, Tidsskrift for Bolig- og Byggeret 2013 p. 150 Eastern High Court decision, Tidsskrift for Bolig- og Byggeret 2013 p. 105 District Court decision.

¹⁸⁵ Margrete Pump og Martin Preisler Knudsen: *Opsigelse og ophævelse af andre væsentlige grunde* in Tidsskrift for Bolig- og Byggeret 2001 p. 131 ff.

¹⁸⁶ Recent examples from case law references on this topic: Ugeskrift for Retsvæsen 2011 p. 2400 Western High Court decision, Grundejernes Domssamling 2012 no. 77 Eastern high Court decision, Tidsskrift for Bolig- og Byggeret 2012 p. 542 Western High Court decision.

When (if) the landlord gets the verdict that the termination was valid, the landlord may proceed through the Bailiff's Court and get the tenant evicted with no possibility for the tenant to mount an objection.

The tenant shall pay rent etc. until the expiry of the usual period of notice. In addition, the tenant shall indemnify the landlord for any loss, including the cost of recovering possession of the premises.

- *Rules on protection ("social defences") from eviction*

Between landlords and tenants, no constitutional come into play if the landlord wants to evict the tenant because the tenant has not paid the rent. There are no rules on protection from eviction in the Rent Act. In some cases, due to social legislation, the local authorities have an obligation to help the evicted tenant arrange a new home, e.g. if it is a family with children and/or with social problems.

If 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 be pleaded in only a very few cases under special circumstances, e.g. when the tenant's bank failed to transfer the amount to the landlord's accounts or if the tenant has been hospitalised and unable to make the transfer on time. Even if the amount in question is very small (less than a month's rent or even just a few DKK), this is not a valid reason alone to find the matter immaterial.¹⁸⁷

Public-law measures for assigning housing to people in need because they have been evicted are almost non-existent as far as the private housing sector is concerned. As for social housing, local authorities can freely assign at least 25% of the housing available and this available housing is sometimes used for evicted families.¹⁸⁸

- *May rules on the bankruptcy of tenant-consumers influence the enforcement of contracts?*

No such specific rules apply. As a general rule, a rented home is not part of the bankruptcy estate.¹⁸⁹ The creditors cannot force a tenant out of a rented home. This is because this home/the tenancy contract in most cases will not be an asset in the estate anyway, because the landlord must be paid, and the landlord has the right to the deposit until all of the landlord's outstanding debts are paid.

Tenancy law and procedure "in action"

- *The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in this field ("tenancy law in action") is taken into account:*

¹⁸⁷ Niels Grubbe, Hans Henrik Edlund: *Boliglejemål*, 2008, p. 434 ff.

¹⁸⁸ Social Housing Act Section 59 (Consolidated Act no. 1023 of 21. August 2013) and e.g. Lise Sand Ellerbæk & Anders Høst: *Udlejningsredskaber i almene boligområder - En analyse af brugen og effekterne af udlejningsredskaber i almene boligområder* (SFI rapport).

¹⁸⁹ Bankruptcy Act Section 37.

- *What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?*

In the private rental housing market, both landlords and tenants are well organised. The landlords' association is called "*Ejendomsforeningen Danmark*", of which a large proportion of private landlords are members. The organisation advises and supports its members and strives to put the interests of landlords on the political agenda.

The tenants' association is called "*Lejernes Landsorganisation*". This association gives advice to tenants (also in social housing) who are members of the organisation and seeks to influence the political agenda in favour of tenants. Tenant associations can be very active locally and can, for example, provide extensive assistance to tenants who are experiencing problems with their landlord. There are also many smaller umbrella organisations and associations for both tenants and landlords.

Historically the largest organisations have always been involved in political negotiations concerning major revisions to the rent legislation and have considerable political influence in relative terms. Because these organisations have not been able to agree for many years on the terms of a new Rent Act, it has not been possible to create the necessary political majority in the Danish Parliament to initiate a new major reform – including a combination of the two acts. Today (2013) the parties are still negotiating, and the organisations seem to be closer to each other now than in many years.

- *What is the role of standard contracts prepared by associations or other actors?*

Standard contracts are used in most cases when writing tenancy contracts. The reason for this is that their use has been regulated in the Rent Act since the first Rent Act in 1937.

In 2001 the (former) Ministry of Social Affairs (*By- og Boligministeriet*) issued the latest in a string of standard contracts (tenancy agreements), for private rented properties: "*Typeformular A*". This type of contract is used in the majority of all agreements in the private rented sector – and the equivalent for social housing is "*Typeformular B*". The agreements are designed in co-operation with tenants' and landlords' associations.¹⁹⁰

These contract forms cannot be used for other types of contracts which do not concern rented properties. The forms contain everything needed, including space for individual terms and an explanatory text to help parties fill in the blank spaces in the contract. Therefore they can be used as contracts on furnished apartments; student apartments; contracts for room(s) only (e.g. student rooms); and contracts for rooms or apartments located in the house in which the landlord lives as well.

It is permissible not to use the standard tenancy agreement, but if landlords use other agreements which are not authorised, Section 5 of the Rent Act applies (Section 6 of

¹⁹⁰ See Section 6.3 above as well.

the Act on the Renting of Social Housing).¹⁹¹ According to this rule, even if standard terms are not mandatory and can be altered by agreement between the two parties, parts of the agreement are void if they are more burdensome to the tenant than the rules of the law. More burdensome terms are highlighted in the authorised standard tenancy agreement.

- *How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?*

Tenancy law disputes are often enforced before the courts by both landlords and tenants because the law is so complex.

No voluntary or compulsory mechanisms of conciliation, mediation or alternative dispute resolution are being used to any extent. From 1 April 2008 the Danish Courts have offered mediation as an alternative to a traditional adversarial lawsuit.

Mediation is not used very frequently in disputes between landlords and tenants because the dispute is often about interpreting the text of statutes or about the size of the rent determined on the basis of a ruling from the Rent Tribunal.

Disputes arising from tenancy agreements are brought before special divisions of the County Courts called the Housing Courts (*boligretten* in Danish).¹⁹²

In 2012 2,519 cases were decided before the Housing Court. In 2011 the figure was 2,950 and in 2010 2,832. The statistics do not tell us how many of the cases that were brought before the High Courts or how many cases that were brought before the Housing Court, but which were settled by the involved parties prior to a court decision.¹⁹³

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.¹⁹⁴

The decisions made by the Tribunals can be referred to by the courts, but most are not. In 2005 (latest count) 7,105 complaints in all were brought before the Rent Tribunals. In 2012 1,608 complaints were brought before the Rent Tribunal in Copenhagen alone.

- *Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?*

It is difficult to say whether a delay is unreasonable. If a delay is not in the interest of both parties involved, you might say that delays can be unreasonable – e.g. if

¹⁹¹ Jakob Juul-Sandberg, Martin Birk, Marianne Kjær Stolt: *Kommenteret Lov om leje af almene boliger*, 2008, p. 62.

¹⁹² See Section 6.1 above.

¹⁹³ <http://www.domstol.dk/om/talogfakta/statistik/Pages/default.aspx>

¹⁹⁴ See Section 6.1 above.

proceedings are delayed because the Housing Court does not have the time to try the case. This is the case in some districts, where courts have had so many other types of cases to deal with, that many cases have been delayed. This is not a problem specific to tenancy law, however.

In 2012, 37.3 per cent of cases brought before the Housing Court were finished within one year. In 2011, this figure decreased to 28 per cent, and then in 2010 it was 30 per cent. In 2012 the average time it took from when the case was brought before the court until a court decision was made was 9.7 months.¹⁹⁵

In most cases eviction procedures in the Bailiff's Court are handled within 14 days after the landlord has brought the case before the court. The procedure can be delayed if the tenant has reasonable objections and needs to have a lawyer defending him or her in court. However, even in that situation the Bailiff's Court will try the case within a month or so. The reason for this is that the eviction procedure is caused – in most cases – by the tenant not paying the rent, and the landlord cannot re-let the rented property before the tenant has moved out.

Cases brought the Rent Tribunal can also be delayed sometimes because the Tribunal lacks the staff resources to consider the cases as they arrive. Some tribunals need three to four months while others require up to one year. This may be a problem for both landlords and tenants – e.g. when a tenant has moved from the apartment in question and the tenant cannot get the deposit back, or if the rent is regulated so that the landlord is forced to pay an larger amount of money back to the tenant. There is no easy solution to this. It is up to the local municipalities to decide how many caseworkers shall work in the tribunal.

- *Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?*

There is no documentation or scientific studies that prove (or suggest) that there are any problems with fairness or justice in the court system in Denmark or in rent tribunals.

You may argue that because of court fees and legal fees, economic reasons prevent a tenant from turning to the courts to settle the dispute. Consulting a lawyer might be expensive, but the Courts 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, how to obtain legal aid and free legal aid and how to claim payment through legal-aid insurance.

If a tenant earns less than DKK 294,000 per annum (2012) and lives alone – or is living with another person and their total earnings amount to less than DKK 374,000 per year, the tenant 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 which the tenant has won before the Rent Tribunal, the tenant will always be entitled to free legal aid.

¹⁹⁵ <http://www.domstol.dk/om/talogfakta/statistik/Pages/default.aspx>

Legal-aid insurance is not obligatory. This type of insurance is included with a lot of other types of insurance, but typically low-income tenants 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.¹⁹⁶

- *How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc.?)*

The relationship between general and special rules works effectively, and is not a cause of legal uncertainty, but the legal framework leaves a lot of questions unanswered. Sometimes even the rules themselves can create problems. In many ways the rules on rent regulation are especially 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 valid for a long 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.

The most significant cases are published, but most cases from the Housing Courts and the Rent Tribunal are not. This can have the effect that case law for some matters may differ from district to district, because judges (and lawyers) are not able to find information about previous decisions on the same subject from other courts or even from their own. For many years, judges, lawyers and people working in rent tribunals have called attention to this, but creation of general databases containing this type of information is still not underway. In 2013 a website was established where cases from the largest rent tribunals shall be published.¹⁹⁷ The site is still not fully operational, however.

- *Are there “swindler problems” on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?*

Every year this problem is mentioned in the media, especially with regard to the largest cities in the summer, when many young people are looking for housing during study at university or other educational institutions. A typical example is when a person pretending to be a landlord, after showing an apartment to a potential tenant, demands a deposit in cash or to a bank account before a contract can be signed.

Often the “landlord” makes this deal for the same apartment with a lot of desperate potential tenants. Unfortunately there are no statistics available on how widespread this phenomenon might be.

¹⁹⁶ Regulation on legal aid is found in The Administration of Justice Act (Consolidated Act no. 1134 of 24 September 2013).

¹⁹⁷ www.huslejenaevn.dk

- *Are the areas of “non-enforcement” of tenancy law (such as legal provisions having become obsolete in practice)?*

No there is no documentation on this issue.

- *What are the 10-20 most serious problems in tenancy law and its enforcement?*

It is not easy to define what a “serious problem” in tenancy law is. For example, it depends on whether one views the matter from the tenant’s or the landlord’s point of view. The following text sums up the problems from both points of view.

- The most serious and specific problem in general would be that the tenancy legislation is complicated. This causes lots of problems for both landlords and tenants when a disagreement occurs; even when there are no disagreements, the interpretation of the statutes of law can cause trouble. This means that the legal position of both parties can be insecure, which can be the cause of many disputes and which – you may argue – could be avoided if the regulation was simpler. For example, one problem is that both landlords and tenants find it very difficult to determine the appropriate rent for a tenancy. This is due to the various and complicated rent regulations which lack transparency.

- The landlord who has no experience – and who perhaps owns only a single property – could be confronted with demands for a substantial rent decrease that could decrease the value of the investment in the property. the tenant in the same situation finds it very difficult to determine whether he or she is paying too much rent.

- In the largest cities (Copenhagen, Aarhus, Odense), finding an affordable rental dwelling can be difficult for students – who want to live close to universities – and for low-income groups who do not want to live in social housing.

- It is not uncommon for “scammers” to advertise apartments that are being sublet and then demand large sums of rent in advance or a large deposit from the person who wants to rent. After the payment has been made, the “landlord” vanishes and the apartment is found not to be available.

- Declining building activity in the recent years could also increase demand for more rental housing in general, in the longer perspective.

- Payment for utilities other than those specifically stated in the Rent Act is sometimes demanded 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 a rent tribunal.

- Some landlords are not willing to maintain their properties adequately. This means that some tenants must 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 the claim to the Rent Tribunal, and it might take some time before the case is handled; this might be

unsatisfactory for the tenant who must live in a dwelling with defects for a longer period of time.

- A landlord's right to terminate contracts is (very) restricted. The landlord can terminate the contract only in the cases specifically described in the Rent Act. 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 reimbursement of a deposit. This is often because it is not always easy to determine from the tenancy contract the extent to which the tenant must pay for maintenance or breach of contract when moving out. Sometimes the tenant even faces problems getting a deposit back just because the landlord is not willing to pay back the money.
- Because of rent regulation, it is difficult to get an attractive return on investment in rental property. Therefore, landlords are not motivated to make improvements to their property, and this can make housing standards worse.
- Segregation or ghettoisation can be a problem in some areas – most often the suburbs to the major cities. “Ghettos” are developing in residential areas which are dominated by social-housing rental apartments. These areas are often inhabited by higher concentrations of tenants of non-Danish origin (whereas inner-city areas often are inhabited by high-income people, and these areas have a lower percentage of immigrants).
 - *What kind of tenancy-related issues are currently debated in public and/or in politics?*

The on-going debate in Denmark in the public arena and in politics is about rent regulation and about the demand for a simplification of the Rent Act and the Housing Regulation Act.

For social housing it is debated whether more affordable housing should be constructed, and whether the local municipal authorities would do better by helping people – especially younger people – to obtain jobs and thus avoid eviction.

The problems arising from segregation and ghettoisation are topics of on-going discussion.

7. Effects of EU law and policies on national tenancy policies and law

7.1 EU policies and legislation affecting national housing policies

7.2 EU policies and legislation affecting national tenancy laws

7.1 and 7.2 are supposed to include:

- *EU social policy against poverty and social exclusion*
- *Consumer law and policy*
- *Competition and state aid law*
- *Tax law*
- *Energy efficiency rules*
- *Private international law including international procedural law*
- *Anti-discrimination legislation*
- *Constitutional law affecting the EU, and the European Convention of Human Rights*
- *Harmonisation and unification of general contract law (sources such as the Common European Sales Law, the Common Framework of Reference or the Principles of European Contract Law may be considered here)*
- *Fundamental freedoms*
- *e.g. the Austrian restrictions on the purchase of secondary homes and its compatibility with the fundamental freedoms;*
- *Cases in which a licence to buy house is needed – is this compatible with the fundamental freedoms?*

Neither the Danish constitution nor international obligations have had a significant role in the creation of the existing tenancy law regulation. This goes for both private and social housing.

European consumer protection legislation has not influenced tenancy law significantly because tenants have had better protection under the regulation of the Rent Act, Housing Regulation Act or the Act on Renting of Social Housing. However, national consumer protection legislation plays a significant role, because all the most important statutes are mandatory. If they are deviated from by agreement, this part of the contract will be void. The agreement must remain within the framework of the Acts. Indirectly the EU regulation could have an influence, if national regulation were to be changed in areas where consumer protection regulation connects with tenancy law.

The Danish rules on formation of contract apply to tenancy contracts and they are largely in accordance with the principles stated in Chapter 2 of PECL (Principles of European Contract Law), but under Danish law offers can be revoked only if the revocation reaches the other party, before or at the same time as the offer (Article 2.202(1) of PECL). This has no specific consequences for tenancy contracts; nor has it had any consequences for statutes in the Rent Act. Directive 93/13/EC has been implemented as a part of the Danish Contracts Act. The rules of the Directive apply,

but in this respect they are without effect because of the existence of Section 5 of the Rent Act.

Because a lot of focus in national government policies has been on measures of energy savings and reduction of environmental impacts, specific energy policies affect housing policies indirectly through legislation – e.g. by setting standards for building of new houses and obligations to calculate predicted energy consumption for heating etc. for a house each 5 years, or when selling the property. Some of this national-level legislation is based on EU Directives and other international obligations. The direct effect on tenancy law and relations between landlords and tenants is not great. The tenant has no right to demand certain energy standards or energy-saving measures in a rented dwelling. Of course heating systems and other basic utilities must fulfil the standards on which a contract has been based.

Regulations based on the EU Building Directives 2002/91/EF and 2010/31/EU are implemented in Danish law in Consolidated Act no. 636 of 19 June 2012 (*Lov om fremme af energibesparelser i bygninger*) and Statutory Order no. 673 of 25 June 2012. Here is an example: In 2012, a bill was presented which will mean that the letting of premises in accordance with Section 5 subsection 2 of the Housing Regulation Act will be possible only when the entire property has achieved a certain energy classification (energy-saving measures).

The landlord in the private renting sector is free to choose his or her tenants. The landlord can reject anybody as a tenant, out of a general antipathy towards the person in question, the person's 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 religious affiliation or ethnic origin, this may constitute a breach of the Discrimination Act and in addition may be contrary to the Act on equal treatment of persons irrespective of racial or ethnic origin. Agreements between landlords and tenants must not violate the fundamental rights laid down by the Constitution, the Discrimination Act or the Equal Treatment Act. Violations of fundamental rights can be brought before the ordinary courts, as Denmark does not have neither a constitutional court nor special courts dealing with questions concerning human rights. The Danish Discrimination Act – Consolidated Act no. 626 of 29 June 1987 – implemented the UN convention of 21 December 1965 on the abolition of racial discrimination. The Act on equal treatment of persons irrespective of racial or ethnic origin – Act no. 374 of 28 May 2003 implemented Directive 2000/43/EC.

Another example where EU regulation could have an indirect (but perhaps only theoretical) influence on housing policies related to tenancy law is that foreigners' possibility to purchase real estate in Denmark is restricted by statutes of law, but still acceptable in terms of EU and EEA citizens' rights according to EU legislation. Foreigners who are not citizens in the EU/EEA and companies from non-EU/EEA countries are permitted to purchase real estate in Denmark only if the appropriate authorisation to do so has been obtained from the Danish authorities. Denmark has obtained a special right to do so through an addendum to the Maastricht Treaty, which remains in force after adoption of the Lisbon Treaty. In some situations, citizens and companies of EU (or EEA) countries need no authorisation, although certain requirements must still be complied with. In particular, purchase of real estate without authorisation is possible only under certain circumstances – for the purpose of serving as the purchaser's year-round residence, or if the purchase is necessary in

order to conduct independent business or to provide public services in Denmark. The restrictions do not apply to individuals who have been residents of Denmark for a total of five years at the time of purchase, regardless of their nationality or where they are actually living.

Danish tax law is complex; it is often revised and tax regulation is used as a financial instrument to regulate and/or finance parts of the Danish welfare state (among a lot of other things). Regulations of taxes on private property, building materials, rent income, company taxes and more will of course affect the landlord and even tenants. As Danish tax law regulation is also based on EU regulation, one might argue that in this way EU regulation has a (not very measurable) influence on Danish tenancy law.

7.3 Table of transposition of EU legislation

To be inserted.

8. 10 typical national cases

8.1

Ugeskrift for Retsvæsen 1961 p. 337 – Supreme Court decision
“Compulsory purchase”

A tenant’s right regarding termination of contracts was protected under the Danish Constitution Section 73 on compulsory purchase.

8.2

Ugeskrift for Retsvæsen 1965 p. 293 – Supreme Court decision
“Rent control system constitutional”

A group of landlords claimed that the rent control system was a violation of their constitutional right of inviolability of property rights. The Supreme Court stated that the Danish system on rent regulation was not in conflict with the Danish Constitution.

8.3

Ugeskrift for Retsvæsen 1975, p. 438 – Western High Court Decision:
“Discrimination of foreigners 1”

An easement stating that summer cottages could not be let out to foreigners was overruled, as it was a violation of the Discrimination Act.

8.4

Ugeskrift for Retsvæsen 1991, p. 358 – Eastern High Court Decision
“Discrimination of foreigners 2”

A local government authority was not allowed make a recommendation to the organisations running the social-housing sector to give preference to persons of Danish origin as tenants rather than foreigners.

8.5

Ugeskrift for Retsvæsen 1997 p. 490 – Western High Court decision
“Antennas – violation of human rights”

A tenant claimed that tenant’s rights to place radio and television antennas on the property, according to the landlord’s instructions, for the reception of radio and television programmes were in conflict with ECHR Article 10. The tenant won the case but on other grounds, but as a result of this case the Rent Act was changed in 2000 to make sure no violations could occur.

8.6

Ugeskrift for Retsvæsen 2000 p. 905 – Supreme Court decision
“Monetary liability – termination of contracts”

A number of payments from the tenant to the landlord fall under the heading “monetary liability”, meaning that the landlord can terminate the tenancy agreement without further notice under observation of certain terms and conditions, if such payments are not made. In some cases it is doubtful whether a payment can be

considered a monetary liability. In a case on a claim for damages, the Supreme Court stated that such payments included rent, deposits and advance payment of rent and adjustment thereof; heating costs, antenna costs, on-account payments for water, if applicable; and payment of claim fees.

8.7

Ugeskrift for Retsvæsen 2004 p. 156 – Supreme Court decision
“Definition of a “household” under Section 77a of the Rent Act”

The term “household” is not precisely defined in the Rent Act. A mother and a son shared an apartment. The son had lived in the apartment with his mother since he was a child. The mother wanted to move out. Due to an interpretation of the legislative work, the majority of the Supreme Court found that a mother and a son in this situation did not constitute a “household” as stated in Section 77a of the Rent Act, because they did not have the necessary personal and economic relationship.

8.8

Ugeskrift for Retsvæsen 2005 p. 668 – Supreme Court decision
“A tenant’s right to withhold a part of the rent”

Where the rented premises are not in a state of repair and condition as the tenant is entitled to expect at the time of possession or during the continuance of the tenancy agreement, 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. This case shows that there is a large potential risk that a court will not find that the tenant is entitled to withhold the rent or parts of it in this or any other situation. The tenant has the burden of proof as to whether the premises are in the state of repair and condition to which the tenant is entitled, if the tenant wants to remedy the defect at the landlord's expense. Both the Bailiff's Court and the Eastern High Court decided that the tenant could be evicted because he had not paid the rent in full. A majority in the Supreme Court found that it had been legal for the tenant to withhold a part of the rent to cover expenses for a new dishwasher because the old one was not replaced by the landlord.

8.9

Ugeskrift for Retsvæsen 2007 p. 2047 – Supreme Court decision
“Transitional legislation on tenancy agreements”

Transitional legislation problems may arise in connection with the assessment of which rules to apply when determining the rent for a given tenancy. The Supreme Court has confirmed that the general rule in Danish legislation is that agreements which were valid at the time they were established do not become invalid because the legislation changes. In addition, and on the other hand, agreements which were invalid at the time they were established do not become valid because the legislation changes. In the case in question, an agreement on prohibition of claims for a rent decrease was not valid when the agreement was made, but it would have been when the claim was made.

8.10

Ugeskrift for Retsvæsen 2009 p. 2497 – Supreme Court decision

“The landlord’s right to charge the tenant for utilities”

The landlord may (only) make the tenant pay for power, heating, water, wireless signal transmission and cable TV. No other utility is under the authority of the Rent Act and therefore cannot be charged to the tenant. In the case in question the landlord made the tenants pay for water consumption, without having individual consumption meters installed. The Rent Act gives authority to charge the tenant only if there is an individual consumption meter for each dwelling. The ruling from the Supreme Court was general and is now a precedent for all sorts of costs for which the landlord has no direct authority to charge the tenant.

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Tidsskrift for Bolig- og Byggeret 2000 p. 325 Eastern High Court decision
Tidsskrift for Bolig- og Byggeret 2003 p. 458 District Court decision
Tidsskrift for Bolig og Byggeret 2004 p. 201 Eastern High Court decision
Tidsskrift for Bolig- og Byggeret 2004 p. 201 Eastern High Court decision
Tidsskrift for Bolig- og Byggeret 2007 p. 275 District Court decision
Tidsskrift for Bolig- og Byggeret 2007 p. 599 Eastern High Court decision
Tidsskrift for Bolig- og Byggeret 2009 p. 501 Eastern High Court decision
Tidsskrift for Bolig- og Byggeret 2010 p. 317 Eastern High Court decision
Tidsskrift for Bolig- og Byggeret 2011 p. 253 Western High Court decision
Tidsskrift for Bolig- og Byggeret 2011 p. 280 Eastern High Court decision,
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Tidsskrift for Bolig- og Byggeret 2012 p. 290 Eastern High Court decision
Tidsskrift for Bolig- og Byggeret 2012 p. 349 Eastern High Court decision
Tidsskrift for Bolig- og Byggeret 2012 p. 542 Western High Court decision
Tidsskrift for Bolig- og Byggeret 2013 p. 150 Eastern High Court decision
Tidsskrift for Bolig- og Byggeret 2013 p. 105 District Court decision
Tidsskrift for Bolig- og Byggeret 2014 p. 7 District Court decision

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Ugeskrift for Retsvæsen 2006 p. 79 Eastern High Court decision
Ugeskrift for Retsvæsen 2006 p. 745 Eastern High Court decision
Ugeskrift for Retsvæsen 2006 p. 1864 Supreme Court decision
Ugeskrift for Retsvæsen 2005 p. 668 Supreme Court decision
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Ugeskrift for Retsvæsen 2010 p. 88 Western High Court decision
Ugeskrift for Retsvæsen 2011 p. 2400 Western High Court decision
Ugeskrift for Retsvæsen 2012 p. 1024 Western High Court decision
Ugeskrift for Retsvæsen 2013 p. 2881 Eastern High Court decision
Ugeskrift for Retsvæsen 2013 p. 2234 Eastern High Court decision