



TENANT PROTECTION WORLDWIDE: LEGAL DIFFERENCES WITH PRACTICAL RELEVANCE

Housing is a central component of social life and is subject to different regulations in many countries. There is no common, uniform tenant protection at an international level, neither in Europe nor worldwide. However, its relevance remains high, not only in Europe, particularly in times of rising rents and housing shortages. There is a call for uniform tenant protection.

Tenant protection is a national matter and, in individual countries, it usually is distinctly prominent, or less so, for various reasons. Thus, tenant protection is generally more significant in countries with a high proportion of renters and in urban centres with housing shortages, as well as in countries with strong courts and tenant associations. In countries with strong tenant protection, extensive protective mechanisms apply to tenants, in principle. These include, in particular, regulated rent increases, clearly defined grounds for termination and judicial protection against eviction.

There are enormous differences in tenant protection in individual countries within Europe. But tenant protection is socially relevant in all countries in a similar way, especially when rental prices and operating costs increase and housing becomes scarce.

In this newsletter, we use a comparative legal and international analysis to examine the differences in tenant protection in the individual countries of our alliance. We will address the following questions in detail: Is tenant protection equally significant in all countries? In which countries is tenant protection highly developed, and where less so? What are the country-specific differences? Do the same protective mechanisms exist in all countries, such as rent regulations and protection against

termination and eviction? In which countries are there mandatory protective provisions when drafting a contract with little freedom of contract, and in what countries are tenancy agreements freely negotiable? What needs to be taken into consideration in the different countries?

In this article, we provide you with answers and give you a comprehensive overview.

AUSTRIA

I. Does Tenancy Law apply to all lease contracts? When does Tenancy Law apply? When does it not apply?

On 1 January 1982, a Tenancy Law came into force in Austria, by which tenant protection in Austria was standardised and expanded. In Austria, there is thus, by international standards, a relatively high level of tenant protection, although it should generally be noted that the Austrian Tenancy Law does not apply equally to everyone. The applicability of Tenancy Law is not linked to the person who concludes the lease agreement, but rather to the leased property that is leased or rented. Whether an entrepreneur or a consumer concludes a lease agreement is not decisive for the assessment of Tenancy Law's applicability.

With regard to the applicability of Tenancy Law, three areas are distinguished: the full scope of application, the partial scope of application and the non-application. Depending on the case, either all provisions of the Tenancy Law apply, only parts of the Tenancy Law apply, or it does not apply at all. In the full scope of application of Tenancy Law, a rela-



tively high level of tenant protection applies and the statutory regulations cannot be contractually waived in a way that is disadvantageous to tenants.

It should therefore be noted that the Tenancy Law in Austria does not apply to everyone, nor does it apply to all rental properties. Whether a tenancy falls within the Tenancy Law's scope of application and thus is subject to tenant protection depends on the type of property, its year of construction and also its use. The question of the Tenancy Law's applicability is therefore not always easy to answer and requires comprehensive investigations.

II. As a landlord, am I free to set the rental price or am I subject to restrictions? What applies to dwellings? What applies to business spaces?

Whether or not I, as a lessor, am free to set the rental price fundamentally depends on whether my tenancy falls within the scope of the Tenancy Law.

As a lessor, I am subject to restrictions on setting the rent only when the full scope of the Tenancy Law applies. On the other hand, in the partial scope of application of the Tenancy Law or in its non-application, I am therefore free in setting the rental price. In this case, the property market is the regulator.

Residential tenancy law: In Austria, the standard rental price or rental price by category applies to dwellings that fall within the Tenancy Law's full scope of application (e.g. dwellings in old buildings, i.e. those erected before 8 May 1945). The standard rental price is set per federal state and is therefore not the same for all lessors in Austria. What applies to Vienna does not necessarily apply to Salzburg. The rental price by category only applies to lease agreements that were concluded before 1 March 1994.

Commercial sector: There are also restrictions for business premises that fall within the Tenancy Law's full scope of application. The standard price does not apply to them, but an

appropriate rent applies according to size, location and equipment. Accordingly, the restrictions on forming the rental price for dwellings and for business premises apply equally, but always depending on whether the Tenancy Law applies in full or not. I, as a lessor, am fundamentally not subject to any restrictions in the Tenancy Law's partial scope of application or in its non-application.

III. Can I set the limit on the duration of my lease agreement at will? Are there minimum terms? Do minimum terms apply to all lease agreements?

Whether I can limit my tenancy at will or whether I am subject to restrictions regarding the tenancy period again depends on whether my tenancy falls within the scope of the Tenancy Law. There are also differences between leasing residential space and leasing commercial space.

Residential tenancy law: For leasing residential space in the full and partial scope of application of the Tenancy Law, a minimum term must be observed. This minimum term is three or five years. The latter 5-year period applies if I operate my rental activity on an entrepreneurial basis, i.e. if I have more than five rental properties. Accordingly, dwellings in the full and partial scope of application can only be validly limited to a minimum of three or five years. However, there is no upper limit.

If this minimum term is not observed or is applied incorrectly, the tenancy is deemed to be concluded for an indefinite period of time, which may have serious consequences for ending the tenancy. Caution is therefore advised when concluding the lease agreement.

There is also no minimum term when the Tenancy Law does not apply, e.g. for letting single-family and two-family houses. This kind of letting is completely excluded from the applicability of the Tenancy Law.

Commercial sector: However, no minimum term for business premises must be observed. They can be limited in duration at will.



IV. As a landlord, can I always terminate my tenant's lease? Are there any formal requirements and is due cause required?

In the Tenancy Law's full and partial scope of application, as a lessor I cannot terminate my tenant(s) at will. Furthermore, in the Tenancy Law's full and partial scope of application, certain formal requirements for lessors must be observed.

In the case of tenancies concluded for an indefinite period of time, termination by the lessor is always only possible through the courts and only in the case of due cause for termination. The grounds for termination are exhaustively listed in the Tenancy Law. In the event of non-compliance with the formal requirement and the grounds for termination, the termination is definitely invalid. This restriction on termination applies equally to dwellings and business premises.

If, on the other hand, the tenancy is subject to a valid fixed term, the tenancy will, in principle, end upon expiry of the term and no further action is required. In these cases, no specific form needs to be observed, unless otherwise agreed.

CHINA

I. Does Tenancy Law apply to all lease contracts? When does Tenancy Law apply? When does it not apply?

There is a special section in the Chinese Civil Law for lease agreements that applies to both residential and commercial spaces. Specifically for residential space, there are also special State Council regulations that pertain to the relationship between tenants and landlords and are intended to stabilise the housing market.

II. As a landlord, am I free to set the rental price or am I subject to restrictions? What applies to dwellings? What applies to business spaces?

In principle, there is no statutory regulation when setting the rental price. However, in the relationship between private tenants and commercial landlords, the Chinese Consumer Protection Act might apply, which stipulates, among other things, fair pricing. The determination as to whether pricing is "fair" is the responsibility of the authorities and courts.

III. Can I set the limit on the duration of my lease agreement at will? Are there minimum terms? Do minimum terms apply to all lease agreements?

A lease agreement may be concluded for a maximum of 20 years. After expiry of this maximum term, a renewal of the agreement is possible. There is no minimum time limit. However, for a term of more than six months, there is a mandatory requirement that the lease agreement be in writing.

IV. As a landlord, can I always terminate my tenant's lease? Are there any formal requirements and is due cause required?

In the case of open-ended lease agreements, the law provides for ordinary termination with a "reasonable period of notice". A reason for the termination does not have to be stated. The reasonableness of the notice period is reviewed by the authorities and courts. In individual cases, an extremely tenant-friendly interpretation must be expected. In the case of fixed-term contracts (the absolute rule in large Chinese cities), termination is only possible for due cause, and this due cause may also come from the landlord's sphere (disputes about ownership, seizure by authorities or administrative inadmissibility with regard to the suitability of the property as residential space).



CZECH REPUBLIC

I. Does Tenancy Law apply to all lease contracts? When does Tenancy Law apply? When does it not apply?

In the Czech Republic, tenancy law is regulated by the Civil Code, and the letting of dwellings and the letting of business spaces are regulated differently in some respects. Special statutory provisions for the letting of dwellings also apply to the letting of a building or other non-residential spaces if the purpose of the lease consists of securing the tenant's residential need.

II. As a landlord, am I free to set the rental price or am I subject to restrictions? What applies to dwellings? What applies to business spaces?

Currently, the rental price agreement is not subject to any regulation under public law, not even in the case of letting dwellings. The agreement of an inflation clause or another mechanism for automatically increasing the rent is permissible.

Residential tenancy law: In addition, when letting a dwelling, the landlord can propose a rent increase to the tenant up to the amount of the rent common for the locality, and if no agreement is reached, the landlord can demand that the court decide on the rental price. In contrast, the lessee can demand that the rent be reduced to the rent common for the locality. A dwelling's comparable rental price can be determined in accordance with the Government Ordinance on the basis of a market analysis, an expert opinion or by submitting at least three comparable lease agreements in the surrounding area.

Commercial sector: Changes to the rental price for business spaces is governed exclusively by the agreement of the contracting parties.

III. Can I set the limit on the duration of my lease agreement at will? Are there minimum terms? Do minimum terms apply to all lease agreements?

The lease agreement can be concluded for a specific or indefinite period. According to Czech law, there is no legally prescribed minimum lease term for dwellings or business spaces.

IV. As a landlord, can I always terminate my tenant's lease? Are there any formal requirements and is due cause required?

The Civil Code sets out the grounds for termination and the notice periods; different provisions apply to the letting of dwellings and non-residential premises.

Residential tenancy law: The grounds for termination of a dwelling are a gross breach of duty, the lessee's conviction for an intentional criminal offence in connection with the lease agreement, objective impossibility of the use of the dwelling, or other similar serious reasons. The special reasons for the termination of an indefinite lease agreement also include the housing needs of the lessor or his spouse after divorce, or the housing needs of a relative of the lessor or his spouse. In principle, the notice period is three months. The legality of a termination must be reviewed by the court at the request of the lessee.

Commercial sector: Early termination by the lessor of a fixed-term lease agreement for business spaces is permissible if it is objectively impossible to use the premises or in the case of a gross breach of duty. The notice period is three months. Termination of an indefinite lease agreement does not require any reason and the notice period is three or six months, unless the parties agree otherwise.



GERMANY

I. Does Tenancy Law apply to all lease contracts? When does Tenancy Law apply? When does it not apply?

In Germany, tenancy law is regulated in the BGB (*Bürgerlichen Gesetzbuch* [German Civil Code]). It applies to the letting of residential dwellings and premises used for commercial purposes. Supplementary rules are included in regulations of the federal states that provide for restrictions on the rental price for dwellings in areas with tight housing markets. According to those state regulations, the rental price for new rentals may not exceed the local comparative rent by more than 10%, unless the following conditions are met: first use after 1 October 2014, including comprehensive modernisations (new-build character) or where the previous rent was already higher than the permissible rent (grandfathering).

II. As a landlord, am I free to set the rental price or am I subject to restrictions? What applies to dwellings? What applies to business spaces?

Commercial sector: In this case, the rental price can be freely negotiated by the parties. Unless otherwise agreed by the parties, the rental price remains fixed for the entire term of the lease. However, the parties can agree on rules according to which the rent can change during the term of the tenancy. These include indexation clauses that are linked to changes in the consumer price index. The prerequisite for this is that the lessor is bound for ten years, e.g. by a ten-year contract or a contract with a shorter term, in which the lessee is granted an extension option to extend the lease to 10 years. Graded lease agreements are also permissible in commercial lease agreements.

Residential tenancy law: In principle, the lessor and the lessee can freely agree on the rental price. In residential lease agreements, index clauses or graded leases can be agreed upon in relation to changes in rent. If a lease agreement

does not contain any provision regarding possible changes to the rent, the following applies: Rent increases are permissible up to the amount of the local comparative rent, provided that the increase does not exceed 20% (15% in areas with a tight housing market) of the previous rent within three years. Rent increases are also permitted in connection with modernisation measures.

III. Can I set the limit on the duration of my lease agreement at will? Are there minimum terms? Do minimum terms apply to all lease agreements?

Commercial sector: The parties are free to conclude fixed-term or open-ended contracts. There are no minimum terms.

Residential tenancy law: The standard case is the lease agreement concluded for an indefinite period of time. It is also possible to conclude so-called fixed-term leases. This is possible if the lessor intends to use the premises as a dwelling for himself, for his family members or for members of his household. The conclusion of a fixed-term tenancy agreement is also possible if the lessor intends—in a permissible manner—to demolish the premises or to alter or repair them so substantially that the measures would be considerably more difficult if the tenancy continues. The prerequisite is that the lessor notifies the lessee in writing of the reason for the fixed term by the time the contract is concluded; otherwise, the lease is deemed to have been concluded for an indefinite period. The lessor's notification must be made in writing. If the lessor intends to use the property for their own purposes, the individuals who are involved must be listed without stating their names, but the family relationship must be indicated so that the lessee can determine whether the person in question is privileged. If the lessor intends to renovate or build, a general notification of the type of intended construction measures is necessary. For tenancies that already existed on 1 September 2001, special rules partially apply.



IV. As a landlord, can I always terminate my tenant's lease? Are there any formal requirements and is due cause required?

Commercial sector: If a tenancy has been entered into for a fixed period, it can only be terminated without notice during this period. If a tenancy has been concluded for an indefinite period of time, notice of termination may be given in compliance with the notice periods set forth in the contract or in the law. In the case of a tenancy of business premises, termination with ordinary notice is permissible no later than the third working day of a quarter of the calendar year to take effect at the end of the next quarter of the calendar year (statutory regulation). Formal requirements for termination usually arise from the contractual rules.

Residential tenancy law: If a residential lease is concluded for an indefinite period of time, the lessor can terminate only if he has a legitimate interest in ending the lease. Termination for the purposes of a rent increase is excluded. A lessor has a legitimate interest particularly if the lessee is culpably in breach of his contractual duties in a way that is not immaterial, the lessor needs the premises as a dwelling for himself, family members or members of lessor's household, or the continuation of the lease would prevent the lessor from making reasonable economic use of the property and would thereby suffer considerable disadvantages. It is mandatory that terminations of residential tenancies be signed by hand.

ITALY

I. Does Tenancy Law apply to all lease contracts? When does Tenancy Law apply? When does it not apply?

In Italian tenancy law, the general provisions of the Civil Code are supplemented by a series of special regulations that are based on the intended purpose of the property. In particular, tenancy law distinguishes between tenancy agreements for residential purposes and tenancy agreements for purposes other than residential use.

For each type of contract, the special laws contain a specific rule with regard to the minimum term of the contractual relationship, the determination of the rental price, the extension of the contract, termination and tenant protection. However, exceptions or less stringent regulations are planned, such as for temporary, tourist or seasonal tenancies. Special types of contracts, such as contracts for non-urban real estate, are also excluded from the scope of the special laws. In any case, the general principles of the Civil Code continue to apply in the cases that are exempt from the special legislation with regard to the obligations of the parties, the duration of the contractual relationship and contractual liability.

II. As a landlord, am I free to set the rental price or am I subject to restrictions? What applies to dwellings? What applies to business spaces?

In Italian civil law, the determination of the rental price generally falls within the scope of the parties' freedom of contract; however, the scope of the freedom granted to the owner varies considerably, particularly for residential leases, depending on the type of contract selected. In particular, the law stipulates two different regulations: the lease agreement with a rental price that is set by the owner and the lease agreement with an agreed rental price. In the lease agreement with a rental price that is set individually by the owner, the owner is actually completely free to set the rental price contractually, since no statutory minimum or maximum limits are provided for. The rental price is therefore negotiated between the parties in compliance with the general legal regulations. In contrast, the lessor's autonomy is significantly restricted in a lease agreement with agreed rent. In this case, the rent must be set within binding ranges that are set in territorial agreements between the associations of owners and tenants on the basis of objective criteria and municipal zoning. This regulation, which generally envisages a term of three years with a two-year extension, is associated with considerable tax benefits.



III. Can I set the limit on the duration of my lease agreement at will? Are there minimum terms? Do minimum terms apply to all lease agreements?

The term of the lease is subject to legal restrictions under Italian law, which vary depending on the intended purpose of the property and the specific reason for the contractual relationship. These restrictions reflect the need to reconcile the parties' freedom to negotiate with their interests that merit protection.

Residential tenancy law: The law stipulates a mandatory minimum term for lease agreements on residential spaces. For example, contracts with a rental price that is set by the owner have a regular term of four years with (almost) automatic extension for another four years, while contracts with agreed rent provide for a term of three years, which can be extended by a further two years. In addition to these models, the law provides for special cases. Temporary lease agreements that are justified by the temporary needs of the lessor or lessee have a term between one and eighteen months. Lease agreements for students, on the other hand, have a term between six months and three years, with the possibility of a tacit extension. Short-term leases last for a maximum of thirty days.

Commercial sector: For lease agreements that are not intended for residential purposes, the statutory minimum term is six years, with (almost) automatic extension for another six years. In general, the Civil Code stipulates a maximum term of 30 years for lease agreements.

IV. As a landlord, can I always terminate my tenant's lease? Are there any formal requirements and is due cause required?

According to Italian law, the owner cannot terminate the lease agreement at any time; rather, the owner has a right to terminate only under certain conditions and in compliance with strict time limits and formal deadlines.

Residential tenancy law: In the case of residential leases, what applies is the rule that the contract is extended practically automatically when it expires. In the case of contracts with a rental price that is set by the owner, the lease agreement is extended for another four years after the expiry of the first four years, unless the lessor terminates the contract in a timely manner for one of the reasons expressly specified in the law. In particular, the lessor can prevent the extension of the contract on the first due date if he asserts his own need for himself or close family members, or if the property is to be used for activities of public or social interest. Termination is also permissible if the lessee has another suitable dwelling in the same municipality, does not continuously inhabit the property without a valid reason, or if the building is to be completely renovated, demolished or rebuilt. Finally, termination is permissible if the lessor wishes to sell the property and does not own any other residential properties, in which case the lessee has a right of first refusal. In any case, the termination must be given in writing at least six months in advance. Upon expiry of the contract, the lessor can, however, refuse to extend without stating the reasons.

Commercial sector: In the case of commercial leases, the landlord can only prevent automatic renewal if there are legitimate reasons, such as the need to use the property for their own use or for use by family members, to carry out their own business, or to carry out renovation, demolition or reconstruction work. Notice of termination must be given in writing by registered letter or certified email with at least 12 months' notice (18 months for hotel businesses) and clearly state the reason, otherwise it is invalid.

POLAND

I. Does Tenancy Law apply to all lease contracts? When does Tenancy Law apply? When does it not apply?

The most important law for the protection of tenants in Poland is the Act of 21 June 2001 on the protection of tenants' rights, the municipal



housing inventory and the amendment of the Polish Civil Code. It regulates the principles of letting residential spaces, particularly the rights and obligations of tenants and owners. Furthermore, it provides for the protection of the tenant against unjustified termination of the lease agreement, the conditions and procedure for rent increases, the permissible grounds for termination of the contract by the landlord, the rules on eviction and protection against eviction without a court order, including the right to social or replacement housing as well as the obligations of the municipalities in relation to the municipal housing inventory. Finally, it defines the basic division of obligations in connection with the maintenance and repair of dwellings.

II. As a landlord, am I free to set the rental price or am I subject to restrictions? What applies to dwellings? What applies to business spaces?

Residential tenancy law: In Poland, there are no restrictions with regard to setting the contractual rent for private dwellings. The owner is free to determine the rental price, depending on market demand. Although there are no restrictions, the increase in rent is regulated. The rent can be increased only for indefinite contracts and may not be increased more frequently than every six months. In addition, the owner must justify the increase. The rent may be increased, for example, if the owner does not obtain any rental income or other usage fees in an amount sufficient to cover the costs for the maintenance of the premises as well as the mortgage principal payment and the profit.

Commercial sector: The landlord has the right to increase the rent for business premises by any amount. In Poland, the amount of the rent increase for business premises primarily depends on the provisions in the lease agreement. In contrast to residential spaces, there are no legal restrictions on the maximum amount of the rent increase for business premises.

III. Can I set the limit on the duration of my lease agreement at will? Are there minimum terms? Do minimum terms apply to all lease agreements?

Polish law does not prescribe a fixed minimum rental period for dwellings or commercial spaces. This means that a lease agreement can be concluded for just one night. The rental period can be short (days, weeks), medium-term (several months) or long-term, with restrictions mainly relating to the maximum duration of certain types of leases (e.g. ten years for “occasional” leases).

IV. As a landlord, can I always terminate my tenant's lease? Are there any formal requirements and is due cause required?

There are statutory grounds which allow the landlord to terminate the contract in the following situations:

- at least three months of rent in arrears,
- use of the dwelling not in accordance with the contract,
- transferring the dwelling to a third party,
- the need for its use by the owner or his family,
- confirmed demolition or renovation.

The termination must be made in writing, stating the specific reason and in compliance with the notice periods. It must be emphasised that the landlord may not terminate the contract without a valid reason or because the landlord has found “better” tenants.

Another form of contract is the “occasional” lease, which offers the landlord more benefits, since in the event of problems, the eviction of the tenant is much more efficient and does not require lengthy court proceedings.



SLOVAKIA

I. Does Tenancy Law apply to all lease contracts? When does Tenancy Law apply? When does it not apply?

In Slovakia, the general legal regulation on tenancies is contained in the Civil Code; special laws regulate the leasing of non-residential spaces (regulation on the leasing and subletting of non-residential spaces), the short-term leasing of dwellings (an alternative regulation for the leasing of dwellings for a fixed period) and the leasing of agricultural land (regulation on the special features of the leasing of agricultural and forestry land).

II. As a landlord, am I free to set the rental price or am I subject to restrictions? What applies to dwellings? What applies to business spaces?

In Slovakia, the landlord has relatively ample leeway in determining the rental price. The primary method for determining the amount of the rent is a free agreement between the landlord and the tenant. In general, the lease agreement must contain either the exact amount of the rent or the calculation method. If the rental price is not agreed in the contract, the usual rental price at the time of conclusion of the contract applies, taking into account the value of the leased property and its type of use. In principle, the rent cannot be changed unilaterally. However, it is possible to agree on an automatic increase according to the inflation rate through an inflation clause.

Residential tenancy law: In the case of short-term letting of a dwelling under a special law, the contract must separately state the rental price and the payment terms, as well as the amount, scope and calculation method of costs for services associated with use of the dwelling. In the case of leasing residential spaces, the rent can also be linked to the price increases of the services required for residential use (electricity, gas, etc.). Regulated prices of rent only apply to certain categories of dwellings

(e.g. municipal dwellings or dwellings built with the support of the State Housing Fund).

Commercial sector: In the case of letting non-residential premises under a special law, the contract must include the amount and due date of the rent as well as the payment terms; otherwise, it is invalid.

III. Can I set the limit on the duration of my lease agreement at will? Are there minimum terms? Do minimum terms apply to all lease agreements?

The duration of a lease agreement is generally not limited and can be determined almost at will. However, this does not apply to rental agreements under the law on short-term letting of dwellings; these can be concluded for a maximum of two years and extended no more than twice, so that the total rental period may not exceed six years. The legal system also does not provide for a minimum lease term (with the exception of the lease of agricultural land within the framework of a commercial operation, where the minimum lease term is legally set at five years).

IV. As a landlord, can I always terminate my tenant's lease? Are there any formal requirements and is due cause required?

In accordance with the general provisions of the Slovak Civil Code, a lease agreement concluded for an indefinite period of time can generally be terminated at any time with a notice period of three months, without giving reasons. However, stricter conditions apply to residential and non-residential lease agreements.

Residential tenancy law: A residential lease agreement pursuant to the Slovak Civil Code (even if it was concluded for an indefinite period of time) and a residential lease agreement pursuant to the special law on short-term lease agreements for dwellings can only be terminated for legally defined reasons (e.g. if the lessor needs the dwelling for himself or relatives, if the lessee grossly violates his obligations, if



the lessee does not pay the rent, if the lessee has sublet the dwelling without the written consent of the lessor, if the lessee uses the dwelling for purposes other than residential purposes, if the lessee damages the dwelling, etc.). However, in the case of short-term letting of dwellings under a special law, the lessor is in a better position than in the case of a lease agreement under the Civil Code (the lessor has more termination options, can agree additional grounds for termination, a shorter notice period applies and the lessor is not required to guarantee the lessee a replacement dwelling after the end of the lease).

Commercial sector: The early termination of a fixed-term lease agreement for non-residential spaces, which usually governs commercial leases (but is not mandatory), is permissible only for serious, legally defined reasons.

TURKEY

I. Does Tenancy Law apply to all lease contracts? When does Tenancy Law apply? When does it not apply?

There is no independent “Tenant Protection Act” in Turkish law. Tenancy agreements are regulated in the Turkish Code of Obligations (“TBK”). In addition to general rental provisions, the TBK also contains special protective provisions for leases of residential spaces and covered commercial spaces (lease of business premises) in favour of the lessee.

These special protective provisions of the TBK apply to leasing real estate that is characterised as residential space or covered business space. Rentals for uncovered, open commercial spaces, on the other hand, are, in principle, subject to the general rental provisions and do not benefit from the protective provisions.

Pursuant to the TBK, the special provisions on the letting of residential space and commercial space do not apply if properties, which are by their nature intended for temporary use, are rented for six months or less. Short-term rentals of holiday dwellings are, in practice, often assessed within this framework, but the com-

position of the rental property is decisive in any specific case.

The provisions on letting residential space and commercial space also apply to lease agreements of public institutions and bodies. However, in the case of official residences that do not have the character of a tenancy agreement, but are associated with an administrative or employment relationship, the scope of application of the TBK’s rental provisions must be examined separately in each individual case.

II. As a landlord, am I free to set the rental price or am I subject to restrictions? What applies to dwellings? What applies to business spaces?

In Turkish law, the freedom of contract generally applies when setting the rental price. As a rule, the initial rental price is freely agreed by the parties for both residential and commercial spaces.

Residential tenancy law and Commercial Sector: During the term of the contract, agreements on rent increases for renewals of residential and commercial tenancies may not exceed the average increase in the consumer price index (CPI) from the last twelve months of the previous rental year. Clauses concerning rent increases that exceed this limit are invalid; the statutory upper limit applies.

If there is no agreement on an increase in the lease agreement, the landlord cannot unilaterally increase the rent. If no agreement is reached between the parties, the rental price for the new rental period is determined by the court; the upper limit must also be taken into account in the context of the judicial determination. After the end of the fifth year of rental, the condition of the rental property and the current rent for comparable rental properties, in addition to the CPI, are taken into account in order to arrive at a fair decision when determining the new rental price.

The rent increase regime is fundamentally identical for residential and commercial tenancies. For both rental types, the CPI limit is



mandatory and cannot be changed in favour of the landlord.

III. Can I set the limit on the duration of my lease agreement at will? Are there minimum terms? Do minimum terms apply to all lease agreements?

In Turkish law, lease agreements can be concluded for a fixed or indefinite period. In the case of letting residential and business spaces, there is no general obligation to have a minimum term. The parties can freely agree on the duration.

In the case of fixed-term tenancy agreements for residential and commercial spaces, a key protective provision applies: According to the TBK, the lease agreement is extended by one year on the same terms, unless the lessee terminates the agreement no later than fifteen days before the expiry of the term of the agreement. On the other hand, the lessor cannot terminate the contract solely due to the expiry of the term. The purposes of this regulation is to protect the lessee.

Against the background of this extension mechanism, lease agreements for residential and business spaces are often concluded in practice with a minimum term of one year. However, there is no legal obligation to do so; however, in practice it is a common arrangement.

In the case of tenancies that are not to be classified as residential or commercial tenancies – particularly in the case of rental properties that are by their nature intended for temporary use and are leased for a maximum of six months – the special protective provisions for residential and commercial tenancies do not apply. Questions about term and termination are therefore assessed according to the general rental provisions; an automatic extension is not provided for in these cases.

IV. As a landlord, can I always terminate my tenant's lease? Are there any formal requirements and is due cause required?

In the case of residential and commercial tenancies, the lessor cannot terminate the contract at will. Pursuant to the TBK, the validity of the notice of termination is also subject to it being in writing.

According to the TBK, the mere expiry of time does not entitle the lessor to end the tenancy in the case of fixed-term lease agreements. An ordinary right of termination without justification only arises for the lessor after the contract has continued for ten years by way of annual extension; in this case, notice of termination must be given no later than three months before the end of the 11th year of extension.

Furthermore, the lessor may only end a tenancy through the courts and only by invoking the grounds for termination provided by law. These include, in particular: the landlord's own needs or the needs of the spouse, descendants, ancestors or other persons entitled to maintenance by law; the necessity of essential repairs, expansion or conversion measures, which necessitate vacating the leased property, for example, in the context of a reconstruction or a comprehensive renovation; the lessee's non-performance of a written eviction obligation as well as repeated payment arrears despite a reminder.

In summary, the lessor may terminate the contract either ordinarily in compliance with the aforementioned statutory deadline or for due cause by filing a legal complaint.



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