

EUI Tenancy Law Project

Final Report Denmark

1. Introduction

a) Origins and basic lines of development of national tenancy law:

The legislation is primarily set out in four Acts. Two of these Acts regulate commercial premises and social housing (non-profit housing) and will not be discussed further. The two relevant Acts for the purposes of this study are referred to here as the Private Housing Act (lov om leje)¹ and the Temporary Regulation of Private Housing Act (den midlertidige boligreguleringslov).² In their existing form both entered into force in 1980, yet many of their rules were introduced much earlier in Danish legal history, some of which date from before World War II. Since 1980, both Acts have been frequently amended, almost every year. Most of the changes have been made under Social Democratic Governments, to a certain degree influenced by tenants associations.

Neither the Danish constitution nor international obligations have had a significant role in the creation of the existing rules, as is the case in many other legal systems.

There have been no significant reforms in the last twenty years. The most important has been a change to the procedural system, implemented a few years ago, when a national system of rent tribunals was established.³ Previously, tribunals had only operated in the major cities.⁴ At the same time the jurisdiction of the tribunals was extended. The driving force behind this reform was a desire to establish further protection for tenants. The tribunals deal with disputes between landlords and tenants and can often save the parties from taking each other to court.

The respective roles of the legislature and the courts in the development of tenancy law can be described briefly. Rules adopted by Parliament establish the legal framework but leave a lot of questions unanswered. Sometimes even the rules themselves create problems. The tribunals and the courts therefore play an important gap-filling role and help solve problems arising out of inadequate and contradictory rules.

b) Basic structure and content of current national law:

aa) Private tenancy law

As discussed further below in the short general introduction to the questions in Set 1, the rules on the formation of contracts are the same for tenancy agreements as for most other forms of contract. There are no special rules besides those relating to standard contracts (see below question 18).

¹ Consolidated Act no. 347 of 14 May 2001.

² Consolidated Act no. 348 of 14 May 2001.

³ Act no. 406 of 31 May 2000.

⁴ Cf. Section 1 of the Temporary Regulation on Private Housing Act.

The conditions for the termination of tenancy agreements by the landlord are stipulated exhaustively in the Private Housing Act, as described in the answers to questions 6 and 11.

The Landlord is normally entitled to increase rents if the conditions laid down in the two Acts are satisfied. See below in the short general introduction to the questions in Set 3.

The basic law of landlord and tenant is state law (the Private Housing Act). The Temporary Regulation of Private Housing Act applies in most local government areas (especially the bigger ones) unless the local government authority decides to not to apply the Act in its area. Smaller local government authorities (fewer than 20,000 inhabitants) can decide that the Act shall apply in their jurisdiction. (Section 1 of the Temporary Regulation on Private Housing Act.)

What the two Acts do not regulate is instead regulated by general private law. Most of the rules of the statutes are mandatory in the sense that they cannot be derogated from to the disadvantage of the tenant. At the end of each Chapter of the Private Housing Act there are sections stating which of the rules in the chapter are mandatory. The Temporary Regulation of Private Housing Act is mandatory in itself. The non-mandatory parts of the statutes can only be deviated from in standard contracts as stated below in answer to question 18. Most of the general private law is non-mandatory. Only rules concerning consumers in general can be mandatory.

Other forms of "lawful possession" of premises for housing purposes exist in different forms of co-operative housing schemes and other multi-ownership schemes.

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. See also question 18.

The relationship between general and special rules works effectively, and is not a cause of legal uncertainty, (see below c).

On the one hand, the position of a tenant is considered as conferring a real property right because tenants are protected when the house is sold. Under Section 7 of the Private Housing Act the rights of the tenant according to the statutes are protected against all third persons. (See question 4(c) below.) The tenants are also protected in cases of compulsory purchase. Sections 85 a and b of the Private Housing Act prescribe a right for the tenant to be given alternative housing and compensation for costs caused by compulsory purchase. On the 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.

bb) Social regulation affecting private tenancy contracts

In Denmark roughly 19% of residences fall within the category of 'social housing', which is managed on a non-profit basis,⁵ and owned by organisations where tenants always enjoy an in-built majority in the decision-making bodies. This form of housing is subsidised by the state and local authorities.

⁵ Cf. Det Økonomiske Råd: Dansk Økonomi - Forår 2001, p. 234.

All tenants (either in private or in social rented housing) may be subsidised directly should their income not exceed a certain level. 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.

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%⁶ (in Copenhagen 33%) of the housing available.

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 6 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.

c) Summary account on "tenancy law in action":

The general situation in regard to housing is that Denmark is moving from a situation of general shortage to a situation where there is sufficient housing available. In the major cities the situation remains one of shortage, but in more rural districts Denmark is witnessing a situation where housing is difficult to sell or let.

51% of housing is owner-occupied, 18% is occupied by tenants in the private housing sector, and 19% by tenants in the social housing sector. The rest is mainly co-operative housing. (Figures from 2000.)⁷ In 1960, 40% of housing was occupied by tenants in the private housing sector.

The role of landlords and tenants associations is mainly to represent their members as interest groups. Some of them also act as advisors and/or agents in solving disputes. The organisations nominate members of the rent tribunals and lay judges.

The organisations do not prepare standard tenancy agreements. They do have some influence on the drafting of the standard contract issued by the Ministry of Social Affairs (see below question 18).

Cases on tenancy law are often brought before courts by landlords and tenants, but most disputes must be brought before a rent tribunal first. If the tribunal has jurisdiction, the dispute cannot be brought before the courts before the tribunal has made a decision.⁸ The independent 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.⁹ The tribunals are public authorities and the plaintiff has to pay only a small fee (approx. €15). The decisions made by the tribunals can be referred to by the courts, whilst some disputes may only be initiated before the courts. Disputes arising from tenancy agreements are brought before special divisions of

⁶ Cf. Section 59 of the Social Housing Act (Consolidated Act no. 626 of 30 June 2003).

⁷ Cf. Det Økonomiske Råd: Dansk Økonomi - Forår 2001, p. 234.

⁸ Cf. Section 107(1) of the Private Housing Act.

⁹ Cf. Section 36 of the Temporary Regulation of Private Housing Act.

the County Courts called the Housing Courts (boligretter). The only difference between a Housing Court and an ordinary court is that the Housing Court consists of three judges instead of one. Two of them are lay judges nominated by tenants and landlords associations respectively.¹⁰ 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.

It is right to say that fair and effective access to courts for tenants exists, mainly because of the almost free access to the rent tribunals and because there is a widespread form of insurance, which covers most of the costs of trials. Tenants of limited means have the right to free legal aid.

It is also true to say that there is considerable uncertainty with regard to tenancy law, particularly as a result of the many differing and complicated sets of rent regimes in force (see below Set 3). Moreover, it is not possible for lay people to properly calculate the maximum rent applicable to a particular tenancy. This is the cause of many legal disputes, which must be resolved by the judicial system. The same problem arises as a result of contradictory and inadequate statutes - including a number of troublesome transitional rules - many of which have been in operation for a long period of time. In addition, many of these difficulties are not addressed in the secondary literature.¹¹ Instead, lawyers must deal with decisions handed down by the courts which remain typically contradictory and which fail to adequately resolve outstanding issues in doubt.

2. Questionnaire

Set 1: Conclusion of the Contract

Short General Introduction:

The rules for entering into leasehold 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 (Consolidated Act 781 of 26 August 1996.) Offers and acceptances are binding, and when an offer is accepted (orally or in writing) the contract is concluded. 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 only be revoked if the revocation reaches the other party, before or at the same time as the offer. (See Article 2.202(1) of PECL.)

Question 1: Choice of the Tenant

L offers an apartment for rent in a newspaper. T replies and shows interest. However, L rejects T after she tells him that she:

- a) has a husband and three children.

¹⁰ Sections 107(2), 108 and 109 of the Private Housing Act.

¹¹ A complete up-to-date literature on the entire body of tenancy law does not exist. The most often used literature is the commentary in the annotated multi-volume statute book Karnovs Lovsamling by Professor H. Krag Jespersen. Other books are Kallehauge, H. & Blom, H.: Kommentar til lejelovene, Vol. I and II (1980) and a supplementary volume from 1984, Jespersen, H.K.: Lejeret I and II (1989), Dons, M. and Bang, J.: Omkostningsbestemt leje og forbedring, 3. ed. (1997). Detailed articles on different specific issues are found in various legal periodicals.

- b) is a Muslim, and L is afraid of terrorism.
- c) has a small dog.
- d) is a hobby piano player and wants to play about 1 hour every evening from 8-9 p.m.
- e) does not have full capacity and is under custody.

Does T have a claim against L?

No. L is free to choose whomsoever he prefers as a tenant. This goes for all situations a)-e). L can reject anybody as a tenant out of a general antipathy towards children, domestic animals etc., provided that the rejection cannot be qualified as discrimination and this will not be the case in situations a), c), d) and e).

However, if L informs T that he rejects him because he is a Muslim (situation b), this may constitute a breach of the Discrimination Act¹² and may further be contrary to the Act on equal treatment of persons irrespective of racial or ethnic origin.¹³ Agreements between landlords and tenants must not violate the fundamental rights laid down by the Constitution, the Discrimination Act¹⁴ or the Equal Treatment Act. Violations of fundamental rights can be brought before the ordinary courts, as Denmark does not have either a constitutional court or special courts dealing with questions concerning human rights.

A person under wardship or guardianship (situation e) cannot enter into a binding contract on his or her own. If L does conclude a contract with a person under wardship, without the involvement of his legal representative, the contract will be void and L cannot claim damages.

Variant: In order not to lose any chances to get the apartment, T answers with a lie, which is later discovered by L. Can L avoid the contract for deceit or claim damages?

This behaviour would be characterised as fraudulent if it is “unlawful”. Promises obtained by fraud are void.¹⁵ In situation a), c), and d) the fraud is unlawful and L can claim damages. Danish Law is thus in accordance with Articles 4:107 and 4:117 of the PECL.

In the case of situation b) the Muslim does not act unlawfully if L is discriminating against him on ethnical or religious grounds.

Question 2: Sharing with Third Persons

L rents an apartment to T. After some months, T wants to take into the apartment:

¹² Consolidated Act no. 626 of 29 June 1987. This Act implemented the UN Convention on abolition of racial discrimination of 21 December 1965.

¹³ Act no. 374 of 28 May 2003. This Act implemented Directive 2000/43/EC.

¹⁴ Several cases have dealt with the rules of this Act: *Ugeskrift for Retsvæsen 1975, p.438*, Western High Court Decision: An easement stating that summer cottages could not be let 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 prefer persons of Danish origin as tenants rather than foreigners. *Ugeskrift for Retsvæsen 1999, p. 1286*, Eastern High Court Decision: A doorkeeper was found guilty of violating the Discrimination Act for not allowing a person of Moroccan origin to enter a discotheque.

¹⁵ Cf. Section 30 of the Contracts Act.

- a) her husband and children.
- b) her boyfriend.
- c) her homosexual partner.
- d) her parents.

Is this possible against the will of L?

In the situations mentioned under a)-c) the answer is yes. These persons will be considered as part of T's household, but they will not enter as parties to the contract. The answer could be no, if a restriction on the number of persons in the apartment is part of the contract. According to a High Court Decision concerning brothers, L can probably deny T the right to take the parents (d) into the apartment.¹⁶ However, without further information the answer is subject to some uncertainty.

If not, what are L's remedies?

L must direct a complaint and warning to T in which he encourages him to ask the persons not belonging to his household to leave. If T's parents choose to stay, L can terminate the contract due to T's breach of contract. There is no regulation on minimum space for each inhabitant, and L cannot ask for an increase of the rent due to the more intense use of the premises.

Variant 1: T dies. The persons listed under a) – c), who were sharing the house with T during her last years, want to continue the contract with L under the same conditions.

- a) *The husband and the children are entitled to continue the tenancy under Section 75(1) of the Private Housing Act*
- b) *and c) The boyfriend and the homosexual partner are entitled to continue the tenancy under Section 75(2) of the Private Housing Act, but only if they have been part of the household of the deceased for the last two years or more. Registered homosexual partners are covered by Section 75(1).*

Variant 2: Students' house: From the very beginning the apartment was inhabited by a group of students with L's consent. However, the contract was concluded only between L and T, who is one of the students and was selected by L because she had the best financial background. After the departure of one of the students from the house, T wants to accept another student called A. Is this possible against the will of L, who does not like A?

Unless otherwise agreed, the other students do not have any contractual rights against L and they are not liable for the rent either jointly or severally. However the exact answer depends on what actually has been agreed upon by the parties. If L has accepted the others as part of the household and not as individuals, he cannot refuse the introduction of a new student to the apartment as long as T lives there. If L has expressly or impliedly accepted that each student is entitled to find his or her own successor, he has also accepted each student as a party to the contract.

¹⁶ Cf. *Tidsskrift for Bolig- og Byggeret* 1999, p.356, Western High Court Decision. A man was not allowed to let his brother and his family live in the apartment for a longer period of time.

Question 3: Sub-renting

Does, and if yes under what conditions, T possess the right to sub-rent a room in his apartment to S?

Yes. Under Section 69(1) of the Private Housing Act, T has a right to sub-let a maximum of half the rooms to another person, unless the sub-letting will lead to the number of persons in the apartment exceeding the number of rooms. Section 69 cannot be derogated from to the disadvantage of the tenant. (Section 79 of the Private Housing Act.)

Can T make the permission conditional on an increase of the rent?

No, unless T is not entitled to sub-let under Section 69.

What are L's rights if T sub-rents a room without permission (termination, damages)?

If T is entitled to sub-let under Section 69(1), L cannot terminate the tenancy or claim damages. If the number of persons exceed the number of rooms, L must direct a complaint and warning to T, urging a reduction of the number of tenants. If T should continue to sub-let, L can terminate the contract immediately and claim damages.¹⁷ If the sublet is illegal, T does not owe the rent received from S to L. He only has to fulfil his own contractual obligations.

Question 4: Formal Requirements and Registration

a) Does the tenancy contract require a specific form (e.g. in writing) – if yes, what is the rationale of this requirement? What is the consequence if this form is not observed?

The tenancy agreement does not require a specific form. However Section 4(1) of the Private Housing Act gives each of the parties under a tenancy agreement the right to demand the agreement to be in writing.

b) If an oral contract is valid, are there any additional requirements to be satisfied to render it enforceable before a court?

If sufficient evidence is given of the existence of a tenancy agreement, nothing else is required.

c) Does the contract need to be registered in a public register? What are the consequences in private law, especially in court actions, if the registration does not take place?

Registration in the Land Registry (tingbogen) is not obligatory. Under Section 7(1) of the Private Housing Act, the fundamental rights of tenants are enforceable against

¹⁷ Cf. Section 93(1)(f) of the Private Housing Act.

anyone, without registration. If T has been granted special rights, he has to register the tenancy agreement in order to be protected against any new owners and the creditors of L.¹⁸

Question 5: Extra payments and Commission of Estate Agents

During the negotiations, L requests from T, who wants to become the tenant, the sum of 100 € (the monthly rent being 1000 €) for the drafting of the contractual documents. Is this legal?

No, not if the tenancy agreement is for residential premises. Under Section 6 of the Private Housing Act, it is not permitted to receive any kind of payment from the tenant in return for allowing him be party to a contract.¹⁹

Variant 1: The sum of 500 € is requested from T by F who is the current tenant in the house,

- a) because F promises to make L accept T as her successor;
- b) because F agrees to leave the apartment one month before the final deadline, so as to allow T to move in earlier.

a) This is also a violation of Section 6 of the Private Housing Act, which applies to everybody who is instrumental in bringing about a tenancy contract.

b) This arrangement will normally be accepted as a legal form of sub-tenancy contract.

Variant 2: Estate agent A, who was first approached by T, acted as an intermediary in the conclusion of the contract, requests the sum of 2000 € from T as commission. The agency contract concluded between T and A foresees a commission of two monthly rents for A's services, whereas L is not supposed to pay for A's services. Is this claim lawful?

No, this would also fall foul of Section 6 of the Private Housing Act and would therefore be illegal. The estate agent can only demand his fee from L, and only if it is part of their agreement. That is why estate agents in Denmark almost never act as intermediaries as far as rented residential premises are concerned. Instead they assist parties conveying real estate.

Set 2: Duration and Termination of the Contract

Short General Introduction:

Tenancy agreements can be for a limited or an unlimited period. As far as limited tenancies are concerned, neither party can give notice to terminate the contract unless otherwise agreed. Unlimited tenancies can normally be terminated by T giving three months notice, while L can only give notice if certain indispensable conditions laid down

¹⁸ Cf. Jespersen, H.K.: Lejeret 1, (1989) p. 87-92.

¹⁹ Cf. Edlund, H.H: Lejelovens dusørregel, Ugeskrift for Retsvæsen 1991, part B, pp. 114-120.

in the Private Housing Act are met. Immediate termination of the contract is only possible if one of the parties has committed a fundamental breach of contract.

Question 6: Contract Unlimited in Time

- a) L and T have concluded a tenancy contract which does not contain any limitation in time. Under which conditions and terms is L allowed to give notice?

The conditions are to be found in Sections 82 and 83 of The Private Housing Act. These rules are exhaustive. No other conditions and terms can legally be agreed upon to the disadvantage of the tenant.

Under these sections, L can give notice to T if L intends to use the apartment himself, if he intends to demolish or reconstruct the building, if T is the caretaker and has not fulfilled his duties properly, if T has seriously disturbed the domestic peace, or if other substantial reasons makes it a matter of major importance for L to be released from the contract.

In particular: Can L give notice if she wants to renovate the house to increase the rent afterwards, or if she wants to use it for herself or for family members?

The answer to the first part of the question is 'Yes', provided the renovation is so radical that it will not be possible to live in the apartment whilst it is undertaken.²⁰ The answer to the second part is that L can legally give notice only if she wants to use the apartment herself, but not if she intends to let others move into the apartment.

Let us assume that in a trial, L wins a title for eviction which acquires res iudicata effect. How will the execution of the title normally be enforced?

The eviction procedure is as follows: L sends a notice to T. T can object within 6 weeks. If he does so, L is obliged to take T to court if he wants to bring his notice into effect. T will not be evicted under a bailiff's order unless there is a court decision²¹ or unless he has not protested against the notice from L.²²

If T does not leave the premises before the fixed date, he will be evicted under a bailiff's order. (Section 528 of the Administration of Justice Act.)²³

Does T have any legal defences in the execution procedure if she does not find another apartment and risks becoming homeless once the title is executed?

No, it will not be taken into consideration by the bailiff during the execution procedure. However, if the notice is given because L wants to use the apartment herself, the eviction will only be allowed by the Court after considering the conditions of both L and T.

²⁰ Cf. *Ugeskrift for Retsvæsen 2002*, p. 2416, Western High Court Decision.

²¹ Cf. Section 478 of the Administration of Justice Act.

²² Cf. *Ugeskrift for Retsvæsen 2003*, p. 1085, Western High Court Decision.

²³ Consolidated Act no. 779 of 16 September 2002.

²⁴ Cf. Section 478 of the Administration of Justice Act.

²⁵ Cf. *Ugeskrift for Retsvæsen 2003*, p. 1085, Western High Court Decision.

(Section 84(2) of the Private Housing Act.) Here the risk of T becoming homeless will be weighed against L's reasons for wanting to take back the apartment.²⁶

Question 7: Contract Limited in Time and Termination

L and T have concluded a contract limited to one year. Under which conditions and terms is such a contractual stipulation possible?

The contract is not void. However the time limitation can be overruled if L cannot justify his reasons for introducing the limitation into the contract (Section 80(3) of the Private Housing Act).²⁹

Where the rent control system applies, the time limit can also be overruled if an assessment of all terms of the contract leads to the conclusion that the time limit is more burdensome than the terms of contracts for similar tenancies in the house (Section 5(8) of the Temporary Regulation of Private Housing Act).

If a time limit is overruled, the tenancy becomes one of unlimited duration.

Question 8: Justification for Time Limit

- a) L and T have concluded a contract limited to one year with automatic renewal for another year, provided that no party has given notice three months before the annual deadline. No particular reason for this limitation is mentioned in the contract. After 6 years, respecting the delay of three months before the annual deadline, L gives notice of termination without alleging any reasons. Is this lawful?

Most likely not. The automatic renewal term will almost certainly be overruled under Section 80(3) of the Private Housing Act. Only if L is able to satisfy the Court that his reasons for the time limitation are justified, will the condition not be overruled so that T will be forced to move.³⁰

- b) Does the restriction of notice under a) (which is possible only once per year) apply to T, too?

Yes, but the parties may have agreed to other terms in the contract. If nothing is agreed on this issue in the contract, the tenant is not allowed to give notice. (Section 80(1) of the Private Housing Act.)

Question 9: Termination in Special Cases

L and T have concluded a contract with or without time limit.

- a) L dies. Can her heirs give immediate notice to T?

²⁶ See for example *Ugeskrift for Retsvæsen 1977, p. 181*, Western High Court Decision and *Ugeskrift for Retsvæsen 1997, p. 1444*, Western High Court Decision.

²⁷ Cf. Section 478 of the Administration of Justice Act.

²⁸ Cf. *Ugeskrift for Retsvæsen 2003, p. 1085*, Western High Court Decision.

²⁹ Cf. *Ugeskrift for Retsvæsen 1996, p. 461*, Eastern High Court Decision.

³⁰ Cf. *Tidsskrift for Bolig og Byggeret 2000, p. 444*, Western High Court Decision.

Theoretically the answer is yes. In practice the heirs will be required to wait until the Probate Court hands over control of the estate to the heirs. This normally takes between 4 to 6 weeks from the date of death. The heirs are bound by the contract, i.e. they can only terminate the agreement at the next regular deadline at which L herself would have been in a position to terminate. If the deceased was bound by an extraordinary long term of notice, the heirs are empowered to terminate the contract with an ordinary term of notice (i.e. 3 months) under section 75(4) of the Private Housing Act.

b) The house is sold. Has the buyer a right to give anticipated notice?

c) A bankruptcy procedure is carried out against L at the end of which the house is auctioned off. Can the buyer give anticipated notice?

In both examples the answer is yes, but only if Sections 82 and 83 (see question 6) applies. This is not very often the case. Another condition is that the buyer must come into possession of the building before he can give notice to L.

Circumvention of the protection of the tenant seems to be almost impossible.

Question 10: Tenancy “For Life”

L rents an apartment to T, with the contract containing the explicit clause "for life". May, and if so under what circumstances, L give notice before T's death?

L cannot under these circumstances give notice before T's death.

If the clause is interpreted so that it only restrains L from giving notice, T is free to give notice whenever he likes.

If the clause also hinders T from giving notice, T can hand over the premises to L. In doing so he commits a fundamental breach of contract, which entitles L to claim damages. However under Section 86(3) and in accordance with Article 9:505 of PECL, L is obliged to try to rent the premises to another tenant as soon as possible in order to reduce his loss.³¹

The interpretation of contracts in Denmark is largely in accordance with the principles laid down in Chapter 5 of PECL.

A contract for life cannot be registered as “a real right of residence”. However T can register the tenancy agreement to be protected against any new owners and the creditors of L. (Section 7(2) of the Private Housing Act.)

Question 11: Immediate Termination under Unusual Circumstances

L and T have concluded a tenancy contract with or without time limit. Under what conditions and terms may one party give immediate notice under unusual circumstances?

Section 93(1) of the Private Housing Act contains no less than 11 different reasons for the immediate termination of a tenancy agreement due to T's fundamental breach of contract. The most important is Section 93(1)(a) which entitles L to terminate the

³¹ Cf. *Ugeskrift for Retsvæsen* 2002, p. 1109, Eastern High Court Decision.

tenancy immediately if T has not paid the rent in due time, and has not reacted after having received a claim from L stating that if he still does not pay before a final date, the tenancy can be terminated. (Section 93(2).) Other reasons for termination are: using the premises other than for its intended purposes (e.g. using commercial premises for residence or vice versa) (93(1)(b)); neglect of the premises, (93(1)(e)); disturbing the domestic peace (93(1)(g)); and - if the situation is not covered by the schedules a-l - if other substantial reasons make it a matter of major importance, then L can terminate the contract immediately (93(1)(k). In most of these situations, the courts will not grant immediate termination unless L has sent a claim to T stating that his conduct is not acceptable, and that he risks immediate termination of the tenancy if he continues to be in breach of his obligations.

In particular:

a) Can L give immediate notice if T did not pay the two last monthly rents?

Yes indeed.

In fact, a delay of one month in the payment of rent may be sufficient justification. (Section 93(1)(a) and 93(2) of the Private Housing Act.)

b) Can L give immediate notice if T, by repeatedly insulting his neighbours, has endangered peace in the house?

Yes, but only provided that he has informed T, on at least one occasion, that further insults will lead to the immediate termination of the tenancy.

If, after receiving the warning, the tenant again seriously disturbs the domestic peace, L may give notice. (Section 93(1)(g) of the Private Housing Act.)

c) Is a contractual clause (“clause résolutoire”) valid according to which the contract is automatically terminated in case T does not pay two consecutive monthly rents or commits any other “gross” breaches of her duties?

No, such a clause is an infringement of the exhaustive set of rules in Section 93 of the Private Housing Act.

Set 3: Rent and Rent Increase

Short General Introduction:

The rules concerning rent increases are highly complex. Currently, at least five different rent control systems exist simultaneously. The most important are the running-cost-system (where the Temporary Regulation of Private Housing Act applies, i.e., in most major cities) and the value-of-the-tenancy-system (where the Temporary Regulation of Private Housing Act does not apply). Where the Temporary Regulation of Private Housing Act applies, a slightly less bureaucratic system is operated for smaller buildings with a maximum of 6 apartments; yet the maximum rent for these tenancies cannot exceed the rent of similar apartments in larger buildings.

Special provisions regulate: 1) tenancies where the premises have undergone fundamental improvements, 2) tenancies in new buildings, and 3) tenancies where most of the building (as from 1 January 1980) was used for business purposes etc.

In most tenancies, it is possible to raise the rent if L has made improvements or if the increase is due to higher real estate taxes.

Question 12: Settlement Date and Modes of Payment

When is the rent due?

Normally the rent is due on the first day of each month, but the parties are free to agree upon another date. In both cases the tenant enjoys a degree of flexibility in paying after the due date. Section 33(2) of the Private Housing Act prescribes that T always has the right to pay three days later than the due date, and if the due date is on a Saturday or Sunday, the three days runs from the first working day after the due date. The rule is not in accordance with the first part of Article 1:304(2) of PECL, because official holidays occurring during the three-day period are not included in the calculation. The other part of Article 1:304(2) applies.

Is there any restriction on modes of payment?

No, but L is free to choose how and where (in Denmark) payment shall be made. This is not in accordance with Article 7:107(1) of PECL. If the mode of payment is not fixed, a rule like the one in Article 7:101(1)(a) of PECL applies.

Does and if yes, under which conditions, have L a right of distraint (pledge) on T's furniture and other belongings to cover the rent and possible other claims against T?

No, L does not have special rights over the furniture or other belongings in the apartment (Section 509 of the Administration of Justice Act), instead L can provide in the contract that the tenant should make a cash deposit (of up to three months rent) to cover such eventualities. See question 16 below.

Question 13: Requirements for Rent Increase

What are the ordinary substantive and procedural requirements for an increase in the rent?

Substantive requirements: As far as tenancies, to which the Temporary Regulation of Private Housing Act applies, are concerned, the rent can be raised when the running costs

exceed the existing rent and when improvements have been made. (Sections 7 and 8 of the Temporary Regulation of Private Housing Act.) 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. (Sections 47 and 58 of the Private Housing Act and Sections 27 and 29(c) of the Temporary Regulation of Private Housing Act.)

Procedural requirements: 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 T; it must state the reasons for the increase; and finally it must contain information about T's right to raise an objection. The demand for an increase in rent is void if it fails to comply with these requirements. (Sections 48 and 59 of the Private Housing Act and Sections 12, 13 and 27 of the Temporary Regulation of Private Housing Act.)

Are there rules on a maximum increase in private and criminal law (e.g. on profiteering)?

For tenancies where the Temporary Regulation of Private Housing Act applies, the sum of the running costs, a fixed owner's yield, fixed amounts for exterior maintenance and a return on investments in improvements constitute the maximum of the rent increase.

For most others tenancies, there are no rules on maximum increases as long as the rent does not significantly exceed the value of the individual tenancy. If it does, the rent can be lowered and the landlord can perhaps be penalised for excess profiteering under Section 282 of the Criminal Code.³²

By whom are these rules enforced? (public ministry or national or local administrative agency etc)

As a starting point, the rules on rent increase are enforced by the landlord personally. Tenants are, however, free to object.

If a tenant objects to an increase in the rent, the landlord is normally obliged to bring the matter before a rent tribunal, if he still wants to enforce the increase. The decision of a rent tribunal can be referred to a court by either party. Finally, if the rent exceeds the legal maximum, he can bring the matter before a rent tribunal at any time.

Question 14: "Index-clause"

Is it possible to contractually link the annual increase of the rent with the annual average increase of the cost of living (or a similar index) as established by official statistics?

The main rule provides that such a term is illegal. There is an exception for, inter alia, buildings built after 1 January 1992, and for residential premises established in former non-residential premises (Section 53(3-6) of the Private Housing Act and Section 15 a of the Temporary Regulation of Private Housing Act.)

³² Consolidated Act no. 779 of 16 September 2002.

Variant: Is a progressive rent arrangement, providing for an annual increase of X percent, lawful?

No, but one can lawfully make an agreement where the rent for a fixed period is raised by fixed amounts on settled dates (Section 53(2) of the Private Housing Act.)

Question 15: Rent Increase by Contractual Amendment

By ordinary letter, L tells T that the rent will be increased by 10% in three months time to compensate for the general increase of the cost of living. No further justification is provided to support this claim. Without protesting, T pays the increased rent for 3 months without any reservation. After this time only, she gets doubts and consults a lawyer. Can T get some money back?

The parties may expressly agree on rent increases by making contractual amendments. Such an agreement is primarily regulated by general contract law. However 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 at any time bring a claim for a decrease in rent before a rent tribunal. The present situation can be interpreted as a valid contractual amendment, but not if the tenant has merely received the letter and paid the increased rent for such a short period. The announcement of the rent increase will not be interpreted as an 'offer' from the landlord but rather as a command. Should the tenant pay the increased rent for a number of years without protesting, he will most likely be bound by his passivity.³³

If yes, can T off-set the sum to be repaid against future rent instalments on her own motion without judicial intervention?

Yes, unless T has previously agreed to reduce his right to set off.³⁴

Question 16: Deposits

What are the basic rules on deposits?

L is allowed to ask for a deposit, but it cannot exceed three months rent (Section 34 of the Private Housing Act and Section 6 of the Temporary Regulation of Private Housing Act). If the rent can be increased, L can increase the deposit accordingly. After the expiry of the lease L can off-set his claims against the deposit.

Question 17: Utilities

What are the general rules on utilities? Which utilities may the landlord make the tenant pay by contractual stipulation?

L can make T pay for power, heating, water, wireless signals or cable-TV. If L is responsible for paying the supply of utilities, T is required to reimburse L. T normally

³³ Cf. Nielsen, H.H.: Nærmere om retsfortabende passivitet i leje forhold, Ugeskrift for Retsvæsen 2002, part B, pp. 298-305.

³⁴ Cf. Jespersen, H.K.: Lejerens modregningsret eller udlejerens ophævelsesadgang, Tidsskrift for Bolig- og Byggeret, 2001, pp. 126-131.

pays annually when the overall sums are calculated. (Chapters VII, VII A and VII B of the Private Housing Act.) It is often arranged for T to pay the supplier directly, and in such a case the supply of utilities does not form part of the tenancy agreement.

Is it legal to establish in the contract a monthly lump sum to cover certain or all utilities?

No. Only the above described accounting system can apply. (Sections 46, 46(c) and 46(p) of the Private Housing Act.)

Set 4: Obligations of the Parties in the Performance of the Contract and Standard Terms

Short General Introduction:

See the answer to question 18.

Question 18: Control of Standard Terms

What kind of control exists for clauses contained in standard contracts used by a landlord acting in a non-commercial capacity? (presupposing that the national implementation legislation of the Unfair Terms Directive applies to commercial landlords)

The Ministry of Social Affairs has issued a standard contract (tenancy agreement) for private rented properties. This agreement contains everything needed, including space for individual terms and an explanatory text to help filling in the blank spaces in the contract.

This tenancy agreement is made in co-operation with tenants and landlords associations. It is permissible not to use the standard tenancy agreement, but if landlords use other agreements that are not authorised by the Ministry of Social Affairs, Section 5 of the Private Housing Act applies. 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. Section 5 applies to landlords acting in a commercial as well as, more rarely, landlords acting in a non-commercial capacity.

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 Private Housing Act. The same goes for Article 4:100 of PECL.

Question 19: Frequent Standard Terms

The terms of a standard contract used by L (acting in a non-commercial capacity) provide that:

- a) The tenant must not withhold rent or off-set rent instalments against any alleged claims of her own, except if authorised by a judge.
- b) The cost of small reparations, up to 100 € per annum, has to be met by the tenant.

- c) At the end of the tenancy, the apartment has to be repainted by a professional painter at the expense of the tenant.
- d) If the tenant becomes a member of a tenants' association, the landlord has the right to give notice.

Are these clauses lawful?

- a) *Yes. This is not regulated by the existing Acts.*
- b) *No, unless the agreement specifies which parts of the building the tenant is obliged to repair.*
- c) *Yes, but not if the landlord has used a standard tenancy agreement other than the authorised one.*
- d) *No. See question 6 a. The tenant has a constitutional right to join a tenants association.³⁵*

If not, may the standard terms be challenged by a tenants' association, too?

No. Tenants associations can act as the tenant's agents and not as a party to the contract. Under Section 5(2) of the Private Housing Act, tenants associations (and landlords associations) are given a say in drawing up the terms of the standard tenancy agreement issued by the Ministry of Social Affairs (Section 5(2) of the Private Housing Act). Directive 98/27/EC has been implemented as a separate Act,³⁶ but for practical purposes this Act is not relevant to tenancies because of the widespread use of the standard tenancy agreement of the Ministry of Social Affairs.

Question 20: Changes to the Building by the Tenant

T is a tenant in a building with 4 floors and 10 apartments. He asks L for the permission to install a parabolic TV antenna on his balcony. L refuses the permission by alleging that otherwise, he would have to give the permission to every tenant, which would ruin the view of the house aesthetically. In addition, he argues that 15 TV programs are already accessible via the cable TV connection of the house, which should be more than sufficient to satisfy the tenant's demand.

Under Section 29(2) - 29(7) of the Private Housing Act, T is entitled to install a TV aerial on the building. L can refuse, but normally only if all the programmes that T wants to watch are readily available via a communal aerial. L points out a place for T to put the aerial³⁷ and he can also demand a deposit as security for the costs of taking down the aerial, when T moves. Refusal on aesthetic grounds cannot be accepted.³⁸

³⁵ Cf. Section 78 of the Constitutional Act of Denmark of 5 June 1953.

³⁶ Act no. 1257 of 20 December 2000.

³⁷ The installment costs at the place of residence must be fair cf. Ugeskrift for Retsvæsen 1999, p. 656, Western High Court Decision.

³⁸ Cf. Folketingstidende 1999-2000, Addendum A, p. 6444.

Variant 1: Assuming that no Turkish programs can be received through the existing cable TV connection, does it matter if T is a Turkish immigrant who does not speak the national language well?

If the programmes T wants to watch are not available via a communal aerial installation, T can install a 'satellite dish', at a place designated by L (Section 29(2) - 29(7) of the Private Housing Act.)

Because of this, there is no need for public law mechanisms to which L might turn.

Variant 2:

On his balcony, T exhibits a huge poster with the slogan "Peace in Palestine and Iraq". Can L force him to remove it?

Yes. Under Sections 28 and 30 of the Private Housing Act, T cannot exhibit such a poster on the building without the consent of L, but only if the balcony is open. If it closed, the answer is no, because L cannot force T to remove a poster that is "inside" the apartment, even though it may be visible through a window.

Question 21: The Landlord's Right of Possession of the Keys

Does L have the right to keep one set of the keys of the apartment rented to T?

Yes, but the tenant is usually free to change the lock. (Section 20 of the Private Housing Act.)

Under which conditions is L allowed to enter the apartment without T's previous permission?

If it is a matter of extreme urgency (e.g. broken water pipes) the Landlord can enter the apartment without notice. In other cases (that involve no material inconvenience for the tenant) he must give 6 weeks notice, and if his entry will cause material inconvenience to the tenant the prescribed notice is 3 months. (Section 55 of the Private Housing Act.)

If these conditions are not fulfilled, does L commit a criminal offence when entering the apartment without T's previous permission?

Yes. Such an entry is a violation of the prohibition³⁹ against taking the law into one's own hands under Section 294 of the Criminal Code.

Question 22: The Landlord's Liability for Personal Injury

As the stairs in the house are not well maintained and in a slippery state, C, T's child, falls and breaks her leg. Is L liable, and if yes under which legal basis?

Yes, L is contractually liable under Section 13 of the Private Housing Act. The Landlord would be liable under the unwritten rules on tortious liability, even if the person

³⁹ Cf. *Ugeskrift for Retsvæsen* 1889, p. 119, Supreme Court Decision.

who has broken their leg does not reside in the building. In reality, the outcome will be exactly the same for both the landlord and for the injured person.

Set 5: Breach of Contract

Short General Introduction:

If one party fails to fulfil a contract, the other party will normally be entitled to terminate the contract immediately if the breach of contract is considered fundamental, as described in Article 8:103 and 9:301 of the PECL. In this case the injured party can also claim damages. The injured party is free to choose whether to terminate the contract or to demand specific performance (and damages if he has suffered loss.) If the breach of contract is not considered fundamental, the injured party can still be entitled to damages and/or a reduction of the rent in accordance with Article 9:401 of PECL. A party can only be held liable to pay damages if he has acted deliberately or negligently, if he has given a guarantee, or if it is prescribed by law. The Private Housing Act contains a number of rules on these matters, but other questions are subject solely to the unwritten law of contract and tort.

Question 23: Destruction of the House

- a) L and T conclude a tenancy contract. Before T takes possession of the apartment, it is destroyed by a fire for which neither party is responsible.

The contract no longer applies.⁴⁰ (Section 17 of the Private Housing Act.) Neither L nor T has a claim against the other party. If the apartment is rebuilt, T has a right to be reinstated.

- b) Does it make a difference if the apartment is destroyed after transfer of possession to the tenant?

No. The same rule applies.

- c) Does it make a difference if the apartment has already been destroyed at the time of the conclusion of the contract without the parties' knowledge?

No. The same rule applies, unless the Landlord knew about the fire when concluding the contract, in which case he may be held liable.

Question 24: "Double Contracts"

L concludes a tenancy contract with T1. Shortly after, he concludes another tenancy contract over the same apartment also with T2, who is not aware of the earlier contract concluded with T1. Equally unaware of the second contract concluded with T2, T1 then takes possession of the apartment. The two contracts are only discovered when T2 wants to take possession of the apartment as well. What are the legal consequences for both contracts and the rights of the parties?

⁴⁰ Cf. *Ugeskrift for Retsvæsen* 1971, p. 248, Supreme Court Decision.

T1 is entitled to remain in the apartment, and is considered the rightful tenant, because he was the first to take possession and because he has acted in good faith. (Unwritten property law rules.) T2 is entitled to claim damages from L for breach of contract. (Unwritten law of contract and tort.)

Question 25: Delayed Completion

L is an investor and buys an apartment from a big building company. According to the contract, the apartment should be ready from 1/1/2003. However, the purchase contract contains a (lawful) clause according to which the builder is not responsible for delay unless caused by him. L rents the apartment to T from 17/1/2003 without any special arrangements in the case of delay. However, as the neighbour N challenges, though unsuccessfully in the end, the building permit granted by the competent authority to B in an administrative law procedure, the apartment is not available until 1/1/2004. Has T any claims against L?

Yes. T can terminate the contract due to L's breach of contract and claim damages in accordance with the unwritten law of contract and tort.

Has L claims against N?

No. If N deliberately challenges the building permit in order to harm T, then T may be in a position to claim damages from N in accordance with the unwritten law of contract and tort. T's claim is not governed by administrative law.

Question 26: State and Characteristics of the House (Guarantees)

L rents an apartment to T. T wants to diminish the rent because

a) Stains of mildew have been found in some corners.

The rent cannot normally be reduced in this case. T may succeed, however, in obliging L to make repairs if he has neglected his duty to maintain the building properly (Section 11 of the Private Housing Act and Section 22 of the Temporary Regulation of Private Housing Act.) If the mildew makes it impossible to use part of the apartment, then T may be entitled to a temporary reduction of the rent (Section 11(2) of the Private Housing Act). This will also be the case if L has given a guarantee that the apartment is free of mildew. In very serious cases of mildew, the tenant may terminate the contract and claim damages.⁴¹

Variant 1: By letter, T asks L to renovate the walls affected by mildew within 2 weeks. As T does not reply, T has the repair done by a specialist and wants to offset the costs from the monthly rent rates. Is this lawful?

Yes, but only if L has neglected his duty to maintain the building properly (Section 11 of the Private Housing Act) or given a guarantee.

⁴¹ Cf. *Tidsskrift for Bolig- og Byggeret*, 1999, p. 376, Eastern High Court Decision.

Variant 2: T did not discover the mildew stains when inspecting the house before entering into the contract, even though these had already been present. Does this preclude her from claiming a rent reduction?

Normally it would not, however, if T has not raised an objection within 14 days of taking possession of the apartment she will lose her right to claim a rent reduction (Section 14 of the Private Housing Act).

- b) A noisy building site for a big road is opened by the city administration next to the apartment.

No, unless L withheld this information when entering into the agreement or if he has given a guarantee. Danish law accords with Article 4:103(1)(a), 4:106 and 4:107(3)(d) of PECL.

- c) The tenants of the neighbouring apartment in the house have repeatedly and despite T's complaints organised loud nightly parties from 11 p.m. to 5 a.m.

No, L can be held responsible for these circumstances unless he has ignored the complaints of T or others over a longer period, has given a guarantee or has neglected his obligation under Section 27(1) of the Private Housing Act to use his powers to ensure domestic peace. See question 28 below.

Whether a guarantee has been given or not is decided by applying rules very similar to the ones in Article 6:101 and 6:102 of PECL.

To the extent the landlord is held liable under a)-c): Could his liability have been lawfully excluded by a disclaimer clause contained in the contract?

- a) Yes. b) Yes. c) Possibly. In all cases it is a general condition that L has not acted deliberately or with a high degree of negligence.

In addition, the tenant can further make use of public law mechanisms to ensure the adequate quality of the premises. Environmental regulations provide a certain degree of protection in the case of b)⁴² and the police could intervene in case c).⁴³

Question 27: House to be used for Specific Purpose

L rents a big apartment to T under the assumption shared by both parties but not explicitly stipulated in the contract that some rooms will be used by T as a surgery. However, the local authorities deny the permission for the surgery to be opened in the studio for fire protection and zoning law reasons. What are T's claims?

T has no cause of action unless the specified use had been expressed to L previously or if the tenancy agreement can be interpreted as containing a guarantee by L that some of the rooms may be used as a surgery. If this is the case, L can make a

⁴² Cf. Section 42 of the Environmental Protection Act (Consolidated Act no. 753 of 25 August 2001).

⁴³ Information on this issue can be found in most local police regulations, cf. Section 3 of the model police regulation (circular letter no. 203 of 30 September 1968).

claim for a reduction in the rent, for damages and/or for termination of the contract due to L's breach of contract (Section 15 of the Private Housing Act.)

No special rules apply to mixed "private-professional" tenancies. Such apartments are generally considered as dwellings. (Section 3 of the Private Housing Act.)

Set 6: The Relationship among the Tenant and Third Persons

Short General Introduction:

There are no specific rules concerning the relationship between the tenant and third parties.

Question 28: Neighbour Relations

T and N are tenants of neighbouring apartments in the same house. How can T react if N continuously plays excessively loud music or constantly produces bad smells penetrating into T's apartment?

L is contractually obliged to secure peaceful enjoyment of the tenancy under Section 27 of the Private Housing Act. At present, the only options open to T would be to 1) direct a complaint to L and ask him to use his powers to make N stop committing a nuisance or 2) terminate the contract due to N's inconsiderate behaviour.

A committee of the Ministry of Social Affairs has, however, recently recommended the adoption of new rules in the Private Housing Act. Under the new rules should L fail to react to complaints made by T, it will be possible for T to seek a sanction of such behaviour by a rent tribunal instead.

If N owned the apartment it would be almost impossible to have him expelled from the premises. In this case the only opportunity for the tenant would be to direct a complaint about the noise to the police.⁴⁴ Complaints about smells do not fall within the jurisdiction of any public authority, as the environmental authorities are only empowered to deal with commercial premises.

Question 29: Damages caused by Third Parties

T has rented a house from L. The house is damaged negligently by a lorry during construction work undertaken at a neighbour's house, which causes repair costs of 10000 € and entails T being unable to use two rooms for two weeks. Does T have claims against the building company or the neighbour N who commissioned the building company?

If property belonging to T is damaged or T is injured, then T has a claim against the building company. Most probably he will not succeed in his claim against the neighbour. As the house is seriously damaged and a significant section of the property cannot be used for a period, in accordance with Section 11(2) of the Private Housing Act, T is entitled to a reduction in rent.

⁴⁴ See question 26 (c).

L can demand reimbursement of his loss from the building company or possibly also from N.

Question 30: Unwelcome Help among Neighbours (Negotiorum Gestio)

When T has left his rented apartment for holidays, neighbour N notices a strong gas-like smell coming out of T's door. Assuming that the gas pipe in T's apartment has a leak and that a danger of explosion may be imminent, N breaks open the apartment door, thereby destroying his chisel worth 10 € and causing a damage of 200 € at the apartment door. After entering the apartment, N discovers, however, that the gas-like smell stems from the garbage bin which T had forgotten to empty before leaving. Has N a claim against T or vice-versa?

T has a claim against N. One of the conditions for not being liable for damages in a 'negotiorum gestio' situation is that the intervention must be necessary to avoid or reduce a loss. This is not the case in this scenario because there was no danger of T suffering a loss due to the contents of the garbage bin. N may therefore be held liable for having interfered. It is of minor importance whether N has acted in good faith or not. The assessment depends solely on whether a reasonable person in the same circumstances would have acted in the same manner. N could only successfully claim against T if it was accepted that the danger appeared imminent to N.

Aarhus, 14 October 2003

Hans Henrik Edlund,

Associate Professor, Ph.D.

Department of Law

The Aarhus School of Business