Finland

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1. Introduction

A century ago tenants formed 'incomparably the greater part'[2] of town populations. Today, however, homeownership is twice as frequent as rental housing, social and private. The dominant form of tenure is organised in a peculiar way, so a few words are in order about corporate law before moving on to tenancy.

Finns typically live in homes owned by companies that they own themselves. Nearly all multi-storey residential buildings and row or semi-detached houses are company-owned, mainly through a special limited-liability company called the 'housing company' (*asunto-osakeyhtiö*). Regulated in the Housing Companies Act (since 1926)[3] and the articles of association, the housing company owns buildings where residential apartments take up more than half of the total floor area.[4] Its shareholders, who can be natural or legal persons or groups of these, own shares that confer the right to the possession of a specific apartment.[5] The shareholders decide the company affairs basically in the same way as in ordinary business companies. Although a legal person, the housing company, is inserted between an owner-occupant and a dwelling – allegedly simplifying the possession and exercise of rights compared to joint ownership – the dwelling is usually said to be owner-occupied.

In landlord and tenant relations, the landlord is often a shareholder in a housing company. But the housing company can also own flats, and if it rents a flat owned directly by it, the Tenancy Act will apply to the tenant and housing company relationship.

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

For a long period, the development of tenancy legislation was 'a story about the increase of mandatory provisions.'[6] In the early twentieth century, landlord and tenant relations were governed by dispositive law transferred from the early Swedish town

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[2] According to the 1921 proposal 'Ehdotus huoneenvuokralaiksi ynnä perustelut,' 4 *Lainvalmistelukunnan julkaisuja* 1921, 1. 'Also in the countryside, especially in population centres, the number of tenants is not small.' Id.

[3] In 1992, the first act was repealed by the current Housing Companies Act (809/1991) (unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E9910809.PDF).

[4] See more accurately Housing Companies Act 1 and 2. Many buildings are also owned by 'real estate companies,' which are governed by the normal Limited-Liability Companies Act.

[5] The shares are freely negotiable, disposable in a will and subject to inheritance, but the articles of association can contain provisions limiting transferability.

[6] Ari Saarnilehto, *Huoneenvuokran sääntelystä*, Suomalainen lakimiesyhdistys 1981, 49. The first two paragraphs of this outline are mainly based on id., 40–50 and the opening pages of the current commentary to the 1995 Tenancy Act, Ari Kanerva and Petteri Kuhanen, *Laki asuinhuoneiston vuokrauksesta*, Second edition, Suomen Kiinteistöliitto, Kiinteistöalan kustannus 2003.

codes to the Codification of 1734,[7] as well as by standard forms tilted in favour of the landlord[8]. During the First World War, housing shortage necessitated adopting regulations on rent control. After Finland gained its independence in 1917, the first Tenancy Act[9] (which did not include rent control) was passed in 1925. The Act made the tenancy agreement prevail in voluntary transfers of title, and it gave the tenant certain remedies regarding the condition of the apartment. It also supplied an exhaustive list of grounds on which the landlord could rescind the contract, such as the tenant's neglect to pay the rent and nuisance with her way of life. During the Second World War, rent control was re-introduced under legislation passed in accordance with the procedure for amending the Constitution but as an exception to it (hereafter the 'constitutional enactment procedure')[10], because this control was thought to prevent the owner's freedom of use, contrary to protection of property. The government upheld rent control in several cities until 1961 (Helsinki and Tampere) and in part until 1963 (Helsinki).

In 1957, a government committee proposed protecting the tenant against notice as in Swedish law; the report was rejected, and in 1961 a new Act[11] was passed without this protection, yet including the possibility of damages after a notice and the first unconscionability provision in tenancy legislation. The Act did not regulate the amount of rent. But rent control was implemented throughout the country in the dire economic conditions of the late sixties, when interim regulation supporting economic growth 'froze' rents at the level of February 29, 1968 in buildings put up before that date. Landlords increasingly gave notice, and so the next year's interim regulation included the tenant's protection against notice (based on the rejected 1957 proposal). In 1970, this protection was transferred to the proper Act through the constitutional enactment procedure. The unions, especially on the employees' side, played a key part in these 'corporatist' developments, through which tenancy agreements became as a rule unlimited in time, with grounds for notice limited by law to such reasons as the landlord's need for the apartment for her own or family member's or near relative's or employee's use.

In 1974, a system of rent regulation succeeded rent control.[12] Under the new system (incorporated in the Tenancy Act), the landlord could unilaterally increase rent according to annual guidelines issued by the Council of Ministers, which followed the recommendation of a subcommittee that included representatives from the landlords,' tenants' and labour-market unions. In hindsight, one shortcoming of this system was that the subcommittee frequently decided by voting, and the annual rent increases did

[7] The old law was followed during 1809–1917, when Finland was an autonomous Grand Duchy within the Russian Empire.

[8] According to the 1921 proposal, note 2 above, landlord and tenant relations were 'mostly' arranged otherwise than according to the dispositive law. 'The generally employed printed tenancy-contract forms include a host of provisions in favour of the house-owner.' Id., 16.

[9] *Huoneenvuokralaki* (166/1925).

[10] For the history and use of this procedure, see Martin Scheinin, 'Constitutional Law and Human Rights' in *An Introduction to Finnish Law*, Second, revised edition, Edited by Juha Pöyhönen, Kauppakaari 2002, 31–57 at 55–6. 'One of the specific features of Finnish constitutional law is the institution of exceptive enactments, developed when the country was an autonomous Grand-Duchy within the Russian Empire (1809–1917). Finland had its own legislative body which applied the old Swedish constitutional documents but had, of course, no possibility to amend them. As nationhood and a modern market economy emerged during the 19th century, the old Swedish constitutional documents, including the privileges of the Estates, in many ways stood in the way of building an appropriate legislative framework. The solution to the dilemma was found in the institution of exceptive enactments, which are laws that in substance are in contradiction with the Constitution and are therefore adopted in the same procedure as is required for amending the text of the Constitution.' Id.

[11] *Huoneenvuokralaki* (82/1961).

[12] Rent control still reappeared twice for two one-year-long periods in 1976–1978, as part of the economic stabilisation regulation of that period.

not always reflect increases in costs, as was originally planned. Among other shortcomings, the landlord could only increase rent beyond the guidelines through court approval, which was costly in many ways. The tenant could in turn claim rent reduction at any time on the ground that the rent should not exceed market rents. Increase or reduction, the level of market rents was difficult to determine. The government did publish rent statistics to aid the courts and the parties, but at first a problem was that the system had taken off from a condition with no market but a four-year history of rent control. Also later, the statistics were only collected for those ten cities where the general lower court had a special division called the housing court; in other lower courts, the evidence put forward appeared to be even more random.[13]

Twelve years in preparation, a new Tenancy Act[14] was passed in 1987 in accordance with the constitutional enactment procedure. It sustained the rent-regulation system, modified only slightly to include a reasonable profit[15] in the annual rent increase, and among other things it grouped provisions on the leasing of business premises into a separate Chapter. In the early nineties, however, two consecutive reductions in the scope of the rent-regulation system were justified by the need to bring more rental apartments on the market.[16] First, buildings put up on January 1, 1991 or later in the northern and central Finland (but even there excluding university towns) were exempted from the system. In the growing urban areas, it was still considered unnecessary to remove rent regulation, as all housing capacity was already in use and new private construction is very small. Although this out-of-rent-regulation change (which made reference to the Chapter on business leases) differentiated the protection of the tenant across the country, the Constitutional Committee of Parliament allowed it to be passed without the constitutional enactment procedure. In the spring of 1991, the programme of the first conservative government in twenty-five years included the dismantling of the rent-regulation system; in the fall, a new set of changes was passed, which significantly extended the not-rent-regulated regime to cover any contract entered into on February 1, 1992 or later in any part of the country regardless of the age of the building.

Though leaving out data on the consequences of the 1987 Act,[17] a 1994 Government proposal for a new Tenancy Act stated that tens of thousands of private rental apartments had entered the market in 1992–1994.[18] According to the Constitutional Committee of Parliament, the new Act did not require the constitutional enactment procedure, because the fact that old contracts could be renegotiated under it in conditions of greater contractual freedom was a 'purely formal and in the light of protection of property a constitutionally insignificant factor.'[19] In the legislation passed in early 1995, the not-rent-regulated regime became the sole system for all apartments across the country, and the leasing of business premises became regulated in a separate Act[20].

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[13] The problems of the system are discussed in Ari Saarnilehto, 'Eräitä havaintoja heikomman suojan sääntelyn ongelmista ja soveltamisesta oikeuskäytännössä' in Saarnilehto (ed.), *Heikomman suojasta. Yksityisoikeudellisia kirjoituksia*, Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja B, 4 Muut kokoomateokset, Turku 1995, 201–39 at 213–25.

[14] *Huoneenvuokralaki* (634/1987).

[15] The exact percentage 4 was included only in Government proposal 127/84.

[16] The following account of the 1990–1992 changes is based on Ari Saarnilehto, *Huoneenvuokralain uudet säännökset*, Kiinteistöalan kustannus 1992, 9–16.

[17] Saarnilehto, note 13 above, 223–5 includes a critique.

[18] Government proposal 304/1994 general grounds 4.

[19] Constitutional Committee of Parliament Opinion 28/1994.

[20] *Laki liikehuoneiston vuokrauksesta* (482/1995). See notes 46 and 248 below and accompanying text.

b) Basic structure and content of current national law

aa) Private tenancy law

Under the 1995 Act on Residential Leases,[21] the parties can agree on the rent, but the courts may examine the reasonableness of the rent and other contract terms.[22] If the landlord gives notice, she must state a justifiable reason (increasing the rent to a reasonable level, which the tenant refuses to pay, is one), otherwise the termination is illegal. A fixed-term contract expires at the end of the term, and is very difficult to terminate earlier.[23] The parties may agree on the condition of the apartment, but the landlord has the dispositive duty to keep the apartment in a condition that the tenant may reasonably expect of such apartments in the same area.[24] When this duty was made dispositive in the current Act, the tenant who agreed to maintain the apartment was at the same time granted the right to compensation when moving out, after the landlord's notice, for improvements that she has made.[25]

Mandatory provisions in the Act render null and void any stipulation that:[26]

- requires security in excess of three months' rent;[27]
- gives the landlord a unilateral power to increase the rent, unless the parties have also agreed on the grounds on which the rent can be increased;[28]
- removes the tenant's right to off-set a counterclaim against the rent;[29]
- restricts the tenant's rights in connection with transfers of title;[30]
- restricts the tenant's rights to share the apartment[31] or transfer the leasehold[32];
- restricts the tenant's remedies regarding the condition of the apartment;[33]
- extends the grounds on which the landlord may rescind the contract;[34]
- reduces the landlord's notice period or extends the tenant's notice period;[35]
- restricts the tenant's protection against notice;[36]
- restricts the tenant's rights to compensation at termination;
- denies the tenant's right to pay the rent by postal or bank giro or postal order;[37] or
- restricts the tenant's right to request the deferral of the removal date.[38]

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[21] *Laki asuinhuoneiston vuokrauksesta* (481/1995) (hereafter 'Tenancy Act,' 'Act' or '1995 Act') (unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E9950481.PDF).

[22] For details, see **Set 3** below.

[23] For details, see **Set 2** below.

[24] For details, see **Set 5** below.

[25] If it has been agreed that the tenant shall be responsible for the upkeep or maintenance of the apartment, the tenant shall be entitled to compensation from the lessor, after the lessor has given notice on the agreement, for any repairs or alterations carried out by the tenant that have increased the rental value of the apartment. According to 1995 Act 57 para. 2.

[26] The list is exhaustive neither with respect to the explicit provisions of the Act (cf., for example, note 96 below) nor with respect to the fact that many norms on procedure and reasonableness are naturally mandatory.

[27] **16** below.

[28] **13** below.

[29] **15**, **19***a* and **26** below.

[30] **9** below.

[31] **2**–**3** below.

[32] 1995 Act 44–47.

[33] **Set 5** below.

[34] **11** below.

[35] **6** below.

[36] **6** below.

[37] **12** below.

[38] 1995 Act 69 para. 4. See notes 111–113 below and accompanying text.

There are also less common forms of tenure between ownership and tenancy. Modelled mostly on a Swedish example, 'right of occupancy' was introduced in a separate Act in 1990.[39] A right-of-occupancy apartment cannot be redeemed to ownership, but the owner cannot give notice to the occupant, either. Occupants pay an upfront right-of-occupancy payment (totalling 15 percent of the value of the state-subsidised building), after which they pay a monthly residence charge based on the financing and maintenance costs of the buildings of the same owner.[40] The occupant may transfer the right at no higher than the original (indexed) price, usually by notifying the owner; if a new occupant cannot be found, the owner has the duty to redeem the right[41] by paying the original (indexed) price.[42] While the owner is responsible for the condition of the apartment, the occupant may make improvements on the owner's permission, and claim reasonable compensation for these when moving out.[43] Right-of-occupancy apartments comprise currently around one percent of occupied dwellings, most of them in the cities; their popularity has lately been on the wane, however, and some flats are indeed unoccupied, possibly to be changed into rental or owner-occupied apartments in the future.

Other variants include the contractual 'partial ownership' schemes introduced by banks and construction companies to encourage homeownership, beginning during the recession of the early nineties when developers were left with unsold flats. The buyer initially invests a portion (say, ten percent) of the purchase price, receives a corresponding minority of the shares and becomes a joint-owner with the seller. The apartment is leased through a fixed-term tenancy agreement for normally ten years, the lease conferring to the occupant the right to the possession of the apartment. During this period, the seller (or some institutional landlord to whom the shares are transferred) remains the majority shareholder, while the occupant may have the right to redeem up to 49 percent of the shares. At the end of the term, she may redeem the rest, and become the owner.

The relations among the various forms of tenure were described in a 1998 Nordic housing law report as follows:

> A typical characteristic feature of the Finnish system is that the acquisition and possession of a dwelling through an agreement may be arranged so that the whole arrangement consists of a combination of the above types of ownership or right of possession. There is no compulsory type in the sense that an agreement which is not fully equivalent to a certain contractual type would be invalid. However, an attempt has been made to determine the scopes of various Acts so that an Act becomes applicable if the prerequisites for application are met. Consequently, for example in accordance with Section 1 of the Finnish Housing Companies Act, a limited liability company which has the characteristic of a housing company in accordance with the Act must be regarded as such a company. As housing companies are regarded not only companies which the founders or joint owners intended to be housing companies, but all companies which meet the characteristic features laid down in Section 1 of the Finnish Housing Companies Act.

[39] Right-of-Occupancy Housing Act (650/1990) (unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E9900650.PDF) and later also the Act on Right-of-Occupancy Associations (1072/1994) (http://www.finlex.fi/pdf/saadkaan/E9941072.PDF).
[40] For details, see Right-of-Occupancy Housing Act 3 and 16.
[41] within three months of the notification.
[42] Right-of-Occupancy Housing Act 23 and 24.
[43] Right-of-Occupancy Housing Act 7, 11 and 12.

> Correspondingly, the Finnish Act on Residential Leases is to apply when the statutory prerequisites for a lease agreement are present.[44]

Tenancy legislation has mostly been adopted for the protection of the weaker contractual party in the vein of the Consumer Protection Act[45] (which determines its own scope and applies to tenancy if its criteria are met). Frequently, the determination of the scope of the Tenancy Act is straightforward.[46] Gaps in the protection of the tenant have arisen, however, within for example the various partial ownership schemes created by individual sellers and regulated by at least the Tenancy Act, the Housing Companies Act, the Consumer Protection Act, and the Act on Certain Joint Ownership Relations. For instance, on cancellation, the tenant could lose that portion of the purchase price that she has paid concurrently with rent, which contradicts a just mutual return of performances.[47]

In the absence of rules on conclusion, authorisation or invalidity in the Tenancy Act, the associated provisions of the Contracts Act[48] apply. The unconscionability provision of the Contracts Act overlaps with that of the Tenancy Act.[49] That practically exhausts the provisions of the Contracts Act. The Tort Liability Act does not apply to liability for damages under contract.[50]

bb) Social regulation affecting private tenancy contracts

> According to the Constitution:
>
> The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing.[51]

In order to curb homelessness, the municipal housing and social authorities provide social services and subsidised rental apartments. Housing counselling in buildings owned by municipalities and some non-profit organisations also helps tenants to avert evictions (which are usually caused by unpaid rents).

Housing allowance (*asumistuki*) is granted independent of tenure,[52] but nearly all households receiving it occupy a rental apartment. Other government housing-policy subsidies include tax expenditures (*verotuet*) and financial subsidies (*rahoitustuet*).[53] Tax expenditures benefit homeowners in the form of a tax relief on the interest

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[44] *Housing law in the Nordic countries: A report commissioned by the Nordic Council of Ministers*, TemaNord 1998:571, Nordic Council of Ministers, Copenhagen 1998, 38–9. (The Finnish contribution by Ari Saarnilehto, assisted by Seija Heiskanen-Frösén. Translated by Peter Dyrby.)

[45] (38/1978). (Unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E9780038.PDF)

[46] The primary use of the apartment determines its applicability vis-à-vis the Act on Business Leases. See **27** below.

[47] This example was given by Ari Saarnilehto in personal correspondence.

[48] (228/1929). (Unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E9290228.PDF)

[49] Contracts Act 36 and the 1995 Tenancy Act 6 para. 1. See notes 161 and 183 below and accompanying text.

[50] Tort Liability Act (412/1974) 1:1. (Unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E9740412.PDF)

[51] The Constitution of Finland (731/1999) (hereafter referred to as the '2000 Constitution' because it entered into force on March 1, 2000) 19 ('The right to social security') para. 4. (Unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E9990731.PDF)

[52] The general housing allowance covers eighty percent of the household's reasonable housing costs beyond a deductible based on the number of persons and their income and wealth. The three main forms of housing allowance are the general, pensioners' and students' housing allowance.

[53] The Finnish word *tuki* is the same in all three cases, and is roughly translatable as 'aid,' as in 'state aid,' *valtion tuki*.

payments on housing loans[54] and the exemption from taxable income of imputed rental income[55] and capital gains on owner-occupied dwellings[56].

One financial subsidy has traditionally been central to tenancy law. The Housing Fund of Finland (ARA) grants loans to developers – mainly municipalities and non-profit organisations – on the condition that the building will remain in a municipality-controlled residential-lease use for at least 45 years[57]. Apartments in buildings under these 'ARAVA' restrictions comprise the bulk of social rental housing. Grounds for obtaining an ARAVA apartment include need, income and wealth criteria (currently under revision). When the restrictions apply, rent is based on the capital expenditure and maintenance costs of the buildings of the same owner,[58] and there are also other exceptions under the Tenancy Act[59]. After the restrictions expire, the Tenancy Act will apply to rental apartments in these buildings as usual.

c) Summary account on 'tenancy law in action'

In the metropolitan area comprising Helsinki, Espoo and Vantaa, average rents are one third higher than elsewhere in the country (and prices of dwellings are twice as high). It has just been suggested[60] that, in this area, rental accommodation at reasonable price is no longer possible without public subsidy. Between 1995 and 2003, rents had gone up 60 percent, while other prices had risen 14 percent. Also waiting lists for social rental housing tend to be longer in the Helsinki region – and in the cities generally – than elsewhere. Almost all homeless families, and half of homeless individuals, live in Helsinki. Undoubtedly, there is regional imbalance in the Finnish housing market.

As shown in Table 1, from the seventies through to the recession of the early nineties, homeownership increasingly dominated over rental housing. Apart from forced sales, the recession brought about unemployment and short-term contracts, conditions under which it can be difficult and risky to seek out a housing loan. During the late nineties, the information-technology-driven migration to cities may also have favoured rental housing, as the first apartment for a person moving after job opportunities may be a rental one. On the other hand, low interest rates and lengthy loan periods have at the same time encouraged ownership. While the ending of the rent-regulation system should have made rental apartments more attractive as investments, it is difficult to say how much their supply has changed for this reason – out of other factors affecting the housing market, some of which were mentioned above. In any event, from the early to mid-nineties state-subsidised production played the crucial part, and in 2002 an external evaluation noted that 'although social rental housing accounts for only 17% of the total housing stock of Finland, subsidised housing has been accounting for ... probably over 95% of new purpose-built rental housing production. There are no statistics on free-market rental housing production,

[54] *Tuloverolaki* (1535/1992) 131–134.

[55] If the same apartment is rented, the rent income is taxed. Imputed rental income used to be moderately taxed, but in the tax reform of 1993 this tax was repealed as people found it difficult to understand why living in one's own home one should be the subject of taxation.

[56] Apartments for investment purposes are excluded from the exemption by requiring that the tax subject has owned the apartment for at least two years and, during that time, she or her family has lived in the apartment uninterruptedly for at least two years. *Tuloverolaki* (1535/1992) 48 paras. 1 and 2.

[57] Act on the Use, Assignment and Redemption of State-Subsidized (ARAVA) Rental Dwellings and Buildings (1190/1993) 3. (Unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E9931190.PDF)

[58] Act on the Use, Assignment and Redemption of State-Subsidized (ARAVA) Rental Dwellings and Buildings 7.

[59] See **9** and **13** below.

[60] Statistics Finland and *Helsingin Sanomat* (22.3.2004).

but it is estimated that a few hundred dwellings per year are being developed by insurance companies (and non-profits) mainly in the Helsinki Metropolitan area.'[61]

Table 1. Tenure structure (shares %)

	1970	1980	1990	2001
Owner-occupied	60	65	72	64
Free-market rental	33	18	11	15
Social rental	5	13	14	17

Source: *Evaluation of Finnish housing finance and support systems*, Ministry of the Environment, Helsinki 2002, 10 and Statistics Finland.

Table 2 shows one estimate of the ownership structure of rented accommodation. Notably, private persons own nearly two fifths of all apartments, and two thirds of non-subsidised ones. Large institutional investors such as banks and insurance companies own relatively few rental apartments. Recently, indeed, they have tended to sell these properties.

Table 2. The ownership structure of permanently occupied rental apartments in 2000

	ARAVA apartments	Interest support loan and right of occupancy	Privately financed	All rental apartments	
	Number	Number	Number	Number	%
Total	**320 000**	**72 000**	**370 000**	**762 000**	**100**
Private individuals			240 000	240 000	32
Housing companies			20 000	20 000	3
Corporations; industry, insurance, banks	21 000	10 000	45 000	76 000	10
Municipalities	210 000	32 000	20 000	262 000	34
Non-profit organisations	45 000	20 000	5 000	70 000	9
Other (parishes, foundations; unknown)	44 000	10 000	40 000	94 000	12

Source: *Vakaat vuokramarkkinat työryhmän mietintö*, Ministry of the Environment 2002, Appendix 1.

After the rent-regulation system was abolished, some large institutional landlords put into effect perverse rent increases – such as a one-time increase of seventy percent

[61] *Evaluation of Finnish housing finance and support systems*, Ministry of the Environment, Helsinki 2002, 15 (footnotes omitted, except note 6 included in the text). (At: http://www.environment.fi/download.asp?contentid=11756)

with less than the notice period given for the tenant[62]. To tackle these problems, the government and the Finnish Real Estate Union (*Suomen Kiinteistöliitto*, representing landlords) began to define the 'good leasing practice' mentioned in the unconscionability[63] and post-notice compensation[64] provisions of the Tenancy Act.[65] In 1998, both the Council of Ministers and the Union issued a recommendation; while the Council of Ministers recommendation did not become very well known, many large institutional landlords agreed to follow the more specific Union recommendation. It provided that in rent revisions that take place beside a stipulated annual increase, one-time increases should not exceed fifteen percent a year and negotiations with the tenant should be started at least six months prior to a planned increase. In 2003, co-operation between landlords' associations – the Finnish Real Estate Union and *Suomen Vuokranantajat* – and the Tenants' Union (*Vuokralaisten Keskusliitto*) produced a common recommendation, Good Leasing Practice (*Hyvä vuokratapa*). In addition to the two points above, it provides (among other things) that giving notice should not be used as a threat in rent negotiations.[66]

Apart from consumer institutions and the Finnish Bar Association's mediation service, there are few alternatives to court. Ten general lower courts used to have the housing court division, where a lay person could bring her case and the composition of the court included the tenants' and the landlords' representative beside a professional judge, but these housing courts were wound up in 2003. The decisive factor in their demise was probably the lack of cases following the elimination of the rent-regulation system and the tenant's protection against notice. Another reason was that the composition of the court in residential-lease disputes came to include lay members (three, alongside a professional judge as in criminal cases) with or without the housing court, when the lower court system was reformed in 1993. In undisputed civil cases, the composition of the court is one judge in residential-lease cases as in others, but here another exception concerns the winner's legal costs, as the loser pays merely a charge set by the government[67].

The duration of the court procedure varies according to the region. At best a case can be over within a few weeks (a summons, no rejoinder, and judgment by default). The full district-court procedure may take from several months to two years. The average appellate-court procedure takes between one and two years, and if *certiorari* is granted the Supreme Court takes from six months to two years in addition.[68]

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[62] The Appeal Court of Turku 30.7.1999 number 1805, cited in Kanerva and Kuhanen, note 6 above, 68–9.

[63] 1995 Act 6 para. 1. See **13** below.

[64] 1995 Act 57 para. 1. See notes 109 and 110 below and accompanying text.

[65] On this development, see *Vakaat vuokramarkkinat työryhmän mietintö*, Ministry of the Environment 2002, 27–35 and Appendices 7 and 8 which include the 1998 recommendations of both the Council of Ministers and the Union.

[66] Of course, many large institutional landlords made their revisions already in the late nineties. On the other hand, some evidence from 1998 suggests that landlords used only sporadically and mainly in the Helsinki region the possibility of giving notice as a threat in rent negotiations. According to a survey by Statistics Finland, in id., 28.

[67] At the moment, the charges set by the Ministry of Justice are 220 Euro and in more difficult cases 300 Euro. Higher expenses require justification. The rule of loser pays all may apply, if there are weighty reasons and the case is not decided by judgment by default.

[68] These figures are from Kanerva and Kuhanen, note 6 above, 374–5.

2. Questionnaire

Set 1: Conclusion of the Contract

Traditionally, tenancy legislation has dealt with the content of the contract, leaving conclusion to general contract law. On this basis, offers and acceptances may be written, oral or tacit, unless otherwise required. As an exception, the Tenancy Act does require written form of a fixed-term residential lease (see **4** below). Frequently, special legislation gets adopted where problems receive public attention, and one such area has been the activity of the estate agent (see **5** below).

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.

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 pm.

e) does not have full capacity and is under custody.

Does T have a claim against L?

Along the lines of traditional contract law, the landlord is free to choose her contractual partner. The advertisement could be regarded as an invitation to make offers, and making an offer does not give the offeror any right to be accepted. Nor does the offeree have any duty to give reasons for her acceptance or rejection of the offer.[69] Although detailed regulatory criteria apply to tenant selection for ARAVA apartments, the landlord can choose within limits.

Several ongoing developments in European law and constitutional interpretation may recast the above starting point, but to date this import remains unclear. Relating to *b* in particular, in the Equality Act of 2004,[70] which implements the race Directive[71], the scope is limited to the supply and availability of housing 'in other relationships than between private persons.'[72] According to the Government proposal, the relevant provision[73] includes the professional and business supply of services (leasing, agency, sale) regarding all forms of housing, but it 'is not applicable to actions between private persons, because the Directive does not require this, either. The scope of the Act would not, therefore, include sales or leases of apartments between individuals [nor any] arrangement between individuals in, for example, the operation of a housing company, such as the redemption of shares that entitle a party to the possession of an apartment.'[74] In other words, the Government proposal

[69] The conclusion of the contract through an offer and an acceptance is regulated in Chapter 1 of the Contracts Act (228/1929).

[70] *Yhdenvertaisuuslaki* (21/2004).

[71] 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

[72] *Yhdenvertaisuuslaki* 2 para. 2 subpara. 4.

[73] Id.

[74] Government proposal 44/2003 detailed grounds 1.1.

justifies this limitation on the scope of the Act by merely referring to the Directive generally, rather than to any specific point in it.

As to discussions on the applicability of fundamental rights between private persons, equality is a fundamental right and discrimination is prohibited according to the Constitution:

> Everyone is equal before the law.
>
> No one shall, without an acceptable reason, be treated differently from other persons on the grounds of gender, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.[75]

The principal approach to the implementation of fundamental rights in relations between private persons has been through legislation, such as the Sex Equality Act, which has given rise to most discrimination cases in the Supreme Court. In this way, the legislature is among the 'public authorities' that, according to the Constitution, 'shall guarantee the observance of basic rights and liberties and human rights.'[76] Nevertheless, the courts should likewise guarantee the observance of fundamental rights when they decide disputes, and a number of legal academics have argued that they should do so even between private parties. In the case of the prohibition of discrimination and *b*, for instance, the courts could interpret the Tort Liability Act in a 'fundamental rights friendly manner'[77] by granting *b* compensation for any concrete, monetary loss (as the concept of damage is traditionally interpreted narrowly) that the landlord's discriminative action had caused.[78] However, no Supreme Court decision exists supporting this argument.

Absent a constitutional court or other limits on the applicability of the Constitution, any ordinary court would be competent to deal with a constitutional equality claim.

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?

After concluding the contract, the landlord must have an acceptable reason to avoid it, and discrimination based on the tenant's origin or religion would seem to afford her none. By contrast, she may have acceptable reasons for wanting to exclude a husband and three children, a dog, or piano playing that disturbs neighbours. She could then avoid the contract on the ground that the tenant had fraudulently induced her into the contract[79].

The contract concluded with *e* is void, and the landlord may be able to avoid it under the Guardianship Services Act[80].

Claims for avoiding a contract may be coupled with a claim for damages on some such ground as 'negative contractual benefit' or the 'especially weighty reasons' required for compensation for pure economic loss under the Tort Liability Act[81].

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[75] 2000 Constitution 6 paras. 1 and 2.

[76] 2000 Constitution 22.

[77] According to Opinions 2/1990 and 25/1994 of the Constitutional Committee of Parliament, the courts and other public authorities should interpret legislation in a manner that best fulfils the requirements of the Constitution and international human rights obligations. This approach is called 'fundamental rights friendly interpretation.'

[78] This argumentation is taken from Martin Scheinin, 'Mitä on syrjintä?' in *Vähemmistöt ja niiden syrjintä Suomessa*, edited by Taina Dahlgren et al., Ihmisoikeusliitto, Helsinki University Press 1996, 7–19 at 15–8. Scheinin uses an almost identical example to **1***b* at 17–8.

[79] A transaction into which a person has been fraudulently induced shall not bind him/her if the person to whom the transaction was directed was himself/herself guilty of such inducement or if he/she knew or ought to have known that the other party was so induced. Contracts Act 30.

[80] (442/1999) 27. (Unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E9990442.PDF)

2–3. Sharing with Third Persons and Subleasing

2. L rents an apartment to T. After some months, T wants to take into the apartment:
a) her husband and children.
b) her boyfriend.
c) her homosexual partner.
d) her parents.
Is this possible against the will of L? If not, what are L's remedies?

As a rule, the tenant may not assign the apartment to another person's use without the landlord's consent.[82] There are various mandatory exceptions to this rule,[83] and because subleasing is one among them I shall deal with it in this context at *3* below.

The first, loose exception covers *a*, *b* and *c*. The tenant has the right to use the apartment as a joint home with her or his 'spouse' (*puoliso*) and a child of their family.[84] Here, the Act uses the word *puoliso*, which is a broad term covering both a married partner (*aviopuoliso*) and a non-married partner (*avopuoliso*). Since 2002, the Act on Registered Partnerships has required that, as a rule, the same provisions that apply to marriage or a 'spouse' (*aviopuoliso*) apply equally to a registered same-sex partnership or a partner in such a union.[85] As a result, a homosexual partner in a registered partnership should today have the same rights and obligations as a married partner under the Tenancy Act, while the legal position of a homosexual partner outside a registered partnership depends on the interpretation of the term *puoliso* in the Tenancy Act.

A second exception covers *d*. Provided that this will not cause significant inconvenience or disturbance to the landlord, the tenant may use the apartment as a joint home with her or his own, or her or his spouse's, near relative – including at least parents and sisters[86].[87] The landlord's remedies are not stated in the Act, but in advance she could bring a declaratory action in court to show that significant inconvenience will be created, or later on she may have grounds for rescission.[88]

3. Does, and if yes under what conditions, T possess the right to sub-rent a room in his apartment to S? Can L make the permission conditional on an increase of the rent? What are L's rights if T sub-rents a room without permission (termination, damages)?

As a third exception, provided again that this will not cause significant inconvenience or disturbance to the landlord, the tenant may assign no more than half of the apartment to another person's use for residential purposes (rather than for office use, for example);[89] when this occurs for a consideration, the Chapter on subleasing[90]

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[81] (412/1974) 5:1.
[82] 1995 Act 17 para. 2.
[83] 1995 Act 17 para. 1. This provision is mandatory to the benefit of the tenant according to 1995 Act 26.
[84] 1995 Act 17 para. 1.
[85] Act on Registered Partnerships (950/2001) 8. Exceptions deal with the provisions of the Adoption Act, the Names Act and the Paternity Act and provisions applicable to a spouse exclusively by virtue of his or her sex. Id. (Unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E0010950.PDF)
[86] Government proposal 304/1994 detailed grounds 1.1.
[87] 1995 Act 17 para. 1.
[88] Government proposal 304/1994 detailed grounds 1.1. and Kanerva and Kuhanen, note 6 above, 101.
[89] 1995 Act 17 para. 1.
[90] 1995 Act 80–85.

in the Tenancy Act will apply to the relation between the tenant and the subtenant. Like the two exceptions above, the tenant's right is mandatory,[91] and her legal position cannot be weakened by a contractual stipulation. The landlord's remedies are as stated in *d* above.

After an illegal sublease, the landlord could claim damages or, in principle at least, by alleging unjust enrichment, the rent that the tenant received from the subtenant.

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

The deceased tenant's spouse (*puoliso*) or a child of their family[92] has the right to continue the lease, if he or she was living in the apartment.[93] When the tenant dies, the lease remains in effect on the previous terms and the estate of the deceased is responsible for fulfilling the terms. The said persons have three months' time to notify the landlord of an intention to continue the lease, and after this notification the responsibility of the estate ends. If the landlord wants to contest the continuation of the lease, she may submit grounds for doing so to a court for review within one month of receiving the notification of continuation.[94]

2. 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?

L's rights depend on the contract. Because she entered into contract with *T* only, the other students might be considered *T*'s subtenants and, as a sublessor, *T* could choose a new subtenant under the conditions in *3*.

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?

A fixed-term tenancy agreement must be made in writing; if not made in writing, a tenancy agreement can only be valid for an unspecified period. Earlier, it was required that the agreement must be put into written form should either party request this, but in the current Act the wording is changed:

> Lease agreements and amendments thereto shall be made in writing. If a lease agreement has not been made in writing, it is considered to endure for a non-fixed-term.[95]

[91] See note 83 above.
[92] or even the tenant's or the spouse's parent.
[93] 1995 Act 46 para. 2.
[94] 1995 Act 46 paras. 1 to 3.
[95] 1995 Act 5 para. 1. As an exception, an oral contract is valid even for an unspecified period, when the apartment is leased for leisure use. Id.

The earlier requirement was probably dropped and replaced by another substantially similar provision that likewise emphasises the importance of a written agreement, because the wording was misleading as the agreement was not null and void if the formality was disregarded.

If the aim of the second rule in the above-quoted provision was to improve the status of the tenant, it was likely drafted with an eye to short fixed-term contracts, because the advantage of the rule is questionable from the tenant's point of view if the orally agreed fixed term were say ten years.

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

Though valid, an oral contract may be difficult to prove in court.

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?

No registration is needed. It is possible to have a mortgage as security for lease rights registered in a public register, but this is rare (see **24** below).[96]

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 Euro (the monthly rent being 1000 Euro) for the drafting of the contractual documents. Is this legal?

The question of who pays the drafting cost is complicated by the fact that, even if a person who buys a legal document would presumably pay for the service, the landlord typically determines the content of the contract so she should not demand the tenant to pay the cost.

While agents must register in a public register[97] and cannot charge for drafting their own contracts, no special legislation deals with an occasional or non-marketed action such as this one. Its reasonableness might of course be contested under the unconscionability provision in the Contracts Act[98], at least when the tenant's position resembles that of a consumer. Under the Tenancy Act, the extra payment could be regarded as part of the rent, and 1100 Euro would probably be considered a reasonable monthly rent (unlike for example 1000 + 2000 Euro).

Variant 1: The sum of 500 Euro 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.

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[96] Any stipulation in the tenancy agreement stating that no mortgage can be applied for as security for the permanence of the leasehold is null and void. In 1995 Act 9.

[97] *Laki kiinteistönvälitysliikkeistä ja vuokrahuoneiston välitysliikkeistä* (1075/2000).

[98] (228/1929) 36 (956/1982).

With regard to the rare[99] case of an acceptance payment, the current tenant's action would seem to fall outside the estate agent legislation, for it is a single (occasional) act, relating to her position as a tenant. She may have difficulty in performing, however, as the landlord's consent will eventually be needed. Failing this, her action could come to fraud, but fraud is punishable only as an intentional act.

In the second case, the rule that the tenant may not assign the apartment to another person's use without the landlord's consent[100] applies also to the final month. After obtaining the landlord's consent, of course, the current tenant may have good reason for asking the sum if she has already paid the rent. The landlord cannot collect two rents for the use of the same apartment, and the two tenants may agree that the predecessor receives from the successor a payment corresponding to the days that the apartment is in the latter's possession.

Variant 2: Estate agent A, who was first approached by T and subsequently acted as an intermediary in the conclusion of the contract, requests the sum of 2000 Euro 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?

Special legislation applies to estate agents. Under a new 2001 Act, the sole person who should pay the agent's fee is the principal,[101] in this case the tenant. The fee must be reasonable,[102] and the standard practice is for the agent to charge one month's rent plus VAT.

Before the recent law, a common problem in the rental apartment market was that the tenant paid the agent's fee even though the landlord was the principal. This practice, where a different person than the party to the contract paid the agent's fee, was deemed 'strange,'[103] not transparent[104] and even contributing to low price-competition among agents[105]. The new law was expected to increase competition and to bring down the agents' fees, and it was hoped that landlords would pass on the agent's fees in higher rents which would have only a small effect on the general rent level. Nevertheless, once the Act was in force, the fee came to be added to the first two to six month's rents, which became higher than the normal rent by an amount that totalled the agent's fee. On July 31, 2003, the Appeal Court of Helsinki held this arrangement illegal on the ground that the landlord was evading the mandatory rule that the only person to pay the agent's fee is the principal.[106] In August 2003, after many agents had already given up the practice, one third of agreements in the biggest estate agents in Helsinki were still including a clause that required the tenant to pay a higher rent during the first few months. By September, however, this practice had virtually ended, but fixed-term agreements now accounted for two thirds of all the agreements made, as opposed to a previous 10 to 13 percent. Fixed-term agreements had become popular because it is difficult to give notice during the term, and this

[99] Attempts at these requests have not come up in the counselling of the Tenant's Union.
[100] 1995 Act 17 para. 2. See **2**–**3**.
[101] *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* (1074/2000) 20 para. 2.
[102] *Laki kiinteistöjen ja vuokrahuoneistojen välityksestä* 20 para. 3.
[103] *Housing Law in the Nordic Countries*, note 44 above, 272.
[104] Government proposal 58/2000 general grounds 2.3 and 3.2.
[105] Id.
[106] The Appeal Court of Helsinki 31.7.2003 number 2254, cited and commented on in Kanerva and Kuhanen, note 6 above, 149–52.

ensures that the landlord will not have to pay the agent's fee over again after a short period.[107]

Set 2: Duration and Termination of the Contract

Tenancy contracts are unlimited in time unless otherwise agreed or required.[108] A non-fixed-term agreement is normally terminated by giving notice. If the tenant disagrees with the landlord's notice, she may be protected against it (see **6***a* below). Alternatively, she may claim damages – including compensation for the costs of removal[109] and at most three months' rent for inconvenience – if the notice is not in conformity with good leasing practice.[110] The choice between the two remedies depends on the circumstances, but the damages option is out of the question if the tenant stays in the apartment after the removal date. The deferral of the removal date is a special action, which the tenant may bring no less than one month prior to the removal date[111]. If the tenant has substantial difficulty in obtaining another dwelling, the district court may defer (once) the date by up to one year.[112] Its decision cannot be appealed to a higher court.[113]

A fixed-term agreement terminates without notice at the end of the term, when its validity expires.[114] The removal date cannot be deferred.[115] The 1995 Act prescribes no minimum or maximum fixed term.

Before 1991, fixed-term agreements were legal only under exceptional circumstances, such as when a legal ground for notice existed on entering into the contract. Once their use was liberated, it became possible to make many short fixed-term contracts successively instead of a stable one. When Parliament passed the out-of-rent-regulation changes of early 1992, it at the same time required that this recent practice should be prevented, and accordingly a new rule entered into force in late 1992:

> If a fixed-term lease of no more than three months is agreed on with the same tenant more than twice consecutively, the lease shall be considered a non-fixed-term lease notwithstanding the fixed-term provision.[116]

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[107] This information is from a survey of agreements entered into in the biggest estate agents in the Helsinki region in August and September 2003, conducted by the State Provincial Office of Southern Finland as part of its monitoring task under the *laki kiinteistönvälitysliikkeistä ja vuokrahuoneiston välitysliikkeistä* (in note 97 above). (At: http://www.laaninhallitus.fi/lh/etela/kil/home.nsf/pages/529DC0C313D27F30C2256DCC004AE11E/$file/valitysliike_selvitys.pdf)

[108] According to 1995 Act 4 para. 1.

[109] and of acquiring a new apartment and for any repairs and alterations carried out by the tenant which have increased the rental value of the apartment ... provided that under this Act the tenant had the right to perform said work and has not previously received compensation for it. According to 1995 Act 57 para. 1

[110] Id.

[111] 1995 Act 70 para. 1.

[112] 1995 Act 69 paras. 1 and 2. The deferral must not cause the landlord or some other person (a new tenant) substantial inconvenience or loss. 1995 Act 69 para. 3. On making the decision, the court simultaneously announces a new removal date and includes in its decision the requirement that the tenant must move out when the lease is terminated. 1995 Act 71.

[113] 1995 Act 70a (599/2002).

[114] 1995 Act 4 para. 2.

[115] 1995 Act 69 para. 1.

[116] In 1995 Act 4 para. 1.

If the fixed term exceeds three months, this provision does not apply. Even so, a 'chain contract' can be considered unlimited in time on several grounds.[117] First, the intention of the parties should govern the contract, and if they have intended that the lease should continue for an unspecified period, then a contrary stipulation is inapplicable. Next, terms formulated for the purpose of evading the law are customarily considered illegal. Finally, terms contrary to good leasing practice may be ignored under the unconscionability provision of the Tenancy Act[118] (see **13** below).

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? 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 provisions on the detailed grounds for legal notice were abolished along with the rent-regulation system. Today, the landlord may give notice even for the sole purpose of increasing the rent. The tenant is protected against notice under the following conditions:

> The court shall, at the tenant's request, declare notice given by the lessor ineffective if:
> 1) the grounds for giving notice consist of revision of the rent or of a stipulation on determining the rent and the requested rent or stipulation on determining the rent would be considered unreasonable under section 30; or
> 2) the notice must be considered otherwise unreasonable in view of the tenant's circumstances and there is no justifiable reason for termination.[119]

In other words, the tenant may bring an action in court to show that the landlord's demand is unreasonable as explained in **13** below. Alternatively, the notice might be unreasonable because the tenant has, for instance, difficulty in finding a comparable apartment in the region[120] and the landlord does not have a justifiable reason for termination. Any of the grounds contained in the repealed provisions should be expected to be considered a justifiable reason by the court, including the grounds of the landlord's need for the apartment for her own or family member's use.

The landlord may give notice in (i) no less than six months' time, if the lease has lasted uninterruptedly for at least one year immediately prior to the giving of notice (not prior to the end of the notice period), or otherwise in (ii) no less than three months' time.[121] The notice period cannot be reduced in the contract.[122] Unless agreed otherwise, the period is calculated from the end of the month when the notice is given.[123]

The tenant's notice period is one month, no matter for how long the lease has lasted.[124] The period cannot be extended in the contract.[125]

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[117] These options are mentioned in Ari Saarnilehto, *Huoneenvuokralain muutokset 1.11.1992*, Kiinteistöalan kustannus 1992, 6–7.
[118] 1995 Act 6 para. 1.
[119] 1995 Act 56 para. 1.
[120] Government proposal 127/1984.
[121] 1995 Act 52 para. 2.
[122] 1995 Act 52 para. 4.
[123] 1995 Act 52 para. 1.
[124] 1995 Act 52 para. 3.

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

At this late stage, the bailiff may still defer the removal date.[126] According to established practice and a new 2004 Act, the bailiff first sends a request for removal to the address of the apartment to which the eviction applies. The request includes the exact date on which the apartment must be empty – no less than one week, and no more than two weeks from the date on which the request is given. This date may come to pass earlier than when the bailiff actually carries out the eviction. If during the proceedings or while carrying out the eviction the bailiff discovers in the apartment children whose living circumstances are unclear or people in need of direct care (such as the elderly, intoxicated or mentally ill persons), she must immediately inform the municipal housing and/or social authorities. Either the tenant or the housing or social authority may apply for a deferral from the bailiff, or the latter may defer the date of her own motion. If the deferral does not cause substantial inconvenience to the landlord, the bailiff may defer the date by up to two months from the start of the proceedings, or by a longer period, if there is an especially weighty reason for this. She will consider the need for the deferral and the inconvenience on a case-by-case basis, and her decision cannot be appealed to a court.

If, on the eviction date, there are still aforementioned persons in the apartment, the bailiff may not carry out the eviction before the housing and/or social authorities are given the opportunity to arrange housing or social services for them.

7. Contract Limited in Time

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

A fixed-term agreement for one year is valid when made in writing, as explained in **4**.

Throughout the term, the parties are bound to the terms of the contract and cannot give notice unless otherwise agreed. Exceptionally, a court may, after hearing the other party,[127] permit the tenant or the landlord to give notice on special grounds[128]. If the court permits one party to give notice, the other party is entitled to reasonable

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[125] 1995 Act 52 para. 4.

[126] This answer is based on Kanerva and Kuhanen, note 6 above, 361–71.

[127] 1995 Act 55 para. 5.

[128] 1995 Act 55 paras. 1 to 3. The tenant may be permitted to give notice on one of the following grounds: (1) her own or her family member's illness or disability, whereby the need for the apartment comes to an end or is essentially altered; (2) if she moves to another locality because of her studies or her own or her spouse's employment; or (3) if, for some comparable reason, the agreement's remaining in force until the agreed date would be patently unreasonable from the tenant's point of view (perhaps because of unemployment which makes it economically impossible to pay the rent; Kanerva and Kuhanen, note 6 above, 246). The landlord may be permitted to give notice on one of the following grounds: (1) her own or her family member's need for the apartment for reasons of which the landlord could not have been aware at the time when the agreement was made; or (2) if, for some comparable reason, the agreement's remaining in force until the agreed date would be patently unreasonable from the landlord's point of view.

compensation for any loss incurred as a result of the premature termination of the contract.[129]

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 six years, respecting the delay of three months before the annual deadline, L gives notice of termination without alleging any reasons. Is this lawful?

The 1995 Act requires no justification for time limits.

One possible interpretation is that the agreement in question is a non-fixed-term contract, where the notice period starts to run only once a year. This interpretation is justifiable, because the agreement cannot be a fixed-term contract in the sense that it would terminate without notice at the annual deadline.[130]

At the earliest, then, the contract could terminate in six months' time, because the landlord's notice period may not be shorter than this when the lease has lasted uninterruptedly for at least one year (see **6***a*). On giving notice to the tenant, the landlord must deliver a written notification 'stating ... the grounds for' the termination, otherwise the notice will be ineffective.[131] Therefore, the landlord should give at least some reason(s) for the notice to have effect, which she has not. Although, as the grounds for legal notice are no longer stated in the Act, any ground could do so long as it was not contrary to good leasing practice.

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

The parties may agree on the date from which the notice period is calculated,[132] and so the tenant's notice period could start to run for example once a year. This option would seem to be an oversight by Parliament, given that the Act regulates the duration of the tenant's notice period (**6***a*).

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

When property is voluntarily transferred (by sale, gift, etc.) to another person, a tenancy agreement is binding on the new owner if any one of the following three conditions is met: the tenant has taken possession of the apartment before the transfer takes place; the transfer agreement contains a provision on the continuance of the lease agreement; or a mortgage has been taken out to secure the lease.[133] From 1987

[129] 1995 Act 55 para. 4.
[130] Ari Saarnilehto, in personal correspondence.
[131] 1995 Act 54.
[132] 1995 Act 52 para. 1. The notice period for a lease agreement shall be calculated from the last day of the calendar month in which the notice was given *unless otherwise agreed* or otherwise provided in this or some other Act.
[133] 1995 Act 38.

onwards, transfers by inheritance[134] have been equalled to voluntary transfers in the Act. These rules are mandatory to the benefit of the tenant. The new landlord has only the normal rights with regard to termination.

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?

As an exception, the buyer of a property sold in a compulsory auction has the right to give notice on any tenancy agreement within a month of having taken possession of the property, unless the property is sold subject to a stipulation guaranteeing the continuance of the lease.[135] The earliest date at which the buyer may take possession is upon making payment. The tenant will have the benefit of the landlord's notice period, but she is barred from requesting the deferral of the removal date[136].

The exception concerning compulsory auctions has been justified on the ground that debtors could otherwise make – perhaps long-term – lease agreements in the face of bankruptcy and, thus, the value of the property could diminish considerably. On the other hand, even though real property and shares in housing companies are often sold in voluntary auctions[137], these auctions were not included within the exception after debates in the committee preparing the 1995 Act, mainly because they are not controlled by authorities in the same way as compulsory auctions are.[138] While evading the law may be possible through compulsory auctions as well, excepting voluntary auctions would make it really simple.

The exception does not apply to apartments sold under ARAVA restrictions.[139]

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?

The tenant's life could[140] be a valid ('relative') fixed term. If so, the landlord may only give notice under the conditions explained in **7**[141] or **9***c*.

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?

Each tenancy act has included an exhaustive enumeration[142] of grounds on which the landlord has the right to rescind any tenancy agreement. The two most commonly

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[134] or by bequest, by virtue of marital property rights, or by virtue of rescission of joint ownership arrangements. Id.

[135] 1995 Act 39 para. 1. If the buyer was unaware of the existence of the lease, she may give notice within a month of the later date on which she received notification of the existence of the lease. Id.

[136] 1995 Act 69 para. 3.

[137] The exception in the 1987 Tenancy Act left out voluntary auctions. Supreme Court 1992:121.

[138] Kanerva and Kuhanen, note 6 above, 193–6.

[139] 1995 Act 41.

[140] Kanerva and Kuhanen, note 6 above, 60.

[141] See note 128 above and accompanying text.

used grounds are neglect to pay the rent and nuisance created by the tenant.[143] Reasonably, the landlord may not rescind the contract if the action has only minor significance.[144] For the tenant's rights to rescind the contract, see **Set 5** below.

In particular:
a) Can the landlord give immediate notice if the tenant did not pay the two last monthly rents?

The landlord may rescind the contract if the tenant neglects to pay the rent within the required or agreed time, unless the tenant's action has only minor significance.[145] Courts have interpreted what has minor significance and what has not. Leaving rent unpaid for four consecutive months is rather unlikely to be of minor significance,[146] and also rent unpaid for two to three successive months often gives the landlord the right. But the past behaviour of the tenant may also be taken into consideration, for instance if she has been repeatedly late in paying the rent[147]. It is debatable whether social causes for the tenant's breach (such as unemployment) should be given a high priority, as according to one argument in a recent case the rent must normally be paid at the beginning of the rent payment period and, thus, the landlord should not bear the risk of the tenant's ability or willingness to pay[148]. Finally, the landlord's status as a private person or a corporation has been factored in by several courts who have applied a higher standard to the latter, but the typically heard counter-argument against this distinction is of course that the corporation will probably pass on the unpaid rent to the rents of other tenants.

Whether for example two unpaid last monthly rents would give the landlord the right cannot, as a consequence, be stated as a rule.

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

Two complementary grounds could be relevant here: nuisance created by the tenant[149] and, in particular, the violation of provisions or regulations relating to the maintenance of public health and order in the apartment[150]. Unlike neglect to pay the rent, both these grounds require that the landlord should issue the tenant with a prior written warning stating that she will use her right to rescind the agreement[151]. Moreover, the landlord will have the burden of showing that the disturbance went beyond normal. She may need to interview several neighbours in order to obtain

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[142] Any stipulation under which the lessor can rescind the lease agreement on any grounds other than those laid down in this Act shall be null and void. 1995 Act 65 para. 1.
[143] 1995 Act 61 para. 1 subpara. 1 and 4. Other grounds in this paragraph include: '2) if the leasehold is transferred or the apartment or part of it is otherwise assigned for another person's use, contrary to the provisions of this Act; 3) if the apartment is used for any other purpose or in any other manner than that provided when the lease agreement was made'; '5) if the tenant fails to take good care of the apartment' and '6) if the tenant violates provisions or regulations for the maintenance of public health and order in the apartment.'
[144] 1995 Act 61 para. 3.
[145] 1995 Act 61 para. 1 subpara. 1 and para. 3.
[146] Supreme Court 1978 II 16.
[147] This seems to have been decisive in the most recent decision by the Supreme Court: 2003:71.
[148] Supreme Court 2003:71.
[149] 1995 Act 61 para. 1 subpara. 4 ('if the tenant creates disturbance with his or her way of life or allows others to do so in the apartment').
[150] 1995 Act 61 para. 1 subpara. 6.
[151] 1995 Act 62.

sufficient evidence, as courts try to make sure that the tenant will not have to move out because of harassment between individuals.[152]

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

No. The statutory treatment of grounds of rescission is mandatory to the benefit of the tenant, and her legal position cannot be weakened by a contractual stipulation.[153]

Set 3: Rent and Rent Increase

A lease incorporates a consideration, which is called rent; the Tenancy Act contains no provision setting this precondition. Traditionally, the Act has included a Chapter on the payment of rent, with changes brought about through changes in technology, etc. Other provisions address the amount of rent, today generally its reasonableness. The amount of rent has also been regulated outside the Tenancy Act, in rent-control regulations and currently in the Act on Indexing Restrictions[154].

12. Settlement Date, Modes of Payment, Right of Distraint

When is the rent due? Is there any restriction on modes of payment? Does and if yes, under which conditions, L have a right of distraint (pledge) on T's furniture and other belongings to cover the rent and possible other claims against T?

Unless agreed otherwise, rent must be paid no later than on the second day of the rent payment period (one month, unless agreed otherwise).[155] Payment of rent in any form other than money must be agreed upon separately.[156]

The tenant has the right to pay the rent by postal or bank giro or postal order.[157] There is no ground in the Act on which the landlord could refuse to accept cash payments.

The landlord's right of distraint on the tenant's property, which was already known in the 1734 Codification, was repealed in 1993 because it was not much used. The landlord may now only apply for seizure under the Code of Procedure.

13. Requirements for Rent Increase[158]

What are the ordinary substantive and procedural requirements for an increase in the rent? Are there rules on a maximum increase in private and/or criminal law (e.g. on

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[152] Kanerva and Kuhanen, note 6 above, 270 and 273.
[153] See 1995 Act 65 para. 1, in note 142 above.
[154] See **14** below.
[155] 1995 Act 34 para. 1. If that day is a Saturday, a religious holiday, Independence Day, May Day, Christmas Eve or Midsummer Eve, the payment can be made on the first following working day. 1995 Act 12 para. 1.
[156] 1995 Act 34 para. 2.
[157] 1995 Act 35 para. 4. Contrary agreement is null and void.
[158] For the development of 'good leasing practice,' see Section **c** of Introduction.

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

Rent is determined on the basis of what is agreed.[159] Courts can examine whether the rent or a stipulation on determining it are reasonable.[160] The Tenancy Act includes three partly overlapping grounds.[161] First, the tenant may claim that the rent significantly exceeds the current market rate charged in the area, and the court may at its discretion reduce the rent. Second, the landlord may bring an action to increase the rent, but the threshold to alter the rent is in this case meant to be higher than in the tenant's action[162]. Third, either party may bring an action under the unconscionability provision of the Act, which originally meant to protect the tenant as the weaker party but now applies to whichever party is weaker depending on the particular contractual relationship – a private person as a tenant versus an institutional landlord; a private person as a landlord versus a business firm that rents apartments to its employees; etc.[163]

These three provisions are as follows:

> The court may, at the tenant's request, reduce the rent or alter a stipulation on determining the rent at its discretion if, without grounds considered acceptable under tenancy, the rent significantly exceeds the current market rate charged in the area for apartments of similar rental value and used for the same purpose. (1995 Act 30 para. 1)
>
> The court may, at the lessor's request, increase the rent or alter a stipulation on determining the rent at its discretion if the rent or the stipulation on determining it must be considered unreasonable under section 6. (1995 Act 30 para. 2)
>
> If application of a stipulation in the lease agreement would be contrary to good leasing practice or otherwise unreasonable, the stipulation can be adjusted or ignored. If the stipulation is such that the agreement cannot reasonably remain in force otherwise unchanged after it has been adjusted, other parts of the agreement can be adjusted or the agreement can be declared to have lapsed.
>
> The provisions of the Consumer Protection Act (38/78) shall apply to adjustment of a lease agreement between a consumer and a supplier. Notwithstanding, this Act's provisions on adjustment of the amount of the rent shall apply. (1995 Act 6 paras. 1 and 2)

Although the rent can be agreed by the parties, they cannot agree that the landlord may unilaterally increase the rent during the agreement's validity. Parliament added to the 1995 Act a provision according to which a stipulation allowing the landlord to

[159] 1995 Act 27 para. 1. If the parties to a non-fixed-term contract fail to agree on the rent, the landlord may give notice in order to increase the rent. See **6***a*.
[160] 1995 Act 29 para. 1.
[161] In addition to the unconscionability provision in Contracts Act (228/1929) 36 (956/1982).
[162] Government proposal 304/1994 detailed grounds 1.1.
[163] Kanerva and Kuhanen, note 6 above, 66. Consumer contracts that fall within the scope of the unfair terms Directive 93/13/EC were expressly ruled out on implementing the Directive, because the present unconscionability provision allows the judge (i) to take into account changed circumstances to the detriment of the consumer's claim and (ii) to adjust other than the unreasonable term in either direction, for or against the consumer, while not requiring that the term should be contrary to good faith in order to be unreasonable. Government proposal 218/1994 general grounds 2.3.

decide unilaterally the date or amount of rent increase is null and void, unless the parties have also agreed on the grounds on which the rent may be increased.[164]

Under ARAVA restrictions, rent is determined on the basis of capital expenditure and maintenance costs ('cost recovery rent').[165] The landlord may unilaterally decide the date of rent increase by giving written notice at least one full month prior to the month when the new rent will first apply.[166] The tenant-initiated check on the reasonableness of the rent (1995 Act 30 para. 1) and the unconscionability provision (1995 Act 6 paras. 1 and 2) apply also here.

14. 'Index-clause' and Progressive Rent

a) 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 use of index clauses and other comparable stipulations is regulated in a special Act on Indexing Restrictions, which has been renewed every two or three years after the regulation supporting economic growth in 1968–1969.[167] The main rule of the Act prohibits the said stipulations in contracts (but not in wills, articles of association or court judgments) and is followed by a list of exceptions (like pension and alimony agreements, which are exempt on the ground that it would be unjust to let the varying real value of money upset the original balance of actions). The not-rent-regulated tenancy agreements first became exempted in 1992, and in 1995 the exception was extended to cover all residential-lease agreements concluded for an unspecified period or (if fixed-term) for no less than three years[168]. In fixed-term agreements of less than three years, index clauses are null and void to the effect that the lessor will lose the entire rent increase.

In 1993–1994, already twenty percent of the not-rent-regulated tenancy contracts included an index clause.[169] The most common indices probably remain the consumer price index, because it was used in the 1995 Act as the index for the transition period[170], and the cost of living -index, which was widely used during the dismantling of the rent-regulation system.[171]

Combinations of various indices are also lawful.

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

Similarly, other comparable arrangements are lawful in agreements concluded for an unspecified period or no less than three years. Combinations of index clauses and other increases are also lawful. For example, rent could be linked to an index, with an

[164] 1995 Act 27 para. 2.
[165] See Section **b** of Introduction.
[166] 1995 Act 32.
[167] Also in the face of and after the introduction of the Euro in 1.1.2002, this legislation was renewed for a three-year period starting from 1.1.2001 in 2000 and for another three-year period starting from 1.1.2004 in 2003.
[168] *Laki indeksiehdon käytön rajoittamisesta* (1195/2000) 2 para. 1 subparas. 8.
[169] Government proposal 304/1994 general grounds 2.3.
[170] 1995 Act 99.
[171] Kanerva and Kuhanen, note 6 above, 157.

additional clause stipulating a minimum adjustment to ensure that the rent will increase annually.[172]

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

The parties must agree on the rent,[173] and the landlord has no right to increase the rent unilaterally. To give legal meaning to the landlord's letter, it must be regarded as an offer for a contractual amendment. Offers and acceptances do not require a specific form unless otherwise stated in an act. The tenant may accept the offer tacitly, for example by paying the rent, but to count towards creating a contractual amendment the accepted practice should be long-standing[174]. Also, if the tenant has some other justifiable reason for paying the increased rent than acceptance, such as a calculation error, then her payments may not count as tacit acceptance.

The tenant's claim would be based on unjust enrichment, and her right to off-set a counterclaim against the rent is mandatory[175].[176]

16. Deposits

What are the basic rules on deposits?

The 1987 Act introduced a provision on the reasonableness of the security which the tenant may agree to put up against losses resulting from a failure to fulfil her obligations. The 1994 Government proposal modified the wording of the provision so that either party could put up reasonable security[177], and it also mentioned that the parties had more and more commonly agreed that the tenant should put up security of two months' rent, and that security of two to six months' rent would be reasonable (because rescission and eviction can at maximum take six months).[178] Parliament added a new provision to the Act, providing that any stipulation requiring either party to put up security larger than three months' rent is null and void[179].

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[172] Government proposal 304/1994 general grounds 2.2.3.3.
[173] 1995 Act 27 para. 1.
[174] Cf. note 211 below and accompanying text; Supreme Court 2001:125 (a housing-company-lessor and an institutional lessee had not tacitly agreed upon a new rent, when the former had left index increases uncharged for almost ten years).
[175] In 1995 Act 9.
[176] Substantial help from Ari Saarnilehto acknowledged in writing this answer.
[177] The parties to a lease agreement can agree that reasonable security will be put up against any loss incurred as a result of either party's failure to fulfil his, her or its obligations. 1995 Act 8 para. 1 first sentence.
[178] Government proposal 304/1994 detailed grounds 1.1.
[179] 1995 Act 8 para. 2.

The tenant typically deposits security of one to three months' rent on a separate bank account. At the end of the tenancy, she should get the sum back (with interests, according to case law on returns from property)[180], if she has fulfilled her obligations.

17. Utilities

What are the general rules on utilities? Which utilities may the landlord make the tenant pay by contractual stipulation? Is it legal to establish in the contract a monthly lump sum to cover certain or all utilities?

The parties may agree on charges for utilities such as water and electricity, heating or telephone, which are often based on the number of persons living in the apartment or the quantity consumed. The parties may also agree in the tenancy contract on charges for the use of a parking lot, sauna, etc., but one charge too distant from the use of the apartment to be agreed on in the same contract is (this is the example given in the Government proposal[181]) that for the use of a car, even if it were agreed upon in the same document.

The charges, lump sum included, are regarded as part of the rent, and the rent may not be unreasonable. As a matter of fact, a 1961 provision[182] on utilities was later dropped, probably because their status as part of the rent was considered obvious.

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

Standard forms are frequently used, at least as checklists. There are forms for residential leases, subleasing, employment-related apartments, also for giving notice and rescission, etc.: forms drawn up by the Ministry of the Environment, the Real Estate Union, the Tenant's Union, leading landlords, agents, etc.

This Set also deals with the requirement that the apartment is in the tenant's exclusive use, insofar as this precondition means that the landlord may not freely enter the apartment (see **21** below).

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 of the Unfair Terms Directive applies to commercial landlords)

If a clause seems unreasonable, two private parties can only renegotiate or go to court, for example under the unconscionability provision of the Tenancy Act.[183] By

[180] According to the customary rule, unless agreed otherwise, interest paid on the deposit should go to the person whose assets the security is a part of (i.e. the tenant). This rule is also mentioned in Government proposal 304/1994 detailed grounds 1.1.
[181] 304/1994 detailed grounds 1.1 ('Scope of application of the Act').
[182] *Huoneenvuokralaki* (82/1961) 24 para. 2.
[183] Or that of the Contracts Act.

contrast, the unfair terms Directive[184] was implemented through the Consumer Protection Act[185].

In addition, the Consumer Ombudsman may bring action in the Market Court against business entities or their associations to prevent the continuing future use of an unfair term, but this injunction does not alter individual contracts.[186] While not limited to standard terms, this 'collectivistic'[187] control is nevertheless inclined towards them, as they are intended for future use.

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 100E 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?

First, clause *a* is illegal, because the tenant has the mandatory right to off-set a counterclaim against the rent[188]. Next, clauses *b* and *c* are legal under the 1995 Tenancy Act, because the parties may agree on the condition and upkeep of the apartment (see **Set 5** below). Finally, clause *d* is probably illegal, because freedom of association – including the right to be a member – is a fundamental right,[189] although no case exists on this.

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

In the first place, the Consumer Ombudsman may take action against business entities or their associations as described in **18**. If she refuses to bring an action in the Market Court, then an association operating in the interest of consumers or wage earners may do so.[190] This secondary right has not often been used, however, not once by the Tenant's Union[191].

The Act implementing the injunction Directive[192] grants the Consumer Ombudsman a similar right to bring actions in another Member State, but the

[184] 93/13/EC of the Council of 5 April 1993 on unfair terms in consumer contracts.

[185] (38/1978) 4:2 (1259/1994) and Government proposal 218/1994. For the differences in content between the Directive-derived and other unconscionability provisions, see note 163 above. The rule on interpreting unclear terms in favour of the consumer is in Consumer Protection Act 4:3 (1259/1994).

[186] Consumer Protection Act Chapter 3. The possible defendants were extended from business entities to their associations on implementing the unfair terms Directive.

[187] A useful term taken from Thomas Wilhelmsson, *Vakiosopimus*, Second edition, Lakimiesliiton kustannus 1995, 10 and 12–3.

[188] In 1995 Act 9.

[189] 2000 Constitution 13 ('Freedom of assembly and freedom of association') para. 2.

[190] *Laki eräiden markkinaoikeudellisten asioiden käsittelystä* (1528/2001) 4 para. 1.

[191] Anne Viita, in personal correspondence.

[192] 98/27/EC on injunctions for the protection of consumers' interests.

secondary right is given to consumer associations only.[193] The Market Court also deals with actions by the authorities or associations of other Member States.[194]

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.

The apartment is in the tenant's possession, and she may use the balcony as she wants to. If antennae are prohibited in the building generally, in building-façade regulations or by the housing company, then the mounting of the antenna could give rise to a ground for rescission (violation of 'provisions or regulations for the maintenance of public ... order'[195]).

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?

In a recent paper, the German case on which this variant is based was offered as an example of a '"curious" or "abnormal" situation' but one where the relevance of fundamental rights to private law is 'plain.'[196] As a starting point, however, the housing company might or might not have allowed antennae, and if they are forbidden, a question may arise whether one should allow an exception. While no precedent exists on the point, freedom of expression 'entails the right to ... receive information, opinions and other communications without prior prevention by *anyone*'[197] and it seems that the last term covers private persons. Further, the Constitution provides that '[t]he Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture'[198] whereas in this case *T* has no alternative way of receiving TV programs in her own language.

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?

The external wall of the building belongs to the housing company, and neither the tenant nor the landlord is likely to have the right to use it. If the tenant continues to

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[193] *Laki rajat ylittävästä kieltomenettelystä* (1189/2000) 4.

[194] Exceptionally, claims under Directive 90/314/EC 7 must be brought in the Consumer Agency (*Kuluttajavirasto*) and claims under Directive 89/102/EC 14 and Directive 92/28/EC in the National Agency for Medicines (*Lääkelaitos*), in line with the domestic cases. *Laki rajat ylittävästä kieltomenettelystä* 2.

[195] 1995 Act 61 para. 1 subpara. 6. See notes 143–4 and 150–1 above and accompanying text.

[196] Thomas Wilhelmsson, 'Yleiset opit ja pienet kertomukset ennakoitavuuden ja yhdenvertaisuuden näkökulmasta,' forthcoming in *Lakimies* 2004 (generally doubting the prospect of basing a systematic account of private law on the frequently too abstract fundamental rights).

[197] In 2000 Constitution 12 ('Freedom of expression and right of access to information') para. 1 (emphasis supplied).

[198] In 2000 Constitution 17 ('Right to one's language and culture') para. 3.

use the wall against a prohibition by the company, the landlord may have the right to rescind the contract.

21. The Landlord's Right of Possession of the Keys

Does L have the right to keep one set of the keys to the apartment rented to T? Under which conditions is L allowed to enter the apartment without T's previous permission? If these conditions are not fulfilled, does L commit a criminal offence when entering the apartment without T's previous permission?

Instead of addressing the question of the keys, tenancy acts have traditionally laid down dispositive[199] conditions under which the landlord may enter the apartment. The landlord is generally not at liberty to enter, but she has the right to enter for the purposes of (i) necessary supervision of the condition and upkeep of the apartment and (ii) showing the apartment to interested parties if it is to be sold or leased anew. In the first case, the tenant 'shall immediately provide the landlord with access to the apartment at a suitable time'[200] so even in this case the landlord must not enter without permission but arrange her visit at a suitable time, though a letter indicating the time might suffice if the tenant could not be reached[201]. In the second case, the parties must agree on the time, as the landlord has only 'the right to show the apartment at a time suitable to the landlord and the tenant.'[202]

According to the Penal Code, an invasion of domestic premises is an offence against privacy.[203] A person bypassing an obstacle such as a locked door enters unlawfully, if she lacks a right of entry granted under the Tenancy Act.

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?

If the tenant has rented a detached house, the Tenancy Act governs the liability in question, as an 'apartment' in terms of the Act may be 'a *building* or any part thereof.'[204] Unless agreed otherwise, the landlord is responsible for the condition and upkeep of the apartment; as in contractual liability generally, the burden of proof is reversed, so that the landlord must show that the injury was not caused by her carelessness[205] (see **Set 5** below).

If the stairs are not part of the rented apartment, the landlord or the housing company may be liable as the owner of the estate. The estate owner's liability is based on case law.[206] She has an accentuated duty of care with respect to the safety of persons on the property, and she is liable in damages unless she can show that the event giving rise to the damage was unforeseeable. For example, the freezing of

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[199] 1995 Act 3 and 26.
[200] 1995 Act 22 para. 1.
[201] According to Kanerva and Kuhanen, note 6 above, 123.
[202] 1995 Act 22 para. 2.
[203] The Penal Code of Finland (39/1889) 24:1 (531/2000). (Unofficial translation at: http://www.finlex.fi/pdf/saadkaan/E8890039.PDF)
[204] 1995 Act 1 (emphasis supplied).
[205] 1995 Act 20 para. 1, 21, and 23 para. 3.
[206] Supreme Court 1928-II-360 (lift in a deficient condition); 1947-II-160 (doorway slippery because not sanded); 1948-II-229 (icy staircase); 1965-II-89 (inner courtyard not sanded).

running water from a spout on the pavement during a frosty night is not unforeseeable[207], unlike the slamming of a balcony door because of a blast[208]. Recently, the owner of a mall was also held liable when she was not able to show what had caused the shattering of a window-pane.[209] In any event, the owner's liability is dispositive, and in one pertinent case from the nineties the shareholders of a housing company agreed to save costs by assuming the upkeep of a courtyard[210]. In the final scenario, the landlord could be liable instead of the housing company. The tenant may also have agreed to maintain the property herself, even in the course of an accepted practice, as occurred in a case involving a tenant and a landlord-owner whose relationship had over a period of several years assumed a content where the tenant took care of snow-clearing and sanding[211].

Whereas the burden of proof is reversed under both tort and contractual liability, the defendant party remains different in these cases.

Set 5: Breach of Contract

The landlord has the duty to ensure that:

> At the commencement of the lease and throughout its duration, the apartment shall be in such condition as the tenant may reasonably require, taking into consideration the age of the apartment, the local housing stock and other local conditions....[212]

Since 1995, the provision imposing this duty on the landlord has been dispositive, and the parties may now agree on an inferior condition of the flat. The change has been commented upon:

> Up to the most recent revision of the Finnish Landlord and Tenant Act, the content of the mandatory rules on the condition of the flat was equivalent to the rules in Chapter 12 of the Swedish Land Law Code. When the Finnish Act on Residential Leases was passed, the object was, however, to allow the parties greater freedom of contract regarding the condition of the flat as well as regarding many other aspects. In order to "protect" the tenant, it was, indeed, still stipulated that the tenant's right to rely on the rule on the condition of the flat could not be limited by agreement. In practice, this has the effect that the parties may agree that the flat is rented in an inferior condition, but that a contractual term which solely takes away the tenant's right to make a claim about the bad repair and defective state of the flat is not permitted. However, the tenant is always entitled to terminate the lease agreement if the use of the flat entails an obvious health risk (Section 63).[213]

Further mandatory requirements on the condition of the apartment are set in health protection, land use and building and environmental regulation. The parties may only

[207] Supreme Court 1997:151.
[208] Supreme Court 1992:123.
[209] Supreme Court 2001:1.
[210] Supreme Court 1995: 169.
[211] Supreme Court 1980-II-42.
[212] In 1995 Act 20 para. 1.
[213] *Housing Law in the Nordic Countries*, note 44 above, 349–50.

agree on a better condition than in the mandatory requirements, though they can assign the responsibility for this minimum level to the tenant.[214]

Among the various remedies in the Tenancy Act, the tenant has:

(i) the aforesaid right to rescind the contract immediately if the use of the apartment manifestly endangers the tenant's own or her household member's health;[215]
(ii) the right to rescind the contract on the ground that the condition of the apartment becomes deficient while the lease is in force, provided that the defect is not due to the tenant's own negligence or other carelessness and the landlord is responsible for the condition of the apartment, if the defect is of major significance and the landlord does not remedy the defect without delay[216] after the tenant has requested this, or alternatively,
(iii) the right to remedy the defect at the landlord's expense if the landlord does not remedy the defect;[217]
(iv) the right to be exempted from paying the rent or to have the rent reasonably reduced as long as the apartment cannot be used or is not in the required or agreed condition;[218] and
(v) the right to compensation for inconvenience or loss caused by the landlord's negligence or other carelessness, with the landlord having the burden of showing that she did not act carelessly.[219]

In addition, the tenant may have the right to rescind the contract if the apartment is not ready or vacant when she has the right to take possession;[220] and the agreement will simply lapse if the apartment is destroyed or if the authorities prohibit its use for the purpose specified in the lease[221].

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.

When the apartment is destroyed the agreement will lapse,[222] i.e. terminate immediately without any further action or notification required from either party. This traditional rule applies at least when the apartment has burned down so severely as to be uninhabitable. In less acute cases, the rules on the deficient condition of the apartment may apply.

If the agreement lapses before the tenant has the right to take possession, and the landlord had received notification of the grounds for lapse and failed to notify the tenant without delay, the tenant may claim compensation from the landlord for any loss that the tenant incurs as a result of the landlord's neglect (the cost of actions

[214] Government proposal 304/1994 detailed grounds 1.1. (on Section 20).
[215] 1995 Act 63 para. 1.
[216] or within the agreed time.
[217] 1995 Act 20 para. 2.
[218] 1995 Act 23 para. 2.
[219] 1995 Act 23 para. 3.
[220] 1995 Act 16 para. 2. Or, on the ground that the apartment is not in the required or agreed condition when the lease comes into force, in 1995 Act 20 para. 2.
[221] 1995 Act 67 para. 1.
[222] 1995 Act 67 para. 1.

taken ahead of moving; of substitute apartment; etc.).[223] The tenant has the burden of showing the landlord's neglect.

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

The above right to compensation is inapplicable.

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.

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?

The traditional rule in the two tenancy acts up to 1987 gave priority to the earlier agreement, and the losing tenant was entitled to compensation from the landlord, provided that she had entered into the contract in good faith. Since then, protection of possession has been the rule, and a competing agreement is ineffective in respect of the tenant who in good faith takes first possession of the apartment.[224] This tenant has no duty to hand the apartment over to another tenant, but if the other tenant had entered into the contract in good faith, she may claim compensation from the landlord for any (concrete) loss.[225]

As an exception, if a valid mortgage exists as security for another person's lease rights or other rights of use, the holder of the mortgage will have priority.[226] However, this option is not much used, because the registration under the Code of Real Estate requires the property owner's consent and the owner is usually not the landlord but the housing company, which cannot give the consent under the Housing Companies Act.

In any other event, the earlier agreement has priority.[227]

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

[223] 1995 Act 67 para. 2.
[224] 1995 Act 7 para. 1 first sentence.
[225] 1995 Act 7 para. 2.
[226] 1995 Act 7 para. 1 second sentence.
[227] 1995 Act 7 para. 1 third sentence.

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? Has L claims against N?

As the apartment is not ready when the tenant has the right to take possession, she may rescind the contract if the resulting delay causes her significant inconvenience – and also before the scheduled possession if this kind of delay appears obvious.[228] The right is not conditioned on the duration of the delay but on the significance of the inconvenience,[229] which is judged from the tenant's point of view based on the situation as a whole. One example where significant inconvenience is caused is when the tenant has no other apartment.[230] Of course, the landlord might offer her an alternative flat to stay during the delay, and then the inconvenience might no longer be significant. But the tenant has no duty to accept a substitute apartment.[231]

If the tenant decides to wait until the landlord provides her with the apartment, then she has the right to be exempted from paying the rent as long as the apartment cannot be used[232]. Whether she decides to wait or to rescind the contract, she may also claim damages from the landlord, but the landlord can in this case show that the delay was not caused by her negligence.

Finally, the landlord has no claim against the neighbour who exercises her legal rights.

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 tenant has the right to have the rent reasonably reduced when the apartment is not in the required or agreed condition,[233] regardless of the landlord's negligence. Courts have indeed found facts giving rise to this right in some of the numerous recent cases concerning 'mildew houses'.[234]

The period from which the tenant may claim a rent reduction is limited to the time after the landlord was informed of the defect (by the tenant or otherwise).[235]

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

First, the tenant may remedy the defect at the landlord's expense if the following conditions for rescinding the contract are present: the defect is not due to the tenant's negligence; the landlord is responsible for the condition of the apartment; the defect is of major significance; the tenant has requested the landlord to remedy the defect; and

[228] 1995 Act 16 para. 2.
[229] Ari Saarnilehto, *Vuoden 1987 huoneenvuokralaki*, Suomen talokeskus 1987, 27.
[230] Government proposal 127/84.
[231] Kanerva and Kuhanen, note 6 above, 98.
[232] 1995 Act 23 para. 2.
[233] 1995 Act 23 para. 2.
[234] In a 2003 commentary, twenty appellate-court decisions from 1996 to 2003 are concerned with rent reduction and/or damages based on the deficient condition of the apartment, and most of the cases deal with alleged humidity damage and mildew. Kanerva and Kuhanen, note 6 above, 126–36.
[235] 1995 Act 23 para. 2 last sentence.

the landlord does not remedy the defect without delay[236].[237] In this case the request had been made, so the question turns on whether the landlord was given enough time to act.

Then, the tenant has the right to off-set a counterclaim against the rent.[238] She should see to it that the cost is reasonable:[239] she must pay the excess herself.

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?

The agreement may often provide that the apartment is leased 'as is.' However, this stipulation does not preclude the tenant from claiming a rent reduction under the Act if she was unaware of, and by exercising ordinary care could not have detected, the defect at the time of entering the contract.[240]

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

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.

The deficient condition of the apartment could be caused by noise from outside the flat. In support of this conclusion, literature points to an analogy between noise and sewage (on which there is a precedent)[241] entering the apartment, and also to some appellate-court decisions that have mentioned incoming noise as a defect.[242] The source of the noise would probably make no difference in a claim for a rent reduction (but the tenant's awareness of the noise on entering into the contract could make a difference).

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

No. Any stipulation restricting the tenant's rights to require that the apartment is in the required or agreed condition, or to gain a rent reduction, is null and void.[243]

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?

As a point of departure, the parties should include a decisive factor such as a planned surgery-room use in the written contract, in order to exclude doubts about the legal consequences.

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[236] or within the agreed time.
[237] 1995 Act 20 para. 2.
[238] In 1995 Act 9.
[239] 1995 Act 20 para. 2 last sentence.
[240] 1995 Act 20 para. 3.
[241] Supreme Court 1969-II-54.
[242] Ari Saarnilehto, 'Huoneenvuokralain 3 luvussa tarkoitettu huoneisto,' *Lakimies* 1994, 1006–20 at 1014–6.
[243] 1995 Act 26.

The assumption about the use of the rooms was shared by both parties. As the landlord knew or should have known about this assumption, she cannot in good faith maintain that the agreement was made under different conditions.

The assumption in question might be regarded so significant from the viewpoint of the tenant that the denied permission would be equal to a prohibition on the use of the entire apartment. Then the tenant could claim that the contract has lapsed, on the ground that the authorities prohibited the use of the apartment for the purpose specified in the lease[244]. The tenant's claim for compensation would require showing that the landlord was negligent,[245] which does not seem to be the case.

If the assumption were considered less significant for the tenant, she could have the right to rescind the contract on the ground that the apartment is not in the agreed condition[246] or the right to have the rent reasonably reduced as long as the apartment is not in the agreed condition[247].

The Act on Business Leases applies when the apartment is leased primarily for a non-residential-use purpose.[248] Although the above reasoning concerning lapse implies that the surgery-room use was very central to the agreement, the agreement need not fall under this Act. The primary use of the apartment could for example be determined on a square-metre basis, and then the Tenancy Act would apply if the apartment was big and the surgery room – though important – small.

Set 6: The Relationship among the Tenant and Third Persons

Beside the Tenancy Act, the Housing Companies Act also regulates nuisance by the dweller (owner or tenant). If the tenant creates a nuisance, the shareholder's meeting may decide that the company takes possession of the apartment for up to three years. As with the landlord's right of rescission (**11***b*), the conditions include that the nuisance is not of minor significance and that the company has given a prior written warning to the tenant and the landlord-shareholder.[249]

The above tenancy and housing company rules are more important in this area than the Act on Certain Neighbour Relations[250].

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?

As regards the factual background to the case, multi-storey buildings and row or semi-detached houses are typically owned by housing companies. The tenant who gets annoyed by noise or smell coming from a neighbouring apartment of the same house shall contact the company board, and request it to take measures such as a written warning. She may do this even as a tenant; no ground prohibits this.

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[244] 1995 Act 67 para. 1.
[245] Id.
[246] 1995 Act 20 para. 1.
[247] 1995 Act 23 para. 2.
[248] *Laki liikehuoneiston vuokrauksesta* (482/1995) 1 para. 1.
[249] The Housing Companies Act (809/1991) 81 and 82.
[250] *Laki eräistä naapuruussuhteista* (26/1920).

The tenant can also contact her landlord, and complain about the condition of the apartment (**26***b–c*). As the neighbour is also a tenant, the victim-tenant can contact her neighbour's landlord too, but this course of action has no legal relevance. Whether the two tenants have the same landlord or not has no legal relevance either.

Finally, the victim-tenant could in principle also bring a court action for injunction or damages against the tenant who uses the neighbouring apartment on the ground that this use causes an unreasonable burden in terms of the Act on Certain Neighbour Relations[251].

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 Euro and entails T being unable to use two rooms for 2 weeks. The lorry has been driven by E, an employee of the building company B. Does T have claims against the building company B or the neighbour N who commissioned the building company?

As a backdrop to this question, first the contractual freedom of the landlord and the tenant should be recalled: the tenant may assume responsibility for the condition of the apartment, and she may then need to turn to these third parties for compensation. Presumptively, however, the landlord has responsibility, and the tenant may be exempted from paying the rent or have the rent reasonably reduced during the time that the apartment cannot be used[252]. Second, the tenant's claims against these third parties could relate to damage to property such as chattels that were in the apartment, or to the extra cost of substitute accommodation for two weeks, say a hotel room. The landlord is not responsible for these losses, because the damage was not caused by her carelessness[253].

In the absence of a stricter ground in legislation or case law, tort liability requires negligence.[254] In this case the lorry-driver *E*, an employee of the building company *B*, was negligent. Because an employer is vicariously responsible for damage caused by an employee through negligence at work,[255] the tenant may state her claim against the employer *B*. (Most likely, she will state her claim against both *B and* the employee *E*.) In addition to this, vicarious liability applies similarly to a person who assigns work to an independent entrepreneur, who may be considered equal to an employee in view of the permanent nature of the assignment, the nature of the work and other circumstances.[256] Accordingly, the tenant might also be able to state a claim against the neighbour *N*, who had commissioned the building company, but this depends on the contractual relationship between *N* and *E*.

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[251] A property, building or apartment shall not be used in a way that a neighbour, a person living nearby, or a person possessing the property, building or apartment suffers an unreasonable burden from environmentally harmful substances, carbon, dirt, dust, smell, humidity, noise, vibration, radiation, light, heat or other such effects. *Laki eräistä naapuruussuhteista* (26/1920) 17 (90/2000) para. 1 (my translation). The Act of Compensation for Environmental Damage (737/1994) applies to similar emissions but the damage must accrue in the environment, which excludes emissions from one apartment to another within the same building. According to *laki eräistä naapuruussuhteista* 18 (90/2000) para. 1 and Government proposal 84/1999 detailed grounds 1.5.

[252] 1995 Act 23 para. 2.

[253] As required by 1995 Act 23 para. 3.

[254] Tort Liability Act (412/1974) 2:1 para. 1.

[255] Tort Liability Act 3:1 para. 1 first sentence.

[256] Tort Liability Act 3:1 para. 1 second sentence.

The main line of approach would be that *B* as the employer is liable for all the damage to the apartment and the chattels and for the extra cost associated with the hotel room[257].

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 Euro and causing a damage of 200 Euro 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?

Two issues: criminal liability on the one hand, and who pays for the damages on the other. Analogies to criminal law may be needed in tort, because disputes about defences such as necessity tend to be rare, and tort legislation does not deal with defences.

The neighbour's action could amount to criminal damage[258] or an invasion of domestic premises[259]. Both offences require that the offender acted unjustifiably and are punishable only as intentional acts. Let us assume that the neighbour's action was criminal under either head. Still, her action might be permissible as an act of necessity, if it was on the whole justifiable taking into account the nature and extent of the interest to be rescued and the damage and detriment caused, the origin of the danger and other circumstances.[260] It would seem that chiselling a door to enter a neighbour's apartment is a radical act and, as such, hard to justify. Nonetheless, a gas explosion might just be the kind of risk that could justify adopting extreme precautionary measures, as the lives or health of persons may be in danger, and on this account the 'active citizen' might not be to blame after all. Unfortunately, necessity as a defence cannot apply to the case, because no one was actually in danger. The neighbour's action was intentional in the sense that she certainly knew what she was doing, but she mistook that the circumstances could justify her action. Therefore, the case turns on mistake as to a defence. In 2003, the Penal Code was amended to provide that the offender may not be punished if a ground for exemption such as necessity would have been connected with the situation as reasonably understood by the offender[261]. According to the Government proposal, she is in these circumstances 'exempted, under this provision, from liability for intentional acts. Conditions for liability for negligent acts must however be considered separately.'[262]

As a rule, tort liability requires negligence.[263] The tenant's negligence might consist in having left the garbage in the apartment, while the neighbour may have been negligent in too hastily assessing the situation based on the smell. By showing that the neighbour was negligent, the tenant (or the landlord)[264] could claim

[257] The latter is a loss connected to damage to property. Tort Liability Act 5:1.
[258] The Penal Code of Finland (39/1889) 35:1 (769/1990).
[259] The Penal Code of Finland 24:1 (531/2000).
[260] The Penal Code of Finland 4:5 (515/2003) para. 1.
[261] The Penal Code of Finland 4:3 (515/2003).
[262] Government proposal 44/2002 general grounds 5.2.
[263] Tort Liability Act (412/1974) 2:1 para. 1.
[264] The landlord could also claim damages based on contract, as the tenant is liable for damage to the apartment caused by her negligence. 1995 Act 25 para. 2.

compensation for the damage at the door from her. If the tenant were deemed to have been negligent, the neighbour could claim the value of the chisel from her.