

INTRODUCTION

a- Origin and basic lines

Specific regulation on private tenancy law was first introduced in France with the Quillot Act, June 22nd 1982¹. Prior to this date tenancy contracts were established by reference to the general terms contained in the French civil Code concerning the hiring of things (*louage de choses*), initially elaborated for the lease of chattel or of real property. But most lettings were verbal, and thus open to abuse by landlords - especially in times of housing crisis - abuses which led to the adoption of a specific regulation.

In France most "social" laws result from social and political upheavals. Tenancy laws are a good illustration of these struggles which started at the beginning of the 19th Century, together with the very new concept of social housing (much later than in the UK). At that time it was a private initiative; rather a local answer to the needs caused by industrialisation. Regulation only developed with the building of social housing after World War II. This also explains the absence of a codification on social housing and the general impression of a growth in statute law.

Workers' movements focused upon factory issues and were little involved in housing related claims. As a result, action was led by libertarian, anarchist and independent political groups. In the 1880's the housing situation was very difficult, real property speculation was high and those in rent arrears were liable to imprisonment. Many demonstrations and occupations (including the famous *départ à la cloche de bois*) were organised; the issue thus became a very public matter.

In 1889, after many years of debate, social housing was developed, the *Habitation à bon marché*. The 1894 Siegfried Act authorised home ownership and the 1906 Ribot Act created mortgage companies. In 1912, the first institutions entitled to build social houses were created in the Bonnevey Act. Later, the 1928 Loucheur Act would encourage home ownership and tenancies.

However, the aim of this legislation was neither aimed at protecting tenants against abusive evictions, nor at organising rental market. Policies were inspired by hygienist and moralising ideas, and their main objective was to avoid working class riots (by educating the "good" workers, and making sure that the architecture of the new houses would prevent tenants from meeting). As the situation of the poorest deteriorated, the first tenants' association (*l'Union syndicale des locataires ouvriers et employés*) was created in 1910, and from 1910 to 1914, lead by the very charismatic Georges Cochon² serious actions of evicted tenants and homeless families developed.

Another important piece of legislation, relevant to housing, is the 1948 Act³, was passed as a temporary rent-control act (to limit post war rent inflation), and is still applied for some buildings built before 1948 (a recent bill has been proposed to repeal it⁴).

¹ 22 June 1982 Act, n° 82-526, regarding tenants and landlords rights and obligations

² P. Kamoun, *Voilà l'Cochon qui déménage*, Vauchrétien : Ivan Davy Ed., Faits et gestes, 2000

³ 1st Sept. 1948 Act, n° 48-1360

The 1982 Act is therefore the first act establishing a specific regulation of private tenancy law as such. Passed after the 1981 socialist party victory, this was a very symbolic law. The idea was to protect the weak party against the stronger, *i.e.* the tenant against the landlord. Tenants were considered to be abused by unscrupulous landlords taking advantage of the crisis (due to the lack of available lodging) and of insufficient tenants legal protection (they could be evicted at any time for any reason). Basically, this Act imposed the adoption of a written contract within a specific frame, requiring minimum terms and limited conditions to terminate the contract. A strong emphasis was also put on the collective bargaining of rent control.

Reactions were positively strong. The right wing accused the government of willing to abolish private property. The idea of imposing a written contract to a landlord was unbearable, the entire act was considered as a gross violation of property right. As soon as the conservative parties came back to power in 1986, they repealed this act and passed another one. However, even with a right wing government, under tenants' association pressure, the conventions signed in 1974, the *Accords Delmon*, would have probably led to a similar law.

The essential aim of the 1986 Méhaignerie Act⁵ was to reassure landlords and encourage them to rent their property in order to increase the number of available dwellings. The idea was that if landlords were free of increasing rents or evicting tenants when necessary, they would more likely rent their property. Focus was put on non controlled rent under judiciary authority and local conciliation committees.

Rents increased drastically, and when socialists came back to power, this law was repealed, and a new one, the 1989 Mermaz Act⁶ was voted. By then, a consensus had been reached on many points such as a principle of a written contract, a minimum term of 3 years, and some restricted conditions to terminate the contract. Since then, modifications of that law have been more technical than political, like, for instance, the 1994 Act⁷ or the 1998 Act⁸.

The sole constitutional influence that can be seen is in article 1 of the Act, which states that the right to housing is a fundamental right and must be exercised within a legal framework⁹. This phrase is identical to the formulation of the right to strike included in the Constitution preamble. But not much has been made from it.

A reference to the 1987 Resolution of the European Parliament¹⁰ can be found in the Parliamentary debates for the vote of the 1989 Act¹¹. However, this tribute was only made in order to replace the word "housing" (*logement*) instead of the word "habitat" (*habitat*) previously used in the 1982 Act. The word "habitat", taken from the architectural vocabulary, also had a larger meaning.

This legislation was not officially inspired by any other legal system. Nowadays, reforms concern less tenant law as such. Any current modifications objective is no longer to protect tenants against landlords ; they are already well protected : the actual legislation helps people to accede to dwellings (by increasing their availability, by improving tenants' guarantees, by creating specific housing for underprivileged people, or by preventing people from

⁴ Governmental proposal 2003

⁵ 23 Dec. 1986 Act, n° 86-1290, aiming at enhancing rental investments, accession to social dwelling property and immobility development offer

⁶ 9 July 1989 Act, n° 89-462, aiming at rental relationships improvement

⁷ 21 July 1994 Act, n° 94-624, related to *l'habitat*

⁸ 29 July 1998 Guiding Act, n° 98-657, related to *lutte contre les exclusions*

⁹ "le droit au logement est un droit fondamental ; il s'exerce dans le cadre des lois qui le régissent"

¹⁰ European Parliament Resolution, 16 June 1987, in *Europe Sociale*, suppl. 3/92, p. 100

¹¹ P. Pillet, Rapporteur de la Commission des lois, *O.J.*, Senate n° 28 du 21 Apr. 1982, p. 1174

"dropping" out , like in the 1998 Act for instance. However, some reckon that the legislation should be reformed because these protective statutes would tend to decrease the number of dwellings to be rented.

b- Basic structure

Private tenancy

All in all, tenants are well protected. The 1989 Act is *d'ordre public*, which means that all contracts concerning the letting of a dwelling (premises for letting) are covered under this Act, whether this was mentioned in the contract or not. Are excluded from this act, rentals of, furnished accommodations, community homes, accommodations which goes with a, employment (*logements de fonction*), seasonal rentals (*logements saisonniers*) and sub-rentals. The requirements and conditions that a landlord can ask are strictly limited by this law (a list of prohibited clauses is included). The landlord can only terminate the contract under specific conditions (will to sell, will to occupy the dwelling for himself or for close family or for a "*legitimate and serious reason*"¹² such as the violation of tenant' obligations). Moreover, every eviction has to be authorised by a judge within a special procedure for those in financial difficulties.

Rent increase is controlled and indexed to the price of construction increase.

Tenant's statutes derogate from general private law. Very few dwellings can be let out of the 1989 Act field (see article 2, al. 2 "are excluded seasonal lettings, furnished accommodation, hostels, company accommodation...") ; these provisions are mostly compulsory.

Tenants regulations were not directly influenced by consumer protection. But this is obvious that a similar philosophy backs both statutes. The main idea is to protect the weaker (the consumer or the tenant) against the stronger (the professional or the landlord). The list of prohibited clauses reveals these similarities. This will probably tend to increase as these two fields develop.

Apart from problems due to the number of successive reforms (what happens when a disagreement occurs in 1990 about facts in 1987 concerning a contract signed under the 1982 Act ?), there is in general no legal uncertainty between general and special rule.

Nevertheless, one has to mention the lately slight development of "co-locations", not foreseen by the 1989 Act, which might cause new conflicts, and one has also to mention the serious increase of conflicts related to charges in services (*charges locatives*). A 1987 Decree¹³ gives a limited list of charges that a private landlord¹⁴ can recover from the tenant. However, since then, techniques and needs changed and many new services (*door entry systems, electronic surveillance, heating systems, lifts, etc.*) are not included in the Decree. Consequently, many conflicts have arisen. The current government has just launched a "*charges locatives*" project providing a ground for a dialogue between concerned parties and an opinion about the topic in order to reform the law.

¹² Article 15, 1989 Tenancy Act

¹³ 26 August 1987 Decree, n°87-713

¹⁴ A specific Decree (9 Nov. 1982, n°82-955) was elaborated for social housing

Social regulation

Regarding tenancy law, there is no actual difference between private and public housing. There is no difference between public and mixed public/ private housing. The focus is put on the financing of the dwellings. Since the “*solidarité et au renouvellement urbain*” (S.R.U.) Act of 2000¹⁵, the dwelling is “*social*” if there is a specific financing, i. e., public funds.

Provisions concerning public housing are practically the same as those of the private sector (regarding tenancy contracts). The only difference regards the rental terms, which is for life actually, unless tenant chooses to leave or does not respect his obligations. Another slight difference is the eviction procedure, which is longer in the social sector because every local authorities has been informed.

A growing number of public or private institutions sub-let dwellings to under-privileged people (through a specific “*convention*”). Consequently, they may put their tenants into an unsafe situation with some rights which are not always protected (this has slightly changed since the 1998 Act¹⁶). However, even if those situations have not been foreseen by statutes, general principles of law or fundamental rights, such as the right to privacy, which could be violated, would be used and prevail.

Many loans, tax subsidies and tax incentives exist for private individual who will rent their dwelling to people earning less than a fixed amount during some length of time (*ammortissement Besson*, *ammortissement Perrisol*, etc.). This is also possible to get subsidies to renew a building or a flat in exchange of renting it out for a least nine years. A few years ago, the incentive was on property ownership (tax reduction on loans, *prêt à taux zéro*).

The latest tax incentive is the *taxe d'habitation*¹⁷ which must be paid when dwellings are left empty for more than 18 months. The idea was to discourage property owners to leave empty dwellings. The money from the tax is given to a fund that finances house renovations.

A 1945 Requisition Act¹⁸ established a procedure allowing the award of empty houses to people in need. The statute still exists but this is no longer used even though the sector is in crisis, many families are homeless or badly housed, and many dwellings are empty (especially in large cities such as Paris). A 1990 Act¹⁹ created a similar procedure, a renovation rental (*bail à réhabilitation*), which entitles public housing associations to contract with private individuals in order to rehabilitate their buildings in exchange of the use of the dwelling for a certain length of time. This act was seldom applied. In 1995, facing with a very strong pressure from public opinion and using an extraordinary procedure, President J. Chirac requisitioned about 700 empty dwellings. The outcome was not really satisfactory because of the occupants' departure conditions were not foreseen, and because of the cost for the offices buildings transformation into apartments. The 1998 Act created also another requisition procedure with non-profit organisations as mediators, but this too complicated procedure has not yet been used.

¹⁵ The 13 Dec. 2000 Act n°2000-1208 aimed “à la solidarité et au renouvellement urbain”

¹⁶ The 29 July 1998 Guiding Act, n° 98-657, related to “la lutte contre les exclusions”

¹⁷ Ibid.

¹⁸ The ordinance of the 11 Oct. 1945 aimed at attributing vacant dwellings

¹⁹ 31 May 1990 Act, n° 90-449, aiming at the right of dwelling implementation, known as “loi Besson”,

c- The law in action

The general situation as regarding housing will depend on the focus. If one is concerned about the standard of living, the situation is globally better (better quality dwellings), apart from the fact that slums are reappearing in suburbs of large cities and that more and more people have trouble finding an affordable dwelling to rent, tenants in place are basically well protected. Moreover, more individuals own their own house. But if one considers the general renting market, the situation is very tense and has deteriorated in the late years. In some cities, such as Paris it is very difficult to find a rental, prices have drastically increased and landlords are asking for more and more guarantees.

If many dwellings are empty, this may be due to the high level of tenant's protection which makes almost impossible the eviction of those who stop paying their rent, but this is also probably due to real estate speculation (prices in Paris have nearly doubled within the past three years).

The role of tenants' organisations.

Many tenants' organisations were created, or developed, in the 50's in reaction to despicable housing conditions (especially after the "*Appel de l'Abbé Pierre*" in 1954). Among others, can be named : the A.C.D.L. (*Association comités de défense des locataires*), the C.G.L. (*Confédération générale du logement*), the C.L.C.V. (*Consommation, logement, cadre de vie*) and the C.N.L. (*Confédération nationale du logement*). In the 1970's, they were sufficiently important to participate to governmental negotiations which led to the 1974 *Accords Delmon*. Most of the content of these agreements was integrated into the 1982 Act. This Act gives these organisations important prerogatives, which were repealed by the 1986 Act, before having been mostly reintroduced in the 1989 Act. Recent laws²⁰ have increase the role of these organisations, by introducing them within new decision making procedures (at the national as well as the local level) or by authorising them to represent tenants before the courts (under certain conditions).

There is not as such some standard contracts prepared by tenants' or landlords' associations ; these associations are not aimed at preparing such documents, even though they could do so.

The use of alternative dispute resolution in French tenancy law

Tenancy law is very often enforced before courts, this is one of the most frequent conflicts. A voluntary alternative dispute resolution (A.D.R.) procedure can also be used for certain disputes. These A.D.R. are settled by local committees (*commissions départementales de conciliation*) which count an equal number of tenants' and landlords' association representatives ; their jurisdiction was enlarged by article 88 of the 2000 Act²¹.

These committees have to give an opinion and provide solutions to conflicts between tenants and landlords. They are now in charge of solving disputes regarding rent, inventory of fixtures, deposits guarantee, charges of services, and repairs incumbent upon tenants. Their powers have also been extended to the social sector in order to settle disputes resulting from national and local agreements (art. 41 *ter*, and art. 42 December 23rd, 1986 Act), rental consultation plans created by the SRU 2000 Act, or building facilities.

²⁰ 13 Dec. 2001 Act, said *S.R.U.* ; and 17 Jan. 2002 Act, n° 2002-73, said of "*modernisation sociale*".

²¹ 13 Dec. 2002 Act, n° 2000-1208, related to "*solidarité et au renouvellement urbain*" known as "SRU"

The enforcement of a tenancy law judgement is very specific and will be developed further when answering the relevant questions in the questionnaire.

Tenants have a relatively fair and effective access to courts. Legal access is being improved by information campaigns, especially towards the underprivileged, free legal assistance is being developed, through non profit organisations but also through public services (such as within the courts). However, legal aid²² is still slow and the amount given to the lawyers often remains insufficient. If the poorer populations are faced with a lack of information concerning this help, this is probably the lower middle classes that suffer the most from a limited access to justice. They do not benefit from legal aid (a very low salary is required) but still cannot afford lawyers' fees. Moreover, procedures are still often too long (which usually benefits to the tenant – how long more or less? Are there rough numbers available?), as Courts are saturated and lack means, which discourages many from going before them.

Legal uncertainty is not the main issue in tenancy law. Problems do occur on specific subjects such as charges of service, statutes being very misleading²³. Uncertainty may also result from the repossession term; for instance, when a landlord wants to evict a tenant, even though the land lord is in his right, the Court may grant a suspension, and even after the suspension, police may refuse to perform the eviction, the State will then compensate the landlord.

Thus the main interest of our present tenancy project agenda seems to look for a tool of legislative reform, informed by a comparative methodology, which would determine the most appropriate terms of a contractual justice. In that regard, French experience of tenancy law is of great support to enhance such a project²⁴.

²² 10 July 1991 Act, n°91-647, related to *l'aide juridique*

²³ Decree n°87-713 of 26 August 1987, *O.J.* 30 August 1987, implementing Art. 18 of the 23 December 1986 Act n°86-1290, fixing the list of *charges récupérables*

²⁴ Caveat : As already mentioned above, all new tenancies concerning a dwelling (*locaux à usage d'habitation*) fall under the scope of the 1989 Tenancy Act. Are excluded from this act specific rentals such as secondary houses, furnished accommodations, community homes, accommodations which goes with an employment (*logements de fonction*), seasonal rentals (*logements saisonniers*) and sub-rentals. A few rentals are still under the scope of the 1948 Act, and the 1986 Act. In answering the following question, these specific and quite seldom situations will not be brought up unless a particularly interesting case arises.

SET 1: CONCLUSION OF THE CONTRACT

Until the 1982 Act, the laws related to tenancy contract were not included in an autonomous legislation. Apart from the contracts on dwellings built before the 1948 Act, prohibiting rent increases and evictions, tenancy contracts were ruled by the general French Civil Code provisions on the lettings of things. Inspired by the principle of contractual freedom, these provisions simply authorise rentals of dwellings (article 1713 of the Civil Code) and provide a few specific rules²⁵ such as rental reparations. Parties are left free to negotiate the conclusion of their contract ; this free negotiation is supposed to lead to the best contract.

As mentioned above, the government did not think that such contracts were fair when signed during a housing crisis. Because of the housing shortage, future tenants were not in position to negotiate freely the contract terms. The 1982 Act took into account the weaker position of the tenant by imposing minimum standard terms to the rent, by prohibiting some clauses and by limiting possibilities of contract termination. This act was repealed by the right wing government and replaced by a 1986 Act which gave again more freedom to the contractors.

The 1989 Act is a conciliation between both basic principles of contractual freedom and contractual justice. However, if the principle remains that the landlord has the freedom to choose his tenant, ask for financial guarantees or invite his tenant to leave, most of the landlord's acts are regulated, limited or even prohibited. Tenancy law is therefore quite accurate and deals with most of the problems related to the conclusion of the contract of tenancy as the choice of the tenant (1), sharing with a third person (2), sub-renting (3), formal requirements and registration (4), or extra payments and commission of estate Agents (5).

Question 1: Choice of the Tenant

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

- a) has a husband and three children.*
- 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?

A tenancy contract is an *intuitu personae* contract, that is to say a contract between two specific persons, who choose each other for specific reasons, and who are not normally interchangeable²⁶. In case of death, the contract can be transferred to certain persons (see variant 1 in question 2).

²⁵ Article 1752 to Article 1762 concerning specific rules on rentals

²⁶ Courts have decided that the contract was void for mistake on the person if it is signed by someone who presents himself as the true tenant in order to deceive the landlord on the identity of the true contractor (CA

An important element in the choice of the landlord will often be the solvency of the tenant. He can therefore ask for certain documents, pay slip for instance, in order to make sure the future tenant presents the necessary guaranties. However, article 22-2 of the 2002 Social Modernisation Act (*Loi de modernisation sociale*)²⁷ prohibits the landlord from asking the potential tenant the following documents :

- identity photographs ;
- social security card ;
- bank or postal account statement ;
- certificate of a well kept bank or postal account.

A landlord can refuse a potential tenant because he does not offer sufficient guarantees (they do not earn enough to pay for the rent), but he cannot discriminate nor impose certain conditions.

a) According to article 1 of the 1989 Tenancy Act, the landlord cannot refuse a family unless the apartment is *really* too small (a 10 square metre studio for instance).²⁸

b) The 2002 *Modernisation Sociale* Act also added two paragraphs to article 1 of the 1989 Tenancy Act, prohibiting discriminative behaviour in the choice of the tenant. The list of the prohibited discrimination is extremely large. "One can not be refused the renting of a dwelling on the ground of his origin, name, physical characteristics, sex, family situation, health situation, handicap, moors, sexual habits, political opinions, activities within some unions, or his true or assumed appurtenance or non appurtenance to a an ethnic, a nation, a race, or a determined religion".²⁹ This new law will probably reduce the importance of the European Human Rights Convention in tenancy conflicts, as the French Act is more precise on the procedure and on the evidence.

The implementation mechanism of this article was criticised.³⁰ The person who was refused the tenancy simply had to "*present factual elements that infer the existence of direct or indirect discrimination*" for the landlord to have to prove that his decision to refuse this applicant was justified. Authors feared that action grounded on mere allegations would multiply and that landlords, forced to prove their good faith, would be unable to produce the required "*justification*".

The French Constitutional Court interpreted the provision by underlining that the rejected tenant will have to "*establish the veracity of accurate and concordant factual elements he*

Toulouse, 3^e ch., 23 2000 : *Loyers et copr.* 2001, comm. n°27, obs. B. Vial-Pedroletti) or also, when the tenant presents himself falsely as a wage-earner to deceive the landlord on his solvency (C.A. Paris, 6^e ch. B, 29 June 2000 : *Loyers et Copr.* 2000, comm. n°266, obs. B. Vial-Pedroletti)

²⁷ January 17th 2002 Act n°2002-73

²⁸ See the provision just below n° 30.

²⁹ The 6 July 1989 Act, art. 1 §2 : "Aucune personne ne peut se voir refuser la location d'un logement en raison de son origine, de son patronyme, son apparence physique, son sexe, sa situation de famille son état de santé, son handicap, ses mœurs, son orientation sexuelle, ses opinions politiques, ses activités syndicales ou son appartenance ou sa non-appartenance vraie ou supposée à une ethnie, une nation, une race, ou une religion déterminée". To compare with Directive 2000/43/EC (O.J. 2000, L 180/22) on the principle of equality, prohibiting discrimination on ethnical grounds, to be implemented by 19/7/2003, also covers equal access to housing (Art. 3 § 1 lit. h)

³⁰ See, the action before the French Constitutional Court : *O.J.* 18 Jan. 20002, p. 1072 ; see also, V. Canu, *Modernisation sociale et bail d'habitation* : *Rev. Administrer*, May 2002, p. 9

presents to ground his allegation" and that the landlord will have to "*prove that his decision is motivated by the normal management of his estate or by objective elements*" foreign to any discrimination.³¹ The judge will have to decide "*after having ordered, if needed, every instruction measures he deems useful*". The only civil sanction for the landlord convicted of discrimination seems to be damages. These damages may be as well material as "*moraux*" or immaterial.

During the procedure, the government indicated that these provisions "*were of no effect in criminal matters*".³² However, some do not agree. Article 225-1 of the French Penal Code punishes with penalties foreseen in article 225-2 (two years imprisonment and 30 000 Euros) "*every distinction made between individuals according to their origin, sex, family situation, health, handicap, political or union activities, religion, race, nation, ethnic identity*". On this ground a landlord was convicted of discrimination for demanding supplementary guaranties after having learnt the tenant had AIDS.³³ A landlord could then be sued on criminal matters after having been condemned on a civil ground according to article 1 of the 1989 Tenancy Act.

A landlord cannot refuse a future tenant because he is Muslim, even if he is afraid of terrorism. Such a motive is discriminatory.

c) Article 10 of a 1970 Act³⁴ prohibits provisions forbidding animals in rented dwellings as long as it is a pet and does not destroy the building nor cause abnormal disturbance. A 1999 Act³⁵ authorised clauses prohibiting listed dangerous animals.

A small dog qualifies as a non dangerous pet. A landlord cannot refuse a tenant on that single basis. If in the long run, the dog caused abnormal disturbance (continuous barking for instance), the landlord can evict the tenant, after having asked him to get rid of the dog.

d) Playing the piano from 8 to 9 pm is not a reason for refusing an applicant. It is not an abnormal nuisance prohibited by the 1989 Tenancy Act (see question 26).

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

Solution (b) applies here.

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?*

Article 1134, paragraph 3, of the French Civil Code imposes that contracts have to be agreed in good faith, and article 1109 considers that a contract is not legally formed if the consent was given by mistake, given under violence or fraudulently. This means that generally, a lie from one of the partners on an important aspect of the contract (which is determinant in the decision of contracting) can lead to the rescission of the contract.

³¹ *O.J.* 18 Jan. 20002, p. 1059, n°88

³² *O.J.* 18 Jan. 20002, p. 1082

³³ Cass. Crim., 25 Nov. 1997 : *Rev. Administrer*, June 1998, p. 37, obs. G. Teillais

³⁴ July 9th 1970 Act, n° 70-598

³⁵ January 6th 1999 Act, n° 99-5

Concerning tenancy contracts, such cases are rather theoretical. The only thing that really interest a landlord once the tenant is in the premises, is whether his tenant is going to pay the rent. A second type of worry can be how the tenant will "behave", if he is not going to cause damages to the dwelling or to disturb his neighbours. Nevertheless, a landlord can legally ask a judge to rescind a contract and claim for damages. This is quite unlikely that a first instance judge (*juge d'instance*) will agree with such a claim, the *Cour de Cassation* (more formal on the application of law) might. However, even if the Landlord sue his tenant the procedure will cost him at least as much as what he might get in damages.

Nevertheless, in the above mentioned cases, the Landlord cannot cancel the contract for deceit as none of these motives are legal,.

Question 2: Sharing with Third Persons

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?

After having rented a dwelling, this often happens that a tenant's family life changes.

Should the tenant get married, and informs the landlord, the wife or husband is automatically added to the contract (even if the landlord refuses). If the landlord wants to give notice, he will have to inform namely both the husband and the wife, the same goes for those who are bound by a *Pacs*,³⁶ and for those who co-signed the contract.

A tenant can take relatives into the apartment, he does not have to inform the landlord, who cannot refuse. The only condition being that the occupation has to be gratuitous, if the third party gives anything in return (money, work), it can be re-qualified in a prohibited sub-letting. The tenant is responsible for the people in the dwelling. If the landlord wants to give notice, he does not have to warn anyone else but the tenant.

The landlord cannot increase the rent. A rent is fixed according to a building and not according to the number of people it is likely to house. At the end of the contract, the landlord can just increase the rent, respecting the maximal rent increase.

There is no legal minimum requirements as regards space for each inhabitant. During the debate on the 2000 *SRU* Act, there were passionate discussion on whether the definition of a "*decent lodging*" should include a minimum available space. Parliament decided otherwise.

However, there are social minimum standards. Housing benefit can only be awarded to dwellings of at least 9 square metres. The figures change depending on the number of people and on the type of allowance. Social housing have to comply with these requirements even if a dispensation is easy to obtain. Moreover, verification is rarely done, for such situations are

³⁶ *Pacs* : *Pacte civil de solidarité* : specific institution which legally recognised heterosexual or homosexual couples as co-habitant.

usually quite dramatic (a family with 3 children living in a 16 square meter). As proper solutions are difficult to find, the administration often prefers to ignore the problem).

Including a clause in the contract in order to prohibit the housing of relatives is illegal. The *Cour de Cassation* ruled that a clause prohibiting the tenant from taking in his relatives (*proches*) was void as contrary to article 8-1 of the European Convention of Human Rights³⁷. It seems that even none relatives cannot be refused by the landlord.³⁸

Even if such clauses were legally valid, their violation would not be considered as sufficiently serious to justify the termination of the contract.³⁹ However, the case law is not settled on this question, and this is mostly a question of fact left to the first instance judge's discretion.⁴⁰

However, a landlord can forbid the tenant from lending the apartment to a third party who is not his relative. A clause imposing the tenant to personally occupy the dwelling is not void. But such clauses must be very clear.

The mere obligation « *d'occuper les lieux bourgeoisement* » does not seem to be sufficient.⁴¹, nor is a clause imposing an “*strictly personal occupation*”. For instance, according to the Court of Paris, such a clause does not prevent the tenant to take in his children and grand-children.⁴² Besides, this kind of clause does not prohibit the tenant from accommodating people of his choice,⁴³ but this has to be provisory, if it becomes permanent, it could be interpreted as a sale of rent or sub-letting.⁴⁴

On the other hand, the landlord can refuse to add these people on the tenancy contract except for the husband or wife who are annexed by law⁴⁵ to the contract after information to the landlord that becomes a joint tenancy.

In our case, once the contract has come into force, L cannot forbid T to take relatives in his apartment.

Variant 1

If T dies. The persons listed, her spouse and children or her boyfriend who were sharing the house with T during the last years, want to continue the contract with L under the same conditions.

According to article 14 paragraph 2 of the 1989 Tenancy Act and article 1742⁴⁶ of the French Civil Code, the surviving spouse, and ascendants, descendants, reputed cohabitants

³⁷ Cass. 3^e civ., 6 March 1996 : *D.* 1997, 167, note B. de LAMY ; *J.C.P.* 1997, II, 22764, note Nguyen Van tuong. See A. DEBET, *L'influence de la Convention européenne des droits de l'homme sur le droit civil* : Dalloz, n°429 f.

³⁸ See Recommandation de la Commission des clauses abusives n°2000-01)

³⁹ Cass. 3^e civ., 1^{er} Oct. 1997 : *RD imm.* 1998, p. 144, Obs. Collart-Dutilleul

⁴⁰ Cass. 3^e civ., 9 févr. 1994 : *Loyers et copr.* 1994, n°150)

⁴¹ CA. Paris, 6^e Ch.C, 26 Sept. 1994 : *Loyers et copr.* 1995, comm. 52

⁴² CA Paris, 6^e Ch. C 2 Oct. 1996 : *Loyers et copr.* 1996, n°468

⁴³ Cass. 3^e civ., 5 May 1993 : *Loyers et copr.* 1993, n°292

⁴⁴ Civ. 3^e, 4 Oct. 1994, *Rev. Loyers* 1995, p. 212. See further in the report on Sub-renting XXX

⁴⁵ Article 1751 §1 of the French Civil Code : “Le droit au bail du local, sans caractère professionnel ou commercial, qui sert effectivement à l’habitation des deux époux, quel que soit leur régime matrimonial et nonobstant toute convention contraire, et même si le bail a été conclu avant le mariage, réputé appartenir à l’un et à l’autre des époux, sous réserve des droits à récompense ou à indemnité au profit de l’autre époux”.

⁴⁶ Art. 1742 of the French Civil Code : “Le contrat de louage n’est point résolu par la mort du bailleur ni par celle du preneur”.

people under certain conditions can ask for the transfer or continuation of the contract.⁴⁷ The Landlord cannot consider that the changing of debtor creates a particular risk of insolvency or that the personal character of the tenancy was for him a circumstance without which he would not have concluded the contract.

However, the list of beneficiaries is limited and is interpreted according to an order of preference ; in case of several claims, the judge decides according to the different interests. Parties can stipulate a more favourable provision than the one of the article 14 of the 1989 Act. However, it is important that the landlord demonstrated his intention to give up the benefit of the law.⁴⁸ Any other person than those enumerated by art. 14 of the 1989 Act, cannot refer to the transfer of the rent in case of decease : for instance collaterals of the tenant⁴⁹ or relative by marriage.⁵⁰

In our Case, one has to make a distinction for the T surviving spouse. If he can or not take advantage of article 1751 of the French Civil Code⁵¹.

- In most of the cases, according to the provision of article 1751 of the French Civil Code, the surviving spouse will benefit from an exclusive title on the tenancy. He will not share it with the heirs, which excludes any question of preferential devolution. This title, which is not transmitted by succession, is independent of his rights and of the option he will take (he will then benefit from it even if he gives up the succession).

- If the surviving spouse cannot take advantage of article 1751 of the French Civil Code, he will be in competition with the other beneficiaries of the transfer, and the judge will have to arbitrate.

The other beneficiaries are descendants, major or minor, dependent or not, partners bound by a *Pacs*,⁵² ascendants, notorious co-habitant,⁵³ or any person dependent of T⁵⁴. The required condition is that they all have to have lived with T for at least a year before the decease.⁵⁵

One may add that if T had an homosexual partner, since the Act n°99-944 of the 15 November 1999,⁵⁶ homosexual partners got the quality of co-habitants⁵⁷. Thus, they can take

⁴⁷ There is no need of a will manifestation : C.A. Rennes, 6 mai 1999 : *Loyers et copr.* 2000, n°37, obs B. Vial-Pedroletti,

⁴⁸ C.A. 6^e ch. 24 June 1992, *Loyers et copr.* Dec. 1992, n°453

⁴⁹ Cass. 3^e civ., 22 Jan. 1985 : *Loyers et copr.* June 1985, n°238

⁵⁰ His son-in-law for instance : Cass. 3^e civ., 8 May 1979 : *D.* 1979, inf. rap. 483

⁵¹ The transfer of the tenancy to the various categories of beneficiaries other than the spouse cannot be obtained in the case where the surviving spouse is himself or herself co-entitled of the tenancy, his or her personal right hinders the devolution organised to the profit of other beneficiaries whose rights exist only if the surviving spouse does not ask the preferential attribution he or she can claim : C.A. Versailles, 3 July 1992 : *Bull. inf. C. cass.* 1993, n°216

⁵² See definition above.

⁵³ Definition of co-habitation, “concubinage” is given by the Civil Code in his article 515 §8 : “union de fait caractérisée par une vie commune présentant un caractère de stabilité et de continuité entre deux personnes, de sexe différent ou de même sexe qui vivent en couple”. The term “notorious” implies that the relation is public and known by everyone. See : Cass. req., 10 Nov. 1924 and Cass. civ., 12 May 1925 : *D.P.* 1925, I, 125 and 126

⁵⁴ On persons dependent, see : Cass. soc. 14 May 1956 : *J.C.P.* 1956, II, 9516

⁵⁵ Conditions regarding other beneficiaries : Civ. 3^e, 13 July 1994 : *Bull. civ.* III, n°145 ; *Loyers et copr.* 1994, n°365 (1982 Act) ; Civ. 3^e 13 July 1999 : *Bull. civ.* III, n°170 ; *Gaz. Pal.* 1999. 2 Panor. 244; *Loyers et Copr.* 1999, n°261, obs. Vial-Pedroletti. Cass. 3^e civ. 12 June 2001 : *Loyers et Copr.* 2001, comm. 225, obs. VIAL-PEDROLETTI. This cohabitation has to be usual, effective and continue : C.A. Versailles 20 Sept. 1996 : *Loyers et copr.* 1997, n°133, obs. B. Vial-Pedroletti.,

⁵⁶ *J.C.P. G.* 1999, III, 20172 (n°47)

⁵⁷ V.C. BEDELEEM, “Pacs et concubinage dans la loi du 6 juill. 1989” : *Ann. Loyers* 2000, p. 1133.

advantage of article 14 of the 1989 Act, no matter if they get a *Pacs*, they will only have to prove by any means their “notorious cohabitation” for more than a year.

Variant 2

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?

Co-tenancy is a recent phenomenon in France and thus such situations are not specifically dealt with in the 1989 Tenancy Act if there is no kinship, marriage or *Pacs*.

The contract was only concluded between L and T. The situation of L and A will therefore result from what was stipulated in the contract between L and T, in particular the presentation of new comers after a departure.

A landlord can refuse sub-renting, but cannot prohibit his tenant from housing his relatives.

L can legally refuse A, but if A comes anyway, it will be difficult for the landlord to prove that A is sub-renting (especially if L is also in the premises).

Question 3: Sub-renting

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

Can T 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)?

The answer to the first question depends on the law applied to the contract. Most tenancy contracts fall under the scope of the 1989 Tenancy Act, but the French civil code⁵⁸ as well as the 1948 Tenancy Act⁵⁹ refer to sub-letting.

Article 8 paragraph 1 of the 1989 Act⁶⁰ prohibits the tenant from or sub-renting the dwelling without a written agreement from the Landlord⁶¹.

When the sub-renting is authorised by the Landlord, *ab initio* in the contract or later after a written amendment, the sub-rent has to be fixed by a common agreement, the rent paid by the sub-tenant cannot be higher than the rent paid by the official tenant.

If T sub-rents without L's agreement, L may raise a proceeding for breach of contract.

But the sub-letting is not a sufficient reason for the landlord to increase the rent. Rent increases are strictly regulated (see further).

⁵⁸ Art. 1717 C. civ. :

⁵⁹ Art. 78 of the 1948 Act. :

⁶⁰ Art. 8 §1 : “ Le locataire ne peut ni céder le contrat de location, ni sous-louer le logement sauf avec l'accord écrit du bailleur, y compris sur le prix du loyer...”.

⁶¹ Versailles, 28 Nov. 1997 : *Bull. inf. C. Cass.* 1998, n°844, *Rev. Huiss.* 1998. 436 ; *Gaz. Pal.* 1998. 2. Somm. 482

Under the scope of the 1948 Tenancy Act, the rule is different. Sub-renting is forbidden, except if there is an agreement between parties. Nevertheless, the tenant may sub-rent a room in his apartment if he is able to do so. Then, he would have to notify this new situation to the landlord. Thus T would be allowed to sub-rent a room without permission.

According to Article 1717 of the French civil code, T can sub-rent a room in his apartment unless the tenancy agreement provides otherwise. If the contract contains such a provision, the judge would have a restrictive view of this one to prevent a useless breach of contract.

L will then have a right to cancel the contract and a right of expulsion.

Question 4: Formal Requirements and Registration

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

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

A tenancy contract is a consensual contract, that is to say that a mere exchange of agreements (*échange des consentements*) is enough to form a contract. No specific requirement is needed as long as parties agreed on the subject matter (the dwelling), the rent and the term.

Article 1714 of the French civil code provides that a tenancy contract can be either written or oral. The French *Cour de Cassation* also considers that a verbal contract is valid if the parties agreed on the dwelling, the rent and the term of the contract⁶². According to Article 3 §1 of the 1989 Tenancy Act, "*The tenancy contract must be written*"⁶³, and all previous laws on tenancy (1982 Act, 1986 Act) such a provision is imposed. The idea of the legislator was that a written contract would contain all the necessary information to the parties on the important aspects of a tenancy contract (price, object, term, *etc.*).

During the Mehaignerie Act drafting,⁶⁴ debates occurred on the consequences of oral contracts, as whether they would be void. The 1989 Tenancy Act provides that a landlord can not claim that the contract is not written. Moreover, at any moment the parties can ask for the legal establishment of a written document. The French *Court of Cassation* decided that in the absence of a written contract a verbal tenancy contract was not void. The case was about a tenant who thought he could refuse to pay the rent on the ground of the invalidity of the oral contract, the highest civil Court replied that as the rent had already been performed, the absence of a written contract could not make it void.⁶⁵ Authors still disagree on the consequences of a verbal tenancy contract.

⁶² Cass. 3^e civ., 13 May 1990 ; *Gaz. Pal.* 1980, 2, p. 423

⁶³ "Le contrat de location est établi par écrit".

⁶⁴ Mehaignerie Act of 23 December 1986 see Annexe of the Report made on the behalf of the of the Production and Exchanges Committee, AN, doc. N°258, annexe p. 24

⁶⁵ Cass. 3^{ème} civ., 7 Feb. 1990, *Bull. civ.* III, n°40, p. 21 – See P. Derrez, "La jurisprudence et le sort du bail verbal" : *Ann. Loyers* 1993, p. 309 f.

The main issue with oral contracts is their evidence, this evidence can be brought by any means as soon as the contract has begun.⁶⁶ The parties will automatically be submitted to the obligations provided by the 1989 Tenancy Act. The oral contract will last 3 (or 6 years if the Landlord is a company) from the day the contract started (day the landlord received the payment of the rent).⁶⁷ Termination and eviction will also follow the provisions of the 1989 Tenancy Act.

The disadvantage of oral contracts for the landlord is that he cannot use any optional clause which could have been added in a written tenancy contract, such as a penal clause or termination clause, etc.⁶⁸. The main drawback for the tenant is that in the absence of an "*état des lieux*", premises are presumed to have been in a good state.

Question 5: Extra Payments and Commission of Estate Agents

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

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

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

- Art. 52 of the 1st Sept. 1948 Act prohibits such practices.⁶⁹

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?*

Article 5 of the 6 July 1989 Tenancy Act⁷⁰ limits this kind of payment to intermediaries. If the owner or Landlord as juridical or physical person, by his own means, provides a drawing up of the tenancy contract, he cannot ask any payment for this service.⁷¹

⁶⁶ See Article 1715 of the French Civil Code. Most of the time, this evidence results from the receipt of the payment for the rent by the landlord, bills indicating the rents (Cass. 3^e civ., 29 Apr. 1997 : *Rev. Loyers* 1997, p. 427., but this is also the case when the pretending tenant occupy the apartment, is domiciled, or has taken an insurance policy or a telephone subscription (Cass. 3^e civ. 18 July 2000, arrêt n° 1160 D. aff. Roger)

⁶⁷ CA Bordeaux, 5^e ch., 26 June 1997 : *Loyers et copr.* Janv. 1998, comm.5

⁶⁸ CA Paris, 6^e ch. C, 20 May 1997 : *Loyers et copr.* Août/sept. 1997, comm. 225

⁶⁹ Art. 52 §1 of the 1^{er} sept. 1948 Act : "Sera puni des peines prévues à l'article précédent (Imprisonment of 2 years and a fine of 22 500 Euros), tout locataire ou occupant d'un des locaux visés par la présente loi, qui pour quitter les lieux, aura directement ou indirectement soit obtenu ou tenté d'obtenir une remise d'argent ou de valeurs non justifiée, soit imposé ou tenté d'imposer la reprise d'objets mobiliers à un prix ne correspondant pas à la valeur vénale de ceux-ci".

⁷⁰ Art. 5 of the 6 July 1989 Act : "La rémunération des personnes qui se livrent ou qui prêtent leur concours à l'établissement d'un acte de location d'un immeuble appartenant à autrui tel que défini à l'article 2 est partagé par moitié entre le bailleur et le locataire".

Moreover, art. 5 of the 6 July 1989 Tenancy Act provides conditions in which an Estate agent who act as an intermediary in the conclusion of the contract can receive a commission. Several conditions has to be satisfied : - someone (the intermediary) has to ask a fee; this fee must be related to the drawing up of the act of tenancy; this act must be related to an immovable which belongs to someone else ; an immovable defined by Article 2 of the 1989 Act.

The law applies only to Estate agent ; Estate manager ; Public officers charged of drawing up the act (notaries) ; Any legal profession who can ask for a fee (lawyers, *huissiers*).

The fee must be divided into halves between the intermediary and the Landlord. This is only due at the date of the signing of the contract. Any practice of agencies which would ask the candidates a payment for a reservation contract is totally contrary to art. 6 of the 2 Jan. 1970 Act concerning Estate professionals' fees.

SET 2 : DURATION AND TERMINATION OF THE CONTRACT

Regarding the matter of duration and termination of the contract, French tenancy law is guided by the right to housing and by the balance of rights and obligations of both tenants and landlords provided by Article 1 of the 1989 Tenancy Act.

The main idea is that tenants need security of tenure whereas landlords need security of payment as well as a possibility to sell or to repossess their dwelling. A compromise was found in the concept of minimal term which combined with the possibility for the landlord to evict unscrupulous tenants or to give them notice if landlords need to sell or use their dwellings for their personal purposes.

Consequently, in French Law, there is no contract of rent for unlimited time (6) and thus a tenure that would last as long as a person is alive is void (with one very specific exception) (10), in general, the minimum term is three years (7), limited duration only has to be justified in specific contracts (8), and concerning the termination, parties have to comply with some rules (9) and special procedures in some unusual circumstances (11).

Question 6 : Contract unlimited in time

a) L and T have concluded a tenancy contract which does not contain any limitation in time. Under which conditions and terms is L allowed to give notice ? 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 French High Court, the *Cour de cassation*, will consider void a rent presenting perpetual character on the ground of public policy because French law generally prohibits perpetual commitments. The time limit foreseen by a Decree of 18 and 19 September 1790 is of 99 years is still the principle in French law. A rent contract which does not respect this provision will be sanctioned by absolute nullity and not the reduction to 99 years because this would be a public policy violation.⁷²

⁷¹ Rép. à M. Dominati : *O.JAN CR* 29 mars 1993, p. 1162, n°6511 ; *J.C.P. N.* 1993, prat. 2780-3

⁷² Cass. 20 March 1929 : *D.P.* 1930. I. P. 30 ; Cass. civ. 29 May 1954 : *D.* 1954, p. 640

Further more, article 1709 of the French Civil Code - providing that : “*Le louage de choses est un contrat par lequel des parties s’obligent à faire jouir l’autre d’une chose pendant un certain temps, et moyennant un certain prix que celle-ci s’oblige de lui payer*” – confirms the general prohibition of perpetual contract in French law.

One exception can be found but it does not concern lettings as such. Life time contracts do exist : *contrat viager* are contracts that will last until the death of one of the parties. These are contracts signed by elderly persons who want to sell their home but also want to continue to live in it. The buyer gives a lump sum and pays a monthly “*rent*” until the seller dies.

Under French law, a tenancy contract is thus necessarily a temporary contract⁷³. Article 10 of the 1989 Tenancy Act provides a minimum term of three years when the landlord is an individual, and six years when the landlord is a legal entity (*personne morale*). But the parties are free to fix a longer term or even a maximal term.

If no limit is fixed in the contract, the three years of the 1989 tenancy act are automatically applied as well as the provisions concerning the termination of the contract (the 1989 Tenancy Act being *d’ordre public*). The solution is identical had the contract been signed before the 1982 Act, after the 1986 Act or after the 1989 Act.

A contract cannot be modified or terminated by the landlord before the end of the term, unless he uses a specific clause, the “*clause résolutoire*”. This clause can only be applied if the tenant does not pay the rent or if he hasn’t taken an insurance (See further).

Six months before the end of the term, the landlord can offer a renewal of the contract (rent increase, new clauses), the tenant is free to refuse, in which case, the contract is terminated, as planned, at the end of the term. If no new offer is proposed, the tenancy contract is automatically renewed at the same conditions.

In order to protect the tenant, article 15 of the 1989 Tenancy Act, also limits the conditions under which a landlord can give notice. Thus to be valid, the notice has to be motivated by his will to use the dwelling for himself or for a close family member, by his will to sell or because of a serious and legitimate reason, this may be for instance, the violation of the tenant’s obligations when the rent is not paid, the tenant has not taken a compulsory house insurance, or because he abused of his rights to use normally his dwelling.

Moreover, to be valid, the notice must respect specific rules. The notice has to be sent at any time, but at least six months before the end of the contract by registered post (*lettre recommandée*) or by a bailiff. If the landlord is intending to sell, he must send a copy of the offer (including the price) to the tenant who has a priority right (*droit de préemption*) to buy the dwelling (even over the landlord’s children).

Under the scope of the 1948 Act, a landlord cannot give notice to a tenant just because he wants to sell.

Notices to sell and notices for personal use have been applied in order to evict the tenant. Normally a judge does not check if a notice to sell is justified. However, there is an exception when the notice is given with a fraudulent intention. The difficulty for the tenant is to show evidence of this fraud. Should the landlord sell the dwelling at a cheaper price than the offer, the tenant has a claim against the landlord. If the tenant is informed early enough, he can have the sell cancelled, if not he can only claim damages.

⁷³ Cass., 19 Feb. 1992, *Bull. civ.* III, n° 46

Therefore L can give notice to use it for herself or for family members. The law contains a short list of the admitted family members. Spouse or partners, parents or children belong to this list, this not the case for collateral members of the family like cousins or nephews.

L can also give notice to renovate the house. This has been considered as a legitimate and serious motive⁷⁴. Faced with such cases, judges nevertheless check the seriousness of the landlord's project.

b) Let us assume that in a trial, L wins a title for eviction which acquires res judicata 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 ?

The 1998 statute against social exclusion changed the philosophy of the eviction procedure. The idea is to react prior to the eviction, by involving different local social structures, in order to find a solution (payment of the arrears, new home...). Consequently, only dishonest tenants would be evicted. However, in many cases, no solution can be found, and the court has to give an eviction order.

The eviction procedure is organised in articles 61 to 66 of a 1991 Act⁷⁵ :

The court decision containing the eviction order must be notified to the tenant. If the judge granted the tenant with further time to find another dwelling (the average is a six month deadline), the reception of the notification is the starting point of the prescribed time.

The landlord must then notify a *Commandement de quitter les lieux*, asking the tenant to leave the dwelling. This document has to contain specific information (if not, it is void), including a possibility for the tenant to ask the judge for extra time in the dwelling.

If the judge gave a delay, the tenant then has by law,⁷⁶ another two months from the prescribed time, to leave the dwelling peacefully. Within this time he can submit the matter to a judge in charge of court decisions' performance (*le juge de l'exécution des peines ou Jex*). This judge can postpone the eviction order from 3 months to 3 years (*délais de grâce*)⁷⁷ if seriously unfair consequences could result from the eviction (family with no other place to go, end of school for the children, employment project...). This decision is discretionary appreciated by the judge.

If the tenant has not left by the end of that new term, the bailiff can ask the *préfet* for the *concours de la force publique*, which consists in police help for the eviction. Whatever delay was granted previously, no one can proceed to an eviction during the winter, this "*trêve hivernale*" starts on November 1st to March 15th.⁷⁸ In Paris, an agreement authorises this suspension to start from the October 15th. Courts can withhold the effects of that provision in case of *voie de fait* (which they rarely do).

The *préfet* can refuse to grant this help (if the family is composed of many children for instance), the landlord can then go before the Administrative Courts to ask for damages (which are always granted, though it takes a long time to obtain them). Unless the family in the premises continue paying an "*indemnité d'occupation*" (equivalent to the rent).

⁷⁴ Cass. Civ. 3, Feb. 1996, *Bull. civ.* III, n°34

⁷⁵ n° 91- 650 of the 9 July 1991 Act

⁷⁶ Art 61 of the 9 July 1991 Act

⁷⁷ Art. L. 613-1 to L. 613-5 du Code de la Construction et de l'habitation.

⁷⁸ Art. 21 of the n° 90-449 of 31 May 1990 Act

Question 7 : Contract limited in time and termination

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

A tenancy contract normally has a minimum term of three years. But, under certain specific conditions, a landlord can reduce the term to one year. This is strictly forbidden for legal entities (*personnes morales*) who cannot rent for less than six years. This opportunity is reserved to individuals, including jointly-held property and family companies (*indivisions et sociétés familiales*). The idea behind this possibility was to encourage private owners to rent even if they had a long term professional or family projects (a couple living abroad, but planning to come back when their job contract ends, or a father wanting to give his apartment to his daughter when she starts her studies).

Article 11 of the 1989 Tenancy Act provides that a contract can be limited to one year when a special event leads the landlord to use the apartment for professional or personal reasons. The contract must mention the reasons and the event (the landlord wants to retire and use the dwelling for his personal use). At the moment of the signature, the event and the date must be known (the event of the landlord's death is too vague). A mere desire (of selling the flat, of going away) is not assimilated to a precise event the law imposes.

Two month before the end of the term, the landlord must confirm the actuality of the event. If the event does not occur (wedding cancelled, job project failed), the tenancy is said to have been signed for three years. If the event is differed, the landlord can offer, with a months notice, a new term (he can only postpone the term once), that the tenant does not have to accept.

Question 8 : Justification for time limit

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

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

This case cannot occur under the French 1989 Tenancy Act. See above question 7.

As mentioned in the introduction, free tenancies (*location du secteur libre*) do exist, but they are limited to secondary houses, furnished accommodations, community homes, accommodations which goes with a post (*logements de fonction*), seasonal rentals (*logements saisonniers*) and sub-rentals. In such cases, landlords and tenants can decide almost anything.

Question 9 : Termination in special cases

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

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

According to article 1742 of the French Civil Code, the death of the landlord does not put an end to the contract. Therefore, the heirs cannot give immediate notice to T. They have to

wait for the end of the time limit of the contract, except if they are under the scope of article 15 of the 1989 Tenancy Act. See above question 6 a).

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

The rule is the same as above. Article 1743 of the French Civil Code provides that the selling of the house does not terminate the contract. So the buyer cannot immediately evict the tenant. He must follow the procedure of article 15, 1989 Tenancy Act, and must give notice six months before the end of the contract, and only in three limited cases (to sell, to use for himself, or for any reasonable and legitimate reason).

The most frequent situation is when a landlord gives notice to sell (before selling). This procedure has been used in order to evict tenants.

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 ?

Same solution as in b)

Question 10 : Tenancy “for life”

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

Such a contract would be void. The law provides time limits for the tenancy contract. See above. However, one has to distinguish this case from a “real right of residence” to be registered in the land register (if such a right exists).

Question 11 : Immediate termination under unusual circumstances

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

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

In no way can a landlord give an immediate notice, as meaning an obligation to leave within the hour. Even squatters get at least 2 months.

The *only* case in which tenants might be compelled to leave immediately is if the building is dangerous and is likely to fall down (*batiment menaçant ruine*). The mayor can give notice to the occupants to leave.

The non payment of the rent may constitute a serious motivation under article 15 of the 1989 Tenancy Act for L to give notice to T, provided that he complies with legal requirements about notification (See question 6 a). However, as mentioned above, the procedure is long as the landlord has to wait for the end of the term, and complicated as the notice must be sent at least 6 months before the end of the term and must comply to specific conditions.

The law has therefore provided the landlord with a shorter procedure, a *contractual resolutive clause* (*clause résolutoire*) which can be included in the contract. Again, in order to protect the tenant, this procedure is strictly controlled by article 24 of the 1989 Tenancy Act.

Under general private law, a *resolutive clause* allows the immediate termination of the contract, after a two months notice, if a specific obligation (fixed in the contract) is not reached⁷⁹. The judge can only ratify the acquisition of the clause.

Concerning Tenancy Law, the 1998 Statute against social exclusion, has substantially modified the mechanism of the resolutive clause included in a tenancy contract.

The scope of the resolutive clause is limited, it can only concern the cases where a tenant does not pay his rent or when he has not registered for a house insurance.

At present, the landlord has to send a notice (*commandement de payer*) giving the tenant 2 months to pay the rent or to get insured. This notice has to include very specific information such as part of the content of article 24 of the 1989 Tenancy Act, the address of an institution that might help the tenant in the payment of the arrears (*Fond de Solidarité pour le Logement*), the possibility to ask the judge for a suspension to pay, etc.

Moreover, two months before the hearing, the **prefect** has to be informed of the eviction procedure in order to instruct the adequate procedures (contact the relevant social help). In social houses, this has to be done three months before the hearing.

The most important change brought by the 1998 Act is the fact that such a clause is no longer secured at the end of the two months. A judge can suspend the application of the clause and give the tenant an extra period of time for him to pay. If the tenant respects the agenda given by the court, the resolutive clause is considered as having never been used ("*reputée ne pas avoir joué*"), and the contract has to continue.

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

As mentioned in question 6 a), according to article 15 of the 1989 Tenancy Act, a landlord can terminate (or rather, not renew) a tenancy contract for a "*serious and legitimate reason*". Excessive disturbance such as insulting neighbours and causing violence is considered as a serious and legitimate reason. But the procedure can be long as the landlord must still wait until the end of the term and give notice six months before the end. Moreover, if the tenant refuses to leave, the landlord will have to go to court to ask for an eviction order. Such a procedure can be long (six months to a year and a half), and he will have to give strong evidence of the misbehaviour of the tenant.

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

See question 6 a).

⁷⁹ Cas. Civ. 3^e, 3 April 1996 : *R.J.D.A.* 1996, n°896

SET 3 : RENT AND RENT INCREASE

Before all, the rent fixing obeys to rules provided by the 1989 Tenancy Act which tries to solve the following issues : how to guarantee a minimum profitability to landlords, allowing them to pay their loans (taxes, works, restorations etc.) and to draw satisfactory incomes out of their investments, while protecting tenants against abusive fixing or abusive increase of the rents.

Concerning the modes of payments, parties are free. However, this freedom is limited in two ways (12), one distinguishes two main modalities of increasing the rent (13), according to a construction cost index for instance (14) ; in any case, a payment which is not owed has to be paid back (15); specific rules are foreseen regarding deposit (16), and utilities (17).

Question 12 : Settlement date end modes of payment

When is the rent due ? Is there any restriction on modes of payment ?

According to the freedom of contract, tenants pay the rent according to their contractual provisions. Parties are free to fix these modalities themselves, they may opt for a monthly or a quarterly payment (Art. 7, 1989 Tenancy Act), in advance, at the fallen term, by money order (*mandat-carte*), by letter to the landlord's place of residence.

However, any provisions which would foresee a direct debit, a promissory note or a bill of exchange would be unlawful, these provisions are considered as "*not written*", in other words, they have no legal existence (Article 4 of the 1989 Tenancy Act).

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

In case of unpaid rents, the French common law of obligations may apply.

Landlords can take protective measures like :

- "*saisie vente*" : according to the foreseen procedure in Art 50 of the 9 July 1991 Act, reforming execution writs. This general possibility is given by the obligation of the tenant to furnish the rented dwelling, according to Art. 1752 of the French Civil Code which provides that the tenant has: "to hold rented premises constantly furnish with furniture and movable objects in quantity and of sufficient value to answer of the payment of the rents and loads and the execution of the conditions of the lease".⁸⁰

- Art 68 of the 1991 Act allows a writ of execution on tenant's furnitures, distress or distraint or sequester of property (*saisie conservatoire*), even without a prior judicial authorisation, as soon as it stems from the written contract.⁸¹

⁸⁰ "tenir les locaux loués constamment garnis de meubles et objets mobiliers en quantité et de valeur suffisante pour répondre du paiement des loyers et des charges et de l'exécution des conditions du bail".

⁸¹ L.91- 650 of the 9 July 1991 Act, Art. 67 and 68, put into force since the 1st January 1993

Question 13 : Requirements for rent increase

What are the ordinary substantive and procedural requirements for an increase in the rent ? Are there rules on a maximum increase in private and criminal law (e.g. on profiteering) ? By whom are these rules enforced? (public ministry or national or local administrative agency etc)

The rent increase occurs in two ways (art. 17, 1989 Tenancy Act) :

On one hand, at the renewal of the tenancy, the landlord may increase the rent if it is actually under-estimated. Six months before the end of the contract, the landlord may thus offer another amount fixed with regard to the rents in the neighbourhood. If the tenant does not answer or disagree with the landlord proposal, a committee may be asked to find an agreement. If no agreement can be found, the landlord can make an application to the Court before the end of the contract. If not, the contract will be renewed with its original provisions.

On the other hand, if the contract of tenancy provides it, the landlord may proceed every year to an increase in the rent. In this situation, the increase cannot exceed the construction cost

A “*saisie conservatoire de créances*”, for the paying of the rent according to a contract of rent cannot be used against the “*caution*” of the tenant without a pre-existing authorisation of the judge.⁸²

Question 14 : “Index clause”

Is it possible to contractually link the annual increase of the rent with the annual average increase of the cost of living as established by official established statistics ?

An “index clause” must adopt the construction cost. See above question 13

Variant

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

According to the same rule, such a provision is not void if its performance respects the legal limits resulting from Article 17 of 1989 Tenancy Act, in another words, the construction cost index.⁸³

Question 15 : Problematic rent increase

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. Without protesting, T pays the increase rent for three months. 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 ?

⁸² T.G.I. Bobigny, 12 Feb. 1996 : *Gaz. Pal.* 1997. 2 Somm. 151

⁸³ CA Douai, 10 Feb. 2000 : *Loyers et copr.* 2001, n°141, obs. B. Vial-Pedroletti,

In contract law, a payment which is not owed has to be paid back.⁸⁴ T may off-set the sum provided that L agrees with this settlement. Only if L agrees (which is of course possible on account of contractual freedom).

Question 16 : Deposits

What are the basic rules on deposits ?

Article 22 of the 1989 Tenancy Act settles the rules on deposit. When the rent is not paid in advance, the tenancy contract may provide a deposit to guaranty the performance of the tenant's duties. The average of the deposit cannot exceed the equivalent of a two months rent.

At the end of the contract, the landlord must give the deposit back. He can nevertheless deduct expenses or charges caused by the tenant (broken item that need to be replaced, unpaid rent).⁸⁵ The landlord has two months to return the deposit, which does not gain interest

Recent governments have tried to focus on helping people in acceding to a dwelling. One of the difficulties is the charges linked to the installation in a new dwelling, people often get indebted in order to pay for the necessary expenses (fees, telephone, deposits...especially as housing allocations are not given the first month of the entry).

Hence, one think about how to help people with a low income to pay for the deposit. There are two different mechanisms : the FSL (*Fond de Solidarité Logement*)⁸⁶ and the *LocaPass*. The latter was created in 2003. It is aimed at people working or at under 30 year old looking for their first (proper) job (*CDI à temps complet*). The fund is paid by the 1% *patronal*, that is by companies who must give (less than 1 % of the salary wages). At the end of the rental, the deposit is given back to the fund. The second system is addressed to all those who have financial difficulties. The fund is partly financed by the State and partly by local authorities (*départements et régions*). The procedure is followed by a social assistant (*assistante sociale*), a Committee takes its decision according to the financial resources of the family.

Question 17 : Utilities

What are the general rule on utilities ? which utilities may the landlord make the tenant pay by contractual stipulation ?

As in the provisions of the 1982 Quillot Act (art. 23) and the 1986 Mehaignerie Act (art. 18), the 1989 Tenancy Act lists utilities which are recoverable by Landlords (art. 23).⁸⁷ These utilities belong to three categories :

⁸⁴ Art. 1235 of the French Civil Code

⁸⁵ CA Paris, 16 June 1995 : *Loyers et copr.* 1995, n°466

⁸⁶ Created by the 31 May 1990 Act

⁸⁷ Art. 23 §1 of the 1989 Tenancy Act provides that : "Les charges récupérables, sommes accessoires au loyer principal, sont exigibles sur justification en contrepartie : des services rendus liés à l'usage des différents éléments de la chose louée; des dépenses d'entretien courant et des mesures de réparations sur les éléments d'usage commun de la chose louée; "De la contribution annuelle représentative du droit au bail et des impositions qui correspondent à des services dont le locataire profite directement". « The recoverable loads, the incidental sums to the main rental, are due on justification in return of : services of the various elements of the rented thing; spendings of current maintenance and measures of repairs on the elements of common usage of the rented thing; "of the representative annual contribution of the right to the lease and taxations corresponding to services of which the tenant takes directly advantage. »

- those that correspond to services related to the use of various elements of the rented dwelling ;
- the usual house keeping and small works of reparation on the common element of the rented dwelling;
- the tax rental (*droit au bail*) and charges corresponding to services the tenant directly benefited.

According to the law, the corresponding sums are, “*accessoires au loyer principal*” incidental to the main rental, that is to say that they are submitted to the same rules as the rental itself, in particular in what concerns conditions and guaranties of their payments ; time limits also applied to them (5 years).⁸⁸ This list is limited, and one has to look at the Decree in *Conseil d’Etat* n°87-713 of the 26 August 1987 to get the full list. In principle, this is impossible for the Landlord to ask for utilities that are not included in the Decree.⁸⁹

To stipulate conventionally more favourable conditions for the tenant than those provided by the 1989 Tenancy Act is not prohibited.⁹⁰ On the contrary, in principle, any fixing of recoverable utilities amount to a monthly lump-sum violate legal rules. The principle is that utilities are payable on receipts. However, the tenant can give up these provisions and accept the payment on a monthly lump-sum basis.⁹¹

Is it legal to establish in the contract a monthly lump sum to cover certain or all utilities?
Yes, if it is updated at the end of each year on the basis of the exact amount spent.

SET 4 - OBLIGATIONS OF THE PARTIES IN THE PERFORMANCE OF THE CONTRACT AND STANDARD TERMS

Obligations of the parties as well as standard terms are dealt with in details in the 1989 Tenancy Act. Moreover these provisions are *d’ordre public*, i.e. they are compulsory and can be automatically raised by the judge without any claim from the parties.

The main idea behind the 1989 Tenancy Act was to balance powers between tenants and landlords. Tenants needed to be protected against certain abusive landlords (limited term, limited reasons to terminate the contract, protection against arbitrary eviction...), and landlords needed a minimum of guarantees (concerning the sharing of charges, the payment of the rent, the possibility to take possession of the dwelling if needed...).

French Law is then strictly controlling Standard terms (18 and 19) and pay attention to the changes in the building by the tenant (20).

Question 18 : Control of Standard Terms

What kind of control exists for clauses contained in standard contracts used by a landlord acting in a non-commercial capacity?

⁸⁸ Art. 2277 French Civil Code

⁸⁹ Cass. 3^e civ., 10 March 1999 : *J.C.P. G.* 1999, II 10154, note R. Rade et Ph. Mozas ; *Loyers et Copr.* mai 1999, p. 35, note C. Bedeleem. See, B. Vial-Pedroletti, “A propos de la réglementation des charges” : *Loyers et copr.* 1996, chron. p. 2

⁹⁰ CA Paris, 6^e Ch. B, 9 Dec. 1994 : *Loyers et copr.* 1995, n°256

⁹¹ CA Paris, 6^e Ch. B, 13 Oct. 1995 : *Loyers et copr.* 1996, comm. 57

Unfair terms are strictly controlled as regards to tenant law. Article 4 of the 1989 Tenancy Act prohibits 10 different types of terms, which are simply considered as "non existent" (*non écrites*). This means that if such a term is included in a contract, it has no legal value, just as if it had never been written. A tenant does not have to comply with it, he does not even have to go before the judge to have it withdrawn.

For instance, are prohibited, terms which :

- Impose on the tenant that he should give access to his dwelling for visits, on bank holidays or more than 2 hours per working day.
- Impose a specific insurance company.
- Impose a specific mean for the payment of the rent (the tenant does not have to accept a standing order on his bank account for instance).
- Impose a direct standing order on the tenant's salary.
- Propose collective responsibility of all the tenant in case of deterioration, etc.

These terms are not the sole terms that can be considered as "non existent", the courts will use general contract law as well as fundamental rights to protect tenants against abusive clauses.

The unfair terms Committee (*Commission des clauses abusives*) was created in 1978 and related provisions can be found in Article L. 132-2 of the Consumer code. This is attached to the Minister in charge of Consumption. The Committee examine the terms of standard contracts and recommend the suppression or the modification of terms which would create a significant unbalance between the rights and obligations of the non-professional and the professional. Only agencies and companies are considered as professionals, individuals are not, even if they have many rentals and earn their life with it.

The definition of unfair terms was modified in 1995 in order to reach the provisions of the 93/13/EC Directive on Unfair Terms in Consumer Contracts. Nearly twenty types of terms are listed in the annex of Article L 132-1. This law is *d'ordre public* and these unfair terms are also considered as having never existed.

The unfair terms Committee also publishes recommendations on specific contracts. In July 2000, a Recommendation was elaborated contracts concerning the letting of dwellings.⁹²

The use of Fundamental Rights can also allow to modifying the contract terms. For instance, in March 1996,⁹³ a social housing organisation was condemned by the *Cour de Cassation* (equivalent of the High Court of Justice), for having prohibited the right for a tenant to lodge relatives. This decision was based on Article 8.1 of the European Convention of Human Rights which protects the right to a normal family life. Whereas, the term contained in the contract aimed to "anyone", and the Convention concerns "family life", the Court extended this possibility to close relatives and did not keep a strict vision of the family concept. This legislation is basically aimed at preventing numerous abuses of landlords, who take advantage of the lack of available houses.

⁹² *Recommandation* n°2000-01 émise par la Commission des clauses abusives, complétant la recommandation no 80-04 concernant les contrats de location de locaux à usage d'habitation :

http://www.finances.gouv.fr/DGCCRF/boccrf/00_07/a0070017.htm

⁹³ Cass. Civ. 3^{ème}, 6 March 1996, *Opac de Paris c. Mme Mel Yedei*, *J.C.P. ed. G.*, 1996, IV, p. 973

Question 19 : Frequent standard terms

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

- a) The tenant must not withhold rent or off-set rent instalments against any alleged claims of her own, except if authorised by a judge.*
- b) The cost of small reparations, up to 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? If not, may the standard terms be challenged by a tenants' association, too?

All the terms contained in the contract used by L are either unlawful or useless, and can be as such challenged by the tenant, or if he chooses, by his representative, a tenants' association.

The tenant's right to join an association is protected not only by the 1989 Tenancy Act, but also by the Unfair Terms Directive and by the French Constitution. Tenants' associations have seen their powers increase recently in terms of representation, probably due to the influence of Consumer Law. The 2000 S.R.U. Act, added an article 24.1 to the 1989 Act, giving the tenant, when in conflict with his landlord, the possibility to commission a tenants' association that sits at the National Consultation Committee (*Commission Nationale de Concertation*) and is registered to do so. A written document from the tenant is necessary. This means that a Tenants' association can not act on his own, but only on the behalf of a tenant.

a) The tenant must not withhold rent or off-set rent against any alleged claims of her own, except if authorised by a judge.

This clause is not necessary because Article 7 of the 1989 Tenancy Act imposes the tenant the obligation of paying the rent, whatever conflict occurs between the landlord and the tenant. Any rent withheld can lead to the termination of the contract for breach of obligations (after court decision).

The only exception was added by Article 187 of the 2000 SRU Act (integrated to the 1989 Tenancy Act) concerning the "decency" (*décence*) of the dwelling. In case of unhealthy building, the tenant has to go before the judge and ask for repair, the judge can reduce or suspend the rent until the work is done.

As the content of this clause is incompatible to the provisions of the statute, it is unlikely the courts would give reason to a tenant. Indeed there would be no interest of such an action (*no intérêt à agir*).

b) The cost of small reparations, up to 100 Euros per annum, has to be met by the tenant.

This clause is not lawful, as it does not identify the nature of the repairs.

Article 4, f) of the 1989 Tenancy Act, specifically prohibits clauses which authorise the landlord to ask for unilaterally estimated amounts reimbursement. Moreover, who will pay for the repairs will depend on the nature of these reparations.

According to Article 6 of the 1989 Tenancy Act, the landlord is in charge of keeping premises in a good state of usage⁹⁴. According to Article 7⁹⁵ of the 1989 Tenancy Act, the tenant is in charge of the standard usage of the dwelling as well as small expenditures and rental repairs mentioned in a the 1987 Decree,⁹⁶ the main difficulty being to qualify the nature of the repair.

The tenant can refer the case to a judge, but it might be difficult to safely determine the nature of the repairs, however, the court expenses will be higher than the amount of the reparation.

c) At the end of the tenancy, the apartment has to be repainted by a professional painter at the expense of the tenant.

This clause is void. The tenant has to return the dwelling in the same state as he has it been given. However, a standard usage of it is normal. Painting the apartment is at the landlord's charge, unless specific agreement (in exchange of a reduction a the rent for instance). A tenant does not have to paint the walls, unless he has changed the colours.

Any obsolescence clause is void as these costs are, by law, entirely the landlord's responsibility.

d) If the tenant becomes a member of a tenant's association, the landlord has the right to give notice.

This type of clause is strictly and specifically prohibited by the 1989 Tenancy Act. Article 4, j) provides that a clause that impedes the tenant to perform a political, unionist, associative or confessional activity is void.

This section is only a transcription of the Fundamental Rights to free expression and its corollary, the right of not being discriminated for ones' opinion. When this act was voted, some argued that such a section was therefore not necessary, but it was decided to include it in order to make sure everyone was informed.

Question 20 : Changes to the Building by the Tenant

T is a tenant in a building with 4 flours 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.

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?*

⁹⁴ "Entretenir les locaux en état de servir à l'usage prévu par le contrat et d'y faire toutes les réparations, autres que locatives, nécessaire s au maintien en état et à l'entretien normal des locaux loués".

⁹⁵ "Prendre à sa charge l'entretien courant du logement, des équipements mentionnés dans les contrats et des menues réparations ainsi que l'ensemble des réparations locatives définies par le décret en Conseil d'Etat, sauf si elles sont occasionnées par vétusté, malfaçon, vice de construction, cas fortuit ou force majeure".

⁹⁶ Decree n° 87-712 of 26 August 1987

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?

In both of these cases, the issue is the conflicting fundamental rights of the tenant and the landlord, who have legitimate but conflicting claims (See below).

The judge will have to decide which of these claims has to be protected, that will depend on the facts of the case.

Variant 1

The 2nd July, 1966 Act recognised a "right to an antenna". This right is a fundamental right, it derives from the right to information proclaimed in section 11 of the Human Rights Declaration. This right is also recognised by section 10 of the European Convention of Human Rights, and section 2 of the "television without frontiers" Directive (*Télévision sans frontière*).

Parabolic antennas have recently been assimilated to antennas.⁹⁷

This right to an antenna is *d'ordre public*. Which means that, neither the rental contract, nor the joint owner rules, can oppose it. A clause prohibiting tenants to fix an antenna is void.

However, if the landlord has a "serious and legitimate" reason, he can refuse the antenna.

The tenant has to inform the landlord (by recorded letter) of his intention to fix an antenna. Otherwise, the antenna installation is considered as a violation of the landlord's property right (*voie de fait*) and the landlord can have it taken down (after court decision).

The landlord has three months to react (from the reception of the letter). He can either accept (if he keeps silent after three months), or he can refuse it and offer a connection to a collective antenna, or give a serious and legitimate motive for refusing.

The landlord who intends to refuse the antenna installation has to bring this issue before courts within the three months. The serious and legitimate motives are evaluated by the judge. These motives can be various such as the risk of the building degradation or even a damage in the aesthetic of the building⁹⁸. Courts decide case by case depending on the standing of the building and the specific circumstances of the issue.

The fact the tenant does not speak the language might be taken into account but not necessarily.

Variant 2

Two fundamental rights are opposed. The landlord's fundamental right to property (and its corollary right to aesthetic) and the tenant's fundamental right of free information and expression. The judge will then decide according to the style of the building and the circumstances.

⁹⁷ CA Paris, 23^{ème} ch., 18 nov. 1998, *Loyers et copr.*, 1999, comm. n° 72.

⁹⁸ CA Paris, 23^{ème} ch., 16 déc. 1999, *Loyers et copr.*, 2000, comm. n° 94 ; *RDI*, 2000, p. 248.

SET 5: BREACH OF CONTRACT

Again, concerning the breach of contract, French law tends to combine both interests of the landlord and the tenant, even if one may observe a stronger protection in favour of the tenant.

This is well illustrated in various instances : the fact a landlord does not have the right to possess the keys (21), his liability for personal injury (22), when the dwelling is destroyed after the contract conclusion (23), in case of double contract (24), of delayed completion (25), with regard to the state and characteristics of the house (26), or the specific purposes used with the house (26).

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

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

According to the principle of the right of the tenant to peacefully enjoy from the rented good “*de jouir paisiblement du bien loué*” provided by Art. 6 b) of the Tenancy Act, landlords have no access to the rented dwelling, however nothing prevent them to keep a spare set of keys.

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?

The free access of the rented dwelling is so incompatible with the principle of “*jouissance paisible des lieux*”. This implies a prohibition of entering into a rented dwelling against tenant's will. This could be considered as a “*violation de domicile*”, a criminal offence according to Art. 184 of the French Penal Code.

The only possibility for the landlord to get access to the rented dwelling has to be expressly foreseen in the tenancy contract. The Landlord has others possibilities when he has, for instance, to fulfil his obligation of maintaining the dwelling in good conditions or of doing works when imposed by public administration⁹⁹, and only if this guaranty the tenant to fulfil his own obligations, or when the landlord has to make a potential purchaser visiting the dwelling, or again,, when a case of emergency justifies it. This right to get access to the dwelling has to firstly be claimed “*à l'amiable*” according to a conciliation procedure, and if there is a refusal of the tenant, the landlord may ask an injunction by a first instance court to order.

Question 22: The Landlord's Liability for Personal Injury

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

⁹⁹ The various notions of reparation, restoration of the dwelling are left to the discretion of the courts.

If the landlord does not perform his obligation of maintenance and if an accident stems from this fact, his strict liability and even his criminal liability can be applied.

One has to add, that the landlord is not held by an obligation of result (*obligation de résultat*) regarding the security of his tenant.¹⁰⁰

Question 23 : Destruction of House after Conclusion of the Contract

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.*

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

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?*

Article 1719 of the French Civil Code imposes the Landlord a delivery "délivrance" duty of the rented good to the tenant,¹⁰¹ a decent dwelling.¹⁰² So, as soon as the contract is taken effect, if the dwelling is destroyed in totality by fortuitous case, the contract is resiliated *de plein droit*. If it is partly destroyed, the tenant may, according to the circumstances, claim either a lower price of the rent or the resiliation of the contract.

In both cases there is no place for damages. This can be explained because the landlord does not play any part in the loss of his good and of the joy conferred to the tenant. If there is an imputability to the landlord for the destruction, the resiliation may then be grounded on art. 1641 of the French Civil Code.

The law does not impose the landlord to rebuild the dwelling in case of total or partial loss of it.¹⁰³ The tenant may claim for resiliation only in the case of partial destruction.¹⁰⁴

The combination of articles 1722 and 1741 of the French Civil Code implies that the rent take end *de plein droit* because of a total loss due to a fortuitous case.

Art. 1722 does not only concern the case of total loss of the rented dwelling, but also foresee the case where the tenant is in the impossibility to joy of the dwelling. This is for instance the case when the roof of the dwelling has been damaged for more than 80 % by a fire.¹⁰⁵

There is a resiliation when one is able to establish that reparations or restorations would be of any use and that works for it would be too costly compared to the actual money value of the immovable.¹⁰⁶

If a house is destroyed by fire after the contract but before possession, the first thing is to define the concept of "*possession*" :the tenant takes possession after the signature of the inventory of fixtures and when he is given the keys.

¹⁰⁰ Civ. 2^e, 21st Nov. 1990 : *Bull. civ. III*, n°236, *R.D. imm.* 1991. 265. Civ. 2^e, 2 Dec.1998 : *Resp. civ. et Ass.* 1999, n°34, see also for the latter, Jourdain : *R.T.D.civ.* 1999.407.

¹⁰¹ L. n°2000-1208 of the 13 Dec. 2000, art. 187-I

¹⁰² Décr. N°2002-120 of the 30 Jan. 2002

¹⁰³ Soc. 6 Apr. 1951 : *D.* 1951. 505, note Savatier

¹⁰⁴ Civ. 3^e 1 Feb. 1995 : *Bull. civ. III*, n°33 ; *D.* 1995 IR 53, *RD imm.* 1995. 800, obs. Collart-Dutilleul

¹⁰⁵ Com. 12 Feb. 1962 : *D.* 1962, *Somm.* 122 ; Civ. 3^e, 30 Sept. 1998 : *R.J.D.A.* 1998, n°1191

¹⁰⁶ Civ. 3^e, 19 July 1988 : *Rev Loyers* 1988. 428

If a fire destroys the apartment before the tenant takes possession, he is not responsible as if he was never in the apartment (even if the contract was signed). But has he any claims against L then?

If the fire occurs after the transfer of possession to the tenant, and if the fire took in his premises, he is responsible, even if he acts without fault ; the insurance takes such event in charge.

The house insurance covering standard risks is compulsory by law. Article 7, g) of the 1989 Tenancy Act requires that the tenant has to be insured the day the keys are given. The violation of this provision is as bad as not paying the rent and is a motive for terminating the contract.

In France, there is a tendency of having more and more compulsory insurance in order to prevent any risk. Guaranties are even developing to secure the payment of the rent. This is not impossible that a risks as arrears will have to be insured in the future.

Question 24 : Double contracts

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

This problem is not provided by tenants' law as it is not specific to this type of contract. General contract law prevails. The two contracts are valid. As provided in article 6 a) of the 1989 Tenancy Act, the landlord has a delivery obligation (*obligation de délivrance*). This means he has to provide the tenant n° 2 with a the same or just any substitute dwelling. If he does not reach this obligation, the tenant can ask for damages.

Question 25 : Delayed Completion

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

If the contract had a suspensive clause depending on the existence of the premises the contract is suspended.

If not, the landlord has a delivery obligation, he must deliver a dwelling to the tenant. He may also offer an equivalent dwelling (similar price, similar structure, similar aria). If he does not meet with his obligation, he has to give damages to the tenant. Even if like here, he has acted without fault.

Question 26 : State and characteristics of the House

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

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

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

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?

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 am.

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

Article 6 improved by the 2000 SRU Act, provides that the landlord has to rent an apartment in a good state of use. The unhappy tenant can go before the judge in order to have the necessary repairs done. This new piece of legislation was adopted in order to react against the increasing number of insane dwellings rented at outrageous prices to "fragile" populations. The issue remains that these people often do not have enough knowledge to take their landlord to court.

a) Stains of mildew

Variant 1

A tenant cannot withhold his rent whatever his reasons (unless specific agreement with the landlord). But can he himself get the repairs done (this is a separate question) if the landlord does not accomplish them within a reasonable delay? However, after a summon to the landlord, the tenant can ask the judge to force the landlord to pay him back, if necessary with damages.

Variant 2

The same provision compiles the landlord to rent a "decent house". A 2002 Decree¹⁰⁷ gives the definition of a decent dwelling. Stains of Mildew do not stand as normal according to occidental standards, but the judge will decide if repairs are necessary.

The judge does not automatically reduce the rent. The idea is rather to force the landlord into having the proper repairs. This is only when the state of the dwelling is really bad or when repairs are likely to take long that the judge will reduce or even suppress the rent in the meantime (he can even retrospectively reduce the rent).

¹⁰⁷ Decree n° 2002-120 of 30 Jan. 2002 concerning decent dwelling determination.

b) A noisy building site

According to the 31st December 1992 Anti Noise Act, a loud building site is an abnormal disturbance (*trouble anormal du voisinage*). Such noise is scientifically measured and the building site is only authorised a certain level of disturbance.

As mentioned, one of the landlord's obligation is to make sure the tenant has a "*jouissance paisible des lieux*", he is thus liable. The tenant can therefore submit the case before the court and claim for damages, according the importance of the nuisance will be received. Even if the landlord is not in any way responsible for the noise

c) Noisy neighbours

This case is similar to the previous one : by law, the landlord is responsible for the tenant's peaceful possession. The tenant can petition his landlord who has to take the necessary measures. What kind of measures could this be? - If the landlord does not react, the tenant can sue him and ask for damages.

Question 27 : House to be used for specific Purposes

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?

In France, there are three types of rentals depending on the use of the premises: for residence purposes (*baux à usage d'habitation*), for commercial purposes (*baux commerciaux*), and joint tenures (*baux à usage mixte*).

Rentals for commercial purposes have a specific legislation with the 30th September 1953 Decree.¹⁰⁸ The idea of this legislation was to secure and protect the tenant, and especially, the business concern, by allowing the tenant to stay on the premises. Moreover, the rent is part of the business.

In this case this is more likely to be a joint tenure (for both residence and professional purposes), the 1989 Tenancy Act is to be referred to. Normally a suspensive clause should have been signed, providing that if local authorities deny the right to practice, the contract is considered non existent.

This is possible to argue that the landlord has to deliver whatever was planned in the contract, i.e. an apartment in which some rooms are to be used as a surgery. However, in this case, the apartment is not proper for such a use (no fire protection). The tenant can therefore ask the landlord to do the necessary repairs in order to reach the imposed requirements, otherwise he may claim for damages.

This issue is related to the common law of contract and its notion of "cause".¹⁰⁹ In general: This project is about the "life situation: tenancy". So, we are interested in whatever rules relating to this life situation, irrespective of where (specific tenancy regulation, general contract law, tort law etc) they are stipulated in a particular national system.

¹⁰⁸ Provisions of Decree n°53-960 of 30 Sept. 1953 included in the French Commercial Code (Articles L 145-1 to L 145-60) by *ordonnance* n°2000-912 of 18 Dec. 2000

¹⁰⁹ See Art. 1108 f. of the French Civil Code

SET : 6 THE RELATIONSHIP AMONG THE TENANT AND THIRD PERSONS

One type of relationship has not yet been mentioned, that is the co-owners of a building. This relationship is dealt with in the July, 10th 1965 Act. Before this, there was only one article in the civil code concerning buildings divided by floors which consisted in the superposition of several property rights. A June, 28th 1938 Act tried to solve the problem but co-ownership (*copropriété*) had not been thought of as such and many difficulties were not dealt with (as vertical ownership for instance). A desperate answer was needed, and the reform was adopted in 1965. The philosophy of this law is quite different, most of all, it is compulsory. There were two main ideas : reinforce the collective organs by according power to the majority (unanimity disappears) and increase the guarantees of the co-owners by giving them intangible rights.

This mechanism is not really satisfactory today and there are an increasing number of court cases on the topic. But the problem seems to be less the technical provisions of that law than the lack of the enthusiasm of French co-owners who act more as proper owners. This situation can also be explained by the fact that co-ownership in a collective building is more an imposed situation, the dream of most Frenchmen being a private bungalow.

Question 28 : Neighbour Relations

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

This case is similar to the one n° 24 c), the difference being that the two neighbours have the same landlord. This landlord is all the more expected to react that he can really do something to stop the nuisances: he can start a procedure in order to evict the "bad" behaving tenant for abnormal neighbourhood nuisance.

If the landlord does not do so, the tenant can ask for damages. If T is not the tenant but the owner of the apartment, there is no link with tenancy law. T's landlord does not owe him anything. He can nevertheless complain to the police and sue his neighbour. The procedure is likely to be long any expensive. Moreover he can only hope for damages. This is too vague. What kind of damages could T claim against the neighbour?

Question 29 : Damages caused by Third Parties

T has rented a house from L. The house is damaged negligently by a lorry during construction work undertaken at a neighbour's house, which causes repair costs of 10000 ₤ and entails T being unable to use two rooms for 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?

If this is the structure of the house which is damaged, one has to engage the necessary procedures of the landlord's liability. If the landlord is not diligent enough and does not react, the tenant can go to court and ask for the landlord to be condemned to do the necessary repairs. In the end, the cost will be paid by the building company's insurance. The most likely is that both the tenant and the landlord will sue the neighbour, who will sue the building

company, who will turn to his insurance company. But, please address also: Can T sue the building company and/or the neighbour for the “partial loss of possession” of the apartment.

The same remark can be done concerning the increasing number of issues in which the question is just to define whose insurance is responsible. This is linked to the increasing obligation to be insured for everything. This should be specified more.

New Question 30: Unwelcome Help among Neighbours (Negotiorum Gestio)

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

There are no specific provision in the specific regulation of tenancy contract, the common law of obligations applies.

ABBREVIATIONS

<i>Ann. Loyers</i>	Annuaire des loyers
<i>Bull. civ</i>	Bulletin civil de la Cour de cassation
<i>Bull. inf. C. Cass.</i>	Bulletin d'information de la Cour de cassation
<i>D.</i>	Encyclopédie juridique Dalloz
<i>D.P.</i>	Dalloz périodique
<i>Gaz. Pal.</i>	La Gazette du Palais
<i>J.C.P. G.</i>	La semaine juridique édition générale
<i>J.C.P. N.</i>	La semaine juridique édition notariale
<i>J.O.</i>	Journal officiel
<i>JO. AN CR</i>	Journal Officiel : édition des débats de l'Assemblée Nationale (Comptes Rendus).
<i>Loyers et copr.</i>	La revue Loyers et Copropriété, Juris-Classeur
<i>RD imm.</i>	La Revue de droit immobilier
<i>Rev. Administrer</i>	La Revue Administrer
<i>Rev. Loyers</i>	La Revue des Loyers

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