

Rental Law Workshop

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Broker

- § 652 BGB

A person who promises a brokerage fee for evidence of the opportunity to enter into a contract or for negotiating a contract is obliged to pay the fee only if the contract comes into existence as **a result of the evidence** or as **a result of the negotiation** of the broker.

- **Economic interconnection**
between landlord - broker
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Lease

verbal

in writing

- §§ 535 ff. Bürgerliches Gesetzbuch (BGB)/German Civil Code
- Content of the lease
 - x Parties
 - x Rental units
 - x Duration
 - x Conditions

Parties to the lease

landlord

tenant

- Who should be party to the contract ?
- Who is party to the contract ?
- Is there any valid written lease or are the clauses of the German Civil Code applicable ?



Rental units

- Which rental units will be rented ?
- Are there any additional rental objects, like park spaces or garages ?



Utilities

- Did the parties agree to **monthly advance payment** or to a **flat rate payment** ?
 - Monthly advance payment: Which utility costs are listed in the contract ?
 - According to § 556 Nr. 3 BGB advance payments have to be invoiced once per year
 - The tenant is to be notified of the statement of the utility costs at the latest by the end of the twelfth month subsequent to the accounting period. After this period, assertion of a subsequent demand by the landlord is excluded unless the lessor is not responsible for the lateness of the assertion.
 - The landlord has to be informed by the tenant of any objections to invoicing at the latest by the end of the twelfth month after receipt of the invoice.
 - A valid utility bill has to name the single utility costs, all the costs caused in the house per utility unit during the year, apportion of the costs and the proportionate costs per tenant.
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Rent increase I

- **Up to the reference rent customary in the locality, § 558 BGB**

The landlord can demand approval of an increase in rent up to the reference rent customary in the locality if, at the time when the increase occurs, the rent has remained unchanged for fifteen months. The demand for a rent increase may be made at the earliest one year after the most recent rent increase. In general, the rent may not be raised within three years by more than twenty per cent (capping limit).

The reference rent customary in the locality is formed from the usual payments that have been agreed or that have been changed in the last four years in the municipality or a comparable municipality for residential space that is comparable in type, size, furnishing, quality and location.

In justification, reference may in particular be made to

1. a loss of representative rents (Mietspiegel),
2. information from a rent database,
3. an opinion, provided with supporting grounds, by an officially appointed and sworn expert,
4. examples of equivalent payment for individual comparable dwellings; in this case it is sufficient to name three dwellings.

Rent increase II

- **Stepped rent, § 557a BGB**

The rent may be agreed in writing in varying amounts for specific periods of time. The agreement, each rent amount or each increase must be indicated as a monetary amount. The rent must remain unchanged on each occasion for at least one year. During the period of stepped rent, an increase under sections 558 to 559b BGB is excluded.

- **Indexed rent, § 557b BGB**

The parties to the contract may agree in writing that the rent is to be determined by means of the price index for the cost of living of all private households in Germany.

- **Rent increase in case of modernization, § 559 BGB**

If the landlord has carried out construction measures that increase the utility value or the leases property with lasting effect, improve general living conditions permanently or lead to savings of energy or water with lasting effect, then he may increase the annual rent by 11 per cent of the costs spent on the dwelling.

Duration

- 1) Rental agreement will continue indefinitely
- 2) Fixed-term lease
- 3) Both parties agree to exclude the termination of the lease for a certain time

Indefinite period of time

„The rental agreement becomes effective on....and will continue indefinitely“

The tenant can give notice of termination within three months according to § 573c BGB (the written termination must be sent to the landlord at the latest on the third working day of a calendar month to the end of the second month thereafter)

The notice period for the landlord is extended, by three months in each case, five and eight years after the tenant is permitted to use the residential space

Fixed-term lease

„The rental agreement becomes effective on... and expires on....“

„The rental agreement will be effective for at least...years and continues each time for one more year – if it will be not terminated by one of the parties ...months before it expires.“

§ 575 BGB: A lease may be entered into for a fixed period of time if the landlord upon termination of the lease period

1. wishes to use the premises as a dwelling for himself, members of his family or members of his household, or
2. wishes, admissibly, to eliminate the premises or change or repair them so substantially that the measures would be significantly more difficult as a result of a continuation of the lease, or
3. wishes to lease the premises to a person obliged to perform services

and he notifies the tenant in writing of the reason for the fixed term when the agreement is entered into. Otherwise the lease is deemed to have been entered into for an indefinite period of time.

Exclusion of termination

„Both parties relinquish their right to terminate the lease until“

- according to the Federal Supreme Court the parties can relinquish their right of termination up to four years
 - not possible concerning the right to terminate a lease without notice
 - landlords use this regulation quite often to avoid the fixed-term lease regulations (§ 575 BGB)
 - termination of this kind of contracts before the expiry only by individual agreement or special termination periods
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Termination of a lease

- Termination with notice § 573c BGB
 - Termination without notice, §§ 543, 569 BGB
 - Individual agreement
 - Special termination periods
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Termination with notice

„The rental agreement becomes effective on...and will continue indefinitely“

- Termination in writing !!!
 - Termination period (tenant): 3 months
 - Termination period (landlord): 3/6/9 months
 - + the landlord may only give notice if he has a *justified interest* in the termination:
 - the tenant has culpably and non-trivially violated his contractual duties,
 - the landlord needs the premises as a dwelling for himself, members of his family or members of his household, or
 - the landlord, by continuing the lease, would be prevented from making appropriate commercial use of the plot of land and would as a result suffer substantial disadvantages.
 - According to § 574 ff. BGB the tenant may *object* to the notice of termination of the landlord and demand continuation of the lease if the termination would be, for the tenant, his family or another member of his household, a hardship that is not justifiable even considering the justified interests of the landlord. The objection must be declared in writing at the latest two months prior to termination of the lease.
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Termination without notice

- In writing
- Detailed description of the *compelling reason*
- According to §§ 534,569 BGB compelling reasons are:
 - a party cannot reasonably be expected to continue the lease to the end of the notice period
 - Risk for the tenants health (i.e. mold). The tenant has to report the damage to the landlord (in writing) and has to give notice to remove the damage. If the landlord does not remove the damage until the deadline of the notice, the tenant can terminate the lease without notice.
 - The tenant is in default of payment of the rent

Individual agreement concerning the termination

„The parties agree that the rental agreement expires on...and the tenant, afterwards, does not have to pay further rental payments“

An individual agreement is recommended, if

- the tenant wants to terminate within a shorter period than the three-months-period
 - the tenant wants to terminate within a shorter period than agreed in a fixed-term lease or in a lease excluding the termination with notice for a special time
 - the landlord does not have to agree to an individual agreement – he can insist on the termination period agreed in the lease
 - Check the possibility to sublease
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Special termination rights

- Special termination rights are only applicable if the termination period is longer than three months (fixed-term lease, exclusion of the three-months-termination period)
- Special termination rights:
 - a) Tenant
 - Rent increase, § 561 BGB
 - Rent increase in case of modernization, § 561 BGB
 - to civil servants, soldiers, priests and teachers not applicable any longer since 2001 – the three-months-notice is applicable
 - on the death of a tenant, to the other tenants or heir, § 564 BGB
 - offering another tenant if the tenant has to move to another town caused by a job offer, the tenant needs a bigger apartment caused by his family situation, the tenant has to move to an old people's home etc. - it cannot be expected that the tenants stay in the apartment for the agreed period of time
 - b) Landlord

Simplified termination if the landlord lives by himself in the house having no more than two dwellings – termination without a justified interest. The notice period is in this case extended by three months (§ 573a BGB)

Redecoration

- A tenant does not have to fix more than he wears out
 - Redecorations are: Painting of the walls and the ceilings, wooden window frames (inside), varnish wooden doors, painting of the heating elements
 - Redecorations are not: Sanding and sealing of the parquet flooring, exchange of the carpeting (*normal wear and tear*)
 - *Excessive wear*: (i.e. burn holes, spots in the carpeting; scratches on the door) the tenant has to pay damages to the landlord (important: „New for Old“ !)
 - In general, redecoration work has to be carried out every three years in bathroom and kitchen and every five years in the other rooms
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Redecoration within inflexible periods

- § 535 BGB: In general, the landlord has to carry out all the redecoration work
 - But the landlord can transfer this legal obligation to the tenant in the lease. The contractual agreement must be valid:
 - General terms of business/individual agreement
 - No duty to renovate within inflexible periods (BGH, Az.: VIII ZR 361/03)
 - „has to be carried out within a specific period of time“ - no valid agreement
 - „appropriate periods are...“ - valid agreement because left to the landlords discretion
 - If the tenant stays longer than 3 or 5 years in the apartment, but the contractual agreement concerning redecoration is not valid, the tenant does not have to perform any redecoration work when he moves. Should the tenant move out prior to the redecoration periods the tenant is not liable to pay a proportional percentage of redecoration costs.
Exception: The tenant painted the walls and/or ceilings in dark colors or he used the apartment excessively. Then the tenant has to pay compensation to the landlord.
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Redecoration by the time the lease expires

- *General business terms:* The tenant has to carry out redecoration work when he moves. It does not matter how long the tenant lived in the apartment – no valid agreement
 - Individual agreement - valid
 - Individual agreement means that both parties had the possibility to choose between several terms (renovation at the beginning, at the end of the rental agreement).
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Check in and Check out Report

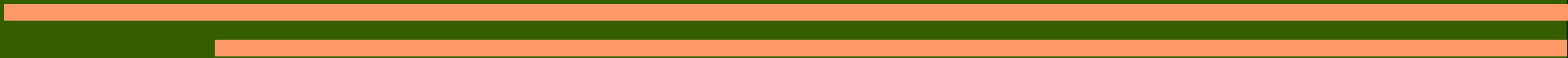
The condition of the apartment should be described in detail.

All rental units and damages should be listed in the report.

Read the meters (heating, warm/cold water, electricity) and mention the number of keys.

It is useful to take pictures and to ask friends or the housing office to have a look at the apartment – they could be important witnesses.

The report should be signed by the tenant, the landlord and the witnesses.



Security deposit

- The deposit is limited to three times the monthly rent (exclusive utility payments)
 - Next to the deposit the landlord cannot ask for further security payments, i.e. surety
 - The deposit can only be used after the rental agreement is already expired
 - The tenant is not allowed to set the last rental payments off against the deposit
 - If the landlord could not find any damages in the apartment, he has to refund the deposit to the tenant plus interest. But the landlord is allowed to keep a part of the deposit if the tenant has to pay further utilities.
 - According to § 548 BGB compensation claims of the landlord for modification to or deterioration of the leased property are subject to a six-months limitation period. Thereafter the tenant should ask for refund of the deposit.
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