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BCC Legal Group Seminar

"Renting a home in Luxembourg: All you need to know about Luxembourg's residential tenancy laws"

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Cercle Munster

I. Concluding a residential lease

Concluding a residential lease

1. Definition and applicable texts
2. Form and parties
3. Compulsory and recommended provisions
4. Administrative formalities

1. Definition and applicable texts

a. What is a residential lease?

Agreement by which one of the parties undertakes to provide the other, during a defined period of time and under the condition of the payment of a price, with the enjoyment of housing to be used as a dwelling (Art. 1709 of the Luxembourg Civil Code, "**CC**"))

b. Which texts apply?

- **Articles 1713 to 1762-2 CC**: general provisions applicable to the lease agreements for dwellings
- **Law of 21 September 2006 on residential lease agreement as amended** (the "**2006 Law**"): specific provisions applicable to the lease of premises for residential purpose to natural persons with the exclusion of:
  - ✓ Premises for commercial, administrative, industrial and working-from-home activities as well as for running a licensed profession. For premises with both residential and professional use, the 2006 Law remains applicable to the whole premises if the part dedicated to the residential use is the most important qualitatively (e.g. Trib. Arr. Lux., 2 October 2009, No. 245/2009 regarding an independent accountant); and
  - ✓ Secondary residence, meaning premises used several times in a year but each time for a short period (weekend, holidays, etc.).

- ✓ Buildings which are accessories of the leased premises (e.g. a garage for which a specific lease agreement was concluded - *Justice de paix,* Lux., 30 April 2008, No. 1621/08)
- ✓ Hotel rooms
- ✓ Collective housing for hosting and integration of immigrants
- ✓ Retirement homes, centres for people with disabilities

2. Form and parties

a. Form

- "written or oral lease agreement" (Art. 1 of the 2006 Law)
- Oral lease can result from a common intention of the parties or a *de facto* situation (paid occupation of premises)
- Strongly **recommended** to conclude a **written lease agreement** in order to avoid:
  - ✓ difficulties to prove the content of the agreement; and/or
  - ✓ risks relating to the state of the premises (if there is no written joint inventory, it is assumed that the tenant received the premises in a good state of repair)
- The written lease agreement must be executed and drawn up in duplicate (Art. 1325 CC)

b. Parties

- The **landlord can be a natural or a legal person** (even a commercial company)
- The **tenant should be a natural person** (Art. 1 of the 2006 Law). However, according to case law (Trib. Arr. Lux., 3 July 2012, No. 144541), a lease can also be concluded by a legal person (commercial company, bank, embassy, etc.) if the aim is to provide a dwelling for a natural person (salaried employee, manager, etc.)

3. Compulsory and recommended provisions

a. Compulsory provisions

- According to Art. 1709 CC, a lease agreement must include information on:
  - ✓ **Parties**
  - ✓ **Premises**
  - ✓ **Rent**
- These provisions should be drafted with as much precision as possible in order to avoid any dispute.
- Regarding the premises, it is also strongly recommended to **draw up a joint inventory** which will be enclosed with the lease as an annex.
- In the case of a **lease of a furnished dwelling**, the following furniture must be included: a single bed (separate from the floor by at least 30 cm), a single locked cupboard, a table and one chair, a mattress with one pillow, one blanket in summer and two in winter and a possibility to dry clothes (Grand-ducal Regulation of 25 February 1979 as amended)

b. Recommended provisions

Duration and method of termination, guarantee, charges, insurance, transfer and sub-lease, use of the premises, registration, diplomatic provision, **luxury housing (if any)**, joint inventory

4. Administrative formalities

a. Registration

- Compulsory if the agreement is executed under a written form (Luxembourg Tax Code, chap. III, section 2§5)
- An original of the executed lease agreement must be provided to the Registration and Estate Administration (Administration de l'Enregistrement et des Domaines) within three months of its conclusion
- If the lease does not determine which party should register, the registration can be done by either of the parties
- The registration fee is equal to 0.6% of the accumulated amount of the rent. If the lease has no limited duration, the registration fee is calculated based on a duration of 20 years. The amount of the fee is doubled in the case of late registration (later than three months from the signature ➔ 1.2%)
- Unless the lease states otherwise, the fee must be paid by the tenant. The AED can, however, ask for the payment of the registration fee by any of the parties. The party which should have paid can then take legal action against the other.

b. Transcription

- **Compulsory if the lease has a duration of more than 9 years** (Luxembourg law of 25 September 1905 as amended)
- An original of the lease agreement executed under the form of a notarial deed and two duly certified copies must be provided to the **Mortgages Office** (*Bureau des hypothèques*) with
- No legal deadline for transcription, but in any case, after the registration
- Once the notarial deed is executed by the parties, the formality of transcription is the **responsibility of the notary**
- The transcription fee is equal to **1% of the accumulated amount of the rent** and is due in addition to the registration fee. There is no financial sanction in the case of no transcription.

c. Specificity of the residential lease

- The main benefit of registering and transcribing a lease is to give it a precise date so that it can be enforceable towards third parties which cannot then claim to be unaware of the existence of the contract itself and/or the parties' rights resulting from it
- By registration, the lease agreement is enforceable towards third parties from its entry into force until (i) its termination if the contract has a duration of nine years maximum or (ii) the end of its ninth year of execution if the contract has a duration of more than 9 years
- By transcription, the lease agreement is enforceable towards third parties from the beginning of its tenth year of duration until its termination
- Failure to register and/or transcribe a lease does not impact the validity of the lease but the contract will not be enforceable towards third parties
- This penalty is not applicable to **residential lease** which **is automatically enforceable towards third parties** (Art. 12 (5) of the 2006 Law)

➔ In practice, very few residential lease agreements are both registered and, where necessary, transcribed whereas it is a compulsory obligation.

II. Executing a residential lease

Executing a residential lease

1. Delivery of the premises
2. Lease rental and charges
3. Maintenance, works, repairs and transformation
4. Sub-lease and transfer

1. Delivery of the premises

a. Obligation to deliver the premises in good state of repair

- Unless otherwise provided in the tenancy agreement, the owner of the premises must provide them to the tenant in a **good state of repair** (Art. 1720 al. 1 CC). However, the lessee may contractually agree to carry out remedial works when he takes possession of the premises.
- According to the amended Law of 25 February 1979 on housing assistance, the rental premises must meet the **minimum standards of hygiene, habitability, and safety** defined by Grand-Ducal regulation of the same date (Article 32 al. 1). Violation of this rule can result it a fine of between EUR 63 and EUR 125,000 (Article 35).

b. Importance of the inventory

- **If no joint inventory of the premises has been drawn up**, it will be assumed that the tenant received the premises in a good state of repair, and, unless he can prove otherwise, he will have to leave the premises in good condition (Article 1731 CC).
- If a defect affecting the premises has not been mentioned in the inventory, it is also crucial for the tenant to **immediately inform the landlord** of such problem by registered letter with acknowledgement of receipt. Otherwise, if no notification is made within a reasonable time, the tenant will be assumed to have accepted the premises in good repair.

c. Warranty for faults and defects

- The owner must provide the tenant with a **guarantee against all faults or defects** which prevent a proper use of the premises, even if he was unaware of them when the lease was signed (Art. 1721 al. 1 CC).
- Any impediment to the proper use of the rented premises may qualify as a fault or defect, whether such impediment is only partial or total, as long as it significantly **affects normal enjoyment of the property** with regards to the tenant's legitimate expectations (Trib. Arr. Lux., 29 June 2007, No. 108351). So "*actual and noticeable nuisance"* would fall into the definition of faults and defects, whereas "*slight inconvenience"* would not (Trib. Arr. Lux., 21 March 2008, No. 113018).
- If a fault or defect is detected and proved, the tenant could be awarded **damages for disturbance of his quiet possession** and/or be granted a rent reduction (Trib. Arr. Lux., 29 June 2007, No. 108351, also stating that if the defect is particularly serious, termination of the agreement with damages is also an option).
- Furthermore, if any other damage occurred as a consequence of the fault or defect detected, the landlord will have to indemnify the tenant (Art. 1721 al. 2 CC).
- By way of exception, the owner is **not responsible for any obvious and apparent defect** or damage which the tenant could or should have noticed when the contract was signed (Trib. Arr. Lux., 27 April 2004, No, 106989, a joint inventory was drawn up, so that the tenant was deemed to have known and accepted the apparent defects; see also Trib. Arr. Lux., 21 March 2008, No. 113018).

2. Lease rental and charges

a. Payment of the lease rental

- Principal obligation of the tenant (Art. 1728, 2° CC), no VAT applicable
- Free establishment of the lease rental by the parties under the condition that lessor's annual income from the lease rental may **not exceed** 5% of the invested capital (*Justice de paix*, Esch, July 2014: the court ordered the lessor to pay the tenant EUR 20,000.00 because he had received an excessive lease rental during 7 years of lease).
- Calculation of the **invested capital** (revalued when the lease agreement is concluded or when the rent is adapted): cost of the original construction and its outbuildings (garage, garden, loft, cellar, etc.), cost of the construction's improvements, cost of the land where the housing is situated.
- **Exception to the rent ceiling**:
  - ✓ Agreement of the parties concerning the amount of the invested capital or the relevant elements to determine the invested capital;
  - ✓ Luxury housing (modern comfort) – when the monthly lease rental exceeds about EUR 2,220.46 and the invested capital exceeds around EUR 5,101.28 per m^2 (joint housing belonging to an ownership) or around EUR 3,714.32 per m^2 (one family house) – *Figures with the index dated October 2014*. The lease must include a specific clause stating the premise is a modern comfort one and referring to the 2006 Law; and
  - ✓ Social housing – the lease rental is adapted in relation to the disposable income, to the composition of the family and to the residential space.

- The **lease rental can be adapted** during the lease following:
  - ✓ An agreement of the parties; or
  - ✓ A claim of one party: In the case of disagreement after sending a notice to the other party, each party can ask for an augmentation (that can never exceed an annual rent of 5% of the invested capital) or a reduction of the lease rental. This request can be done every 2 years by means of a petition before the Municipal Executive (consultation of the Rent Commission), after 6 months of lease agreement (time restriction not applicable to luxury housing).
- **Indexation clause**: prohibited by Art. 5 (5) of the 2006 Law
- The landlord can ask for a **cash or a bank guarantee** of 3 months maximum (restriction does not apply to luxury housing). If the tenant prefers a bank guarantee, the landlord cannot refuse. The lease must include a specific clause on the guarantee. If not, the guarantee is void.

b. Charges

- Charges that have to be paid by the tenant only concern **energy consumption** (electricity, water, and heating consumption), **maintenance of the housing** (snow clearance, cleaning, maintenance of the elevator, etc.), **minor repairs** (minor replacements, etc.) and **fees and costs related to the use of the housing** (municipal fees, maintenance fees regarding common jointly-used equipment, cleaning of the private and common property, maintenance of the garden and the courtyard, chimney sweeping, waste bin fees, housing damages, etc.) (Art. 5 (3) of the 2006 Law)

- **In order to calculate the charges, the lessor and the tenant can choose** one of the following options (they can agree to change from one option to another during the lease):

  ✓ Account of the real charges: Principle: annual account of charges – credit/debit balance to the tenant after deduction of the advances already paid. Multiple housing (all apartments belong to the same owner) – the tenant pays all types of common charges proportionally to the leased apartment are. Shared ownership – the tenant pays the common charges proportionally to its use. In the case of disagreement on the account of charges, each party can bring an action before the court (*Justice de Paix*).

  ✓ Payment of charges on a flat rate basis: Principle: there is no account (the payment on a flat rate basis is made in full discharge and with definitive effect). Adaptation during the lease – both lessor and tenant must agree.

- If the parties choose the account on the real charges, the lessor can ask the tenant to **pay every month an amount corresponding to the advances** on account of the charges even if it is not included in the lease agreement and even if the tenant does not agree, but the monthly amount corresponding to the advances on account of the charges must be appropriate.
- The **monthly amount of the advances can be adjusted** by taking into account the real cost paid by the lessor during the previous years on account of the tenant following:
  - ✓ An agreement of the parties ; or
  - ✓ A claim of one party: In the case of disagreement and after sending a notice to the other party, each party can ask for an augmentation or a reduction of the monthly amount corresponding to the advances on account of the charges. This request can be done every 2 years by means of a petition before the Municipal Executive (consultation of the Rent Commission), after 6 months of lease agreement (Arts 8 and 9 of the 2006 Law). The parties can contest the Municipal Executive's decision and bring an action before the court (*Justice de Paix*) (Art. 10 of the 2006 Law).

- **Prescription**: The lessor has **five years** to ask the tenant for payment of the charges.

3. Maintenance, work, repairs and transformation

a. Routine maintenance and minor repairs

- The **tenant is responsible** for routine maintenance and minor repairs, **unless the tenancy agreement states otherwise** (Art. 1754 CC). This obligation applies, among others, to maintenance, cleaning, and descaling of sanitary equipment; changing pipe gaskets; chimney sweeping; window pane repairs; doors; hinges; bolts and locks.
- However, "*none of the repairs deemed as the responsibility of a tenant may be charged to tenants where they result only from decay or force majeure*" (Art. 1755 CC).
- Moreover, the **tenant must use the premises "in good household manner"** (Art. 1728 CC), which means that he has to inform the owner of all deterioration affecting the rental (Trib. Arr. Lux., 21 March 2008, No. 113018, the lessor cannot undertake a continuous monitoring, so the lessee has to inform him of any situation which might jeopardize proper possession of the premises).
- If the tenant does not comply with his maintenance obligations, the owner may seize some pieces of furniture in order to recover the costs of the needed work or repairs. **The owner has a privileged lien over the furniture of the rented premises to guarantee rental repairs** and, more generally, "*everything related to the execution of the lease"* (Art. 2102 1° al. 3 CC).

b. Major maintenance and repairs

- If major maintenance and repairs are needed, the **landlord is responsible** for these works (Art. 1720 CC). Similarly, Art. 1719 2° CC provides that the rented premises must be maintained under such a condition that the tenant may always enjoy the premises and use them for their intended purpose.
- **Exceptions**: If the major work or repairs were the consequence of the tenant's lack of routine maintenance or improper use of the premises or if the tenant contractually agreed to carry out those works or repairs.
- **What constitutes a non-rental imperative repair?**: Repairs to supporting walls and vaults; heating system repairs; roof, gutters and downpipes repairs, etc.
- The lessor must guarantee the lessee peaceful enjoyment of the premises, which means that, in principle, no work should be carried out during the lease without prior consent of the tenant (non-disturbance of the quiet possession of the tenant vs. termination of the tenancy agreement for necessary work).
- However, if the **repairs are urgent** and cannot be postponed until after the end of the lease, the **landlord is legally allowed to have the work carried out immediately** (Art. 1724 CC). The tenant may ask for compensation if the work continues for more than 40 days.
- Moreover, it is settled case law that the **landlord may terminate the tenancy agreement in order to carry out work if he can justify serious and valid grounds** (Trib. Arr. Lux., 6 October 2006, No. 102922; Trib. Arr. Lux., 5 October 2007, No. 108074): the landlord must have the intent to proceed immediately with the work; only necessary and extensive work may justify termination of the agreement; such work must be of such a nature that the tenant cannot stay in the premises.

- **What to do if the landlord does not comply with his obligations and does not perform the necessary work?**

  - ✓ Suspend the payment of the rent?: Very risky option as payment of the rent is a core obligation of the tenancy agreement. Non-payment might justify eviction. The owner must have committed a serious breach which prevents the tenant from almost all use and enjoyment of the premises (Trib. Arr. Lux., 27 June 2008, No. 115138).
  - ✓ Carry out the work instead of the owner?: The owner might refuse to reimburse the cost of the work and the tenant would have to prove that such work was "*urgent*" and "*necessary*". By contrast, the cost of work that is "*simply useful and non-essential*" made in the tenant's own interest must be borne by the latter (Diekrich, 19 February 1936, under Art.1720 CC).
  - ✓ Leave the premises?: As long as the tenancy agreement stays in force, the tenant could be asked to pay the rent, whether he's in the premises or not.
  - ✓ As a result, the **safest way** for the tenant to resolve a dispute with the owner is the following: First, the tenant should **serve the owner with a letter of formal notice** in order to provide an opportunity to comply with the alleged breaches. Second, **if this fails, a judiciary action before the court** (*Justice de paix*) should be considered.
  - ✓ In application of Art. 24 of the 2006 Law, the *Justice de Paix* would be entitled to order interim measures for the duration of the proceedings (e.g.: nominate an expert to determine the state of repair of the premises).

c. Transformation of the premises

- **Unless otherwise provided in the lease agreement, the tenant has no right to perform transformation work within the rented premises**.
- If such work is carried out by the tenant, the landlord may:
  - ✓ Demand termination of the tenancy agreement;
  - ✓ After the end of the term, force the tenant to restore the premises to their original state or keep the premises as transformed without indemnifying the tenant for any improvement made.

4. Sub-lease and transfer

a. Common rules

- According to Art. 1717 al. 1 CC, "*[a] lessee has the right to sublet or even to assign his lease to another person, unless that faculty has been forbidden to him [in whole or in part]*".
- This principle derives from the fact that a tenancy agreement only creates personal rights of possession and, as such, it remains valid even when it does not relate to the property of the lessor (Trib. Arr. Lux., 5 March 2004, No. 84019).
- **Prohibition of sub-lease or assignment must be expressly stated in the tenancy agreement** (Art. 2 of the 2006 Law). If the tenancy agreement contains a clause prohibiting sub-lease or assignment, the owner may object to sub-lease or transfer without legitimate reasons. However, if the tenancy agreement requires prior consent of the landlord, such consent can be refused only for legitimate grounds (Lux. 5 December 1928, 12, 119).
- Unless otherwise stated in the agreement, **violation of an interdiction to sub-lease or transfer should not necessarily entail termination of the tenancy agreement** (Court, 8 December 1926, 11, 284).

b. Sub-lease

- If the lessee decides to sublet the rented tenancy, a second tenancy agreement has to be concluded between him and the sub-lessee (the sub-lease can be either partial or total).
- Unless the owner agrees to the contrary, **the original tenant remains bound by all the obligations set forth in the tenancy agreement**. Accordingly, the owner would have recourse against the original tenant if the sub-lessee does not comply with the terms of the tenancy agreement.

c. Transfer

- Assignment of the tenancy agreement implies a modification of the head-lease according to which the assignor transfers all his rights under the tenancy agreement to the assignee.
- **The assignee replaces the original tenant as a party to the tenancy agreement** and, in contrast to a sub-lease, a lease transfer cannot be partial.
- The **assignment** of a tenancy agreement is considered as an assignment of claim (Trib. Arr. Lux., 15 February 2008, No 112664) so it **takes effect between the assignor and the assignee merely upon mutual consent** (Art.1689 CC).
- As assignment of the tenancy agreement may impose a new and unknown tenant to the owner, **the owner can only be bound by the transfer if**:
  - ✓ He has been informed of the assignment in accordance with Art. 1690 CC (Trib. Arr. Lux., 15 February 2008, No 112664), and
  - ✓ He has a clear and undisputable knowledge of the existence and validity of the operation and has agreed to it (*Justice de Paix*, Lux., 28 May 1990, No 1937/90).
- If such requirements are not complied with, the assignee will have no right to stay in the premises and the original tenant will remain bound by the obligations stipulated in the initial lease.

III. Terminating a residential lease

Terminating a residential lease

1. Duration of a residential lease
2. Termination by the landlord/purchaser
3. Termination by the tenant
4. Termination by mutual agreement
5. Restitution and remediation of the premises

1. Duration of a residential lease

- The lease contract may be concluded for a **definite or indefinite period**.
- **Without a written lease**, the lease is deemed to be concluded for an indefinite duration.
- Any lease under the 2006 Law, which comes to an end for any cause, is **automatically extended and become an indefinite period contract unless** it has been terminated:

  ✓ by the landlord upon one of the 3 grounds stated in Art. 12 of the 2006 Law; (non applicable to luxury housing)

  ✓ by the tenant upon any grounds;

  ✓ by mutual consent.

2. Termination by the landlord/purchaser

a. Termination for personal needs by the landlord

- **The landlord needs the rented premise for itself or to make it occupied by a parent or relatives within the third degree included.**
- According to case law, the landlord as a public corporation may invoke a personal occupation if this is a perquisite of the regular organisation and functioning of its services.
- The landlord must send a **registered letter with acknowledgement of receipt to the tenant with a precise motivation.**
- The letter of termination must also **include the following wording of Art. 12 (3) of the 2006 Law otherwise** the termination would be **void**. (« *Notwithstanding section 1736 of the Civil Code, the notice period as provided in paragraph (2), point a, is six months. The termination letter must be written, reasoned and accompanied, where appropriate, the evidence and sent by letter registered mail with return receipt.* » (Art.12 of the Law of 21 September 2006).
- The landlord must **send the letter in due time:**
  - ✓ Definite lease: a 6 month notice period must be respected before the contract end date
  - ✓ Indefinite lease : a 6 month notice period must be respected at any time
- **The landlord must occupy the rented premises within 3 months following the tenant's departure, which may be suspended in case of effective renovation and transformation work** (Art. 14 of the 2006 Law) (Court of Appeal, 30 January 1996: occupation of the premises by the landlord's son was not effective because he did not effectively occupy the premises for 8 months).

b. Termination for personal needs by the purchaser

- **The purchaser of rented premise needs it for itself or to make it occupied by a parent or relatives within the third degree included.**
- The purchaser must to send a **registered letter** with acknowledgement of receipt to the tenant **with a precise motivation.**
- The letter of termination must **also include the** following **wording of Art. 12 (3) of the 2006 Law otherwise** the termination would be **void.**
- The purchaser must send the letter to the tenant within **3 months** of the acquisition of the rented premise (Art. 12 (6) of the 2006 Law).
- **The tenant must leave the premises within maximum 12 months** following the sending of this letter.
- **The purchaser must occupy the rented premises within 3 months** following the tenant' s departure, which may be suspended in the case of effective renovation and transformation work (Art. 14 of the 2006 Law).

c. Termination for breach/through the lessee's fault

If the lessee does not comply with the terms of the lease, the landlord may:

- **Terminate the lease for lessee's fault upon a 3 month notice period before the contract ends (definite lease) or at any time (indefinite lease)** (Art. 12 (2) of the 2006 Law)

  - ✓ Recommended to the landlord: Sending a formal notice and, if the notice remains unsuccessful, sending a registered letter with acknowledgment of receipt stating the termination of the lease.
  - ✓ If the tenant refuses to leave the rented premise, the landlord can claim the judicial termination of the contract before Court.

- **Directly claim the judicial termination of the contract before the Court**

If the judge terminates the lease, the tenant may be sentenced to pay all due rents as well as a compensation for re-letting compensating the loss of rental during the necessary time needed by the lessor to find a new tenant.

- In any case, the breach referred to by the landlord has to be sufficiently serious (e.g. non-payment or non-regular payment of the rent (Trib. Arr. Lux., 21 March 2008), deterioration of premises, non subscription of insurance, non delivery of the guarantee).

d. Termination for serious and legitimate grounds

- The landlord may terminate the lease for proven serious and legitimate grounds (Art. 12 (2) of the 2006 Law) upon a **3 month notice period**.

- "Serious and legitimate reason" is not defined by the 2006 Law which only **excludes the sale of the premises.**

- The judge assesses what is considered as a serious and legitimate reason to terminate: **carrying out large scale works** (*Justice de Paix*, 1st April 2009, No 1355/09) **or significant and needed work** (Trib. Arr. Lux., 5 October 2007), **demolition of the building, attribution of the premises to an auxiliary nurse assisting the landlord who suffers from a handicap**.

- No legal form of termination. **Recommended to send a registered letter** with acknowledgement of receipt.

- The landlord is not obliged to include the serious and/or legitimate grounds in the termination letter. However, if the tenant asks for these grounds, the landlord must disclose it.

- **The rented premises must be occupied within the 3 months following the tenant's departure**, which may be suspended in the case of effective renovation and transformation work. (Art.14 of the 2006 Law).

e. Particular case of official lodgings

- **Definition**: accommodation that is provided to someone as an accessory to the employment contract between the parties.

- The lease ceases as of right when the employment contract terminates: it is not necessary to withdraw from the lease.

- **Eviction may be requested from the *Justice de Paix*** (not the Labour Court) which is territorially competent (Trib. Arr. Lux., 8 June 1989, No 38601).

- Recommended to include a **diplomatic clause** in the definite lease stating that if the tenant is transferred abroad for professional reasons before the expiration of the lease, he will be entitled to terminate the contract upon a 3 month prior notice served to the landlord by registered letter. The parties can also agree that this clause applies in case of transfer within the Grand-Duchy for professional reasons with a range of more than (…) km.

f. Eviction and reprieve

- If the tenant refuses to leave the premises on the expiry of the lease or after its termination then the landlord can't force his eviction. A **request** must be brought before the territorially competent ***Justice de Paix*.**

- **Occupation compensation** is owned when the tenant refuses to leave the premises after the termination of the lease.

- Subject to a limited exception, a **tenant who is compelled to leave can request a reprieve**. A request must be brought before the territorially competent *Justice de Paix*. A reprieve is only granted if the tenant deserves it and acts in good faith.

- The duration of the extension is **maximum 3 months**. A further **extension** is possible (maximum of **twice** for maximum **3 months each time**).

g. Protections for the tenant

Legal protections of the tenant who received a termination letter or a Court order for eviction.

i) Extension of the six month termination time-limit (Art.12 (3) of the 2006 Law)

- Only **applicable in the case of termination for personal cause** by the landlord
- **Action to the competent Court** (*Justice de paix*) for claiming an extension of termination time-limit. Has to be done within the 3 months following the reception of the termination letter.
- Extension **granted if the tenant justifies** before this six month termination time-limit :
    - ✓ to be in the process of building or transforming a home owned by him, or
    - ✓ to have rented an accommodation under construction or transformation, or
    - ✓ to have made useful and extensive steps to search for a new home (*Justice de paix* Lux., 17 November 2008: extension non granted, the tenant has only registered with the administrative service of the Town hall to obtain a social dwelling).

- The tenant may obtain an extension of max. 12 months after the six months' termination time-limit (the Court order is binding and not subject to appeal).
- After the extension is granted, the tenant is no longer entitled to claim for the « suspension of eviction ».

ii) Suspension of eviction (Art.12 (3); Arts 16 to 18 of the 2006 Law)

- **Applicable for any termination for cause by the landlord except of the tenant's gross negligence**. Not applicable if the tenant was already granted an extension to the termination time-limit.

- **Action to the competent Court** (*Justice de Paix)* for claiming the suspension of eviction within less than one year from the date of the statement of claim and the expiration of the time-limit for eviction set in the eviction judgment or in a previous order granting suspension.

- **Suspension granted if** the Tenant, under the circumstances appears to deserve it, and can prove that he has made useful and extensive steps to find a new home. Suspension not granted if it is incompatible with the personal needs of the other party

- The tenant may obtain a suspension of eviction during **3 months renewable max. 2 times for 3 months each** and the tenant will pay to the landlord a compensation proportional to his damage

- The Court decision is binding and not subject to appeal**.**

- **The tenant cannot claim the suspension or extended suspension after the 12 months** following the date when the purchaser informed the tenant neither **after the 15 months** following the date when the landlord informed the tenant that he wishes to terminate for personal use/ relative's use of the premise.

iii) Right of preference in the case of the sale of the rented premise (Art. 15 of the 2006 Law)

- Priority right granted to the tenant to acquire from the landlord the rented premise **if :**

  - ✓ the duration of the lease is at least 18 years;
  - ✓ the landlord wishes to sell the rented premise;
  - ✓ the rented premise is not subject to a sale by public auction nor transferred to a family member or parent or relative within the third degree of the landlord, nor subject to a free transfer; and
  - ✓ the tenant has rented all the building, if the flat rented is subject to co-ownership.

- The landlord must send the **proposal of sale by registered letter** with express mention that the tenant can make a counter-offer.

- The **tenant must to respond within 1 month** (or two months if the tenant requests a credit loan to a credit institution based in Luxembourg). Recommended to reply by registered letter because silence implies refusal.

- **In the case of violation by the landlord** of the legal right of preference (e.g. the landlord sells the rented premise at a price inferior to the price offered to the tenant), the **tenant is entitled to claim for damages.**

3. Termination by the tenant

a. Termination for convenience

- The tenant can terminate the lease **without having to give any grounds**. He must respect the terms of the contract (prior notice period and end date).

- A lease with an indefinite period can be terminated at any time. An indefinite period lease in which no prior notice is defined can be terminated by the tenant with a three month prior notice.

b. Termination for cause

- The tenant may apply for the termination of the residential lease at any time for a serious cause **if the landlord does not comply with the terms of the lease**. A “serious cause” may be a contractual breach as the obligation of delivery of the premises or obligation to repair material damage suffered as a result of the age of the rented premises.

- It is **recommended to send first a prior notice for ordering** action to the landlord as a registered letter with acknowledgment of receipt including this formal summons.

- If the landlord challenges the cause invoked by the tenant, the tenant may claim **for the judicial termination for cause before the competent court** (*Justice de Paix*, Luxembourg, Esch or Diekirch depending on the place where the property is located).

4. Termination by mutual consent

- The parties are free mutually to terminate the lease under whatever reason, time, notice period or method
- Both tenant and landlord must agree
- Strongly recommended to **draft a written mutual termination**:
  - ✓ To agree on the conditions of the tenant's departure; and
  - ✓ To agree on the time-limit of the tenant's departure.

5. Restitution and remediation of the premises

a. Obligation to leave the premises in good state of repair

- At the end of the lease the tenant must leave the premises in a good state of repairs, or at least **not in a worse condition than when the inventory was drawn u**p (Art. 1730 CC: "*Where an inventory of fixtures has been made between the lessor and the lessee, the latter must return the premises as he received it, according to that inventory, except for what has perished or deteriorated through decay or force majeure*").
- Consequently, the tenant will be **responsible for any damage which occurred during the rental period, unless he can prove it was not his fault**, for example by establishing an extraneous cause (Art. 1732 CC: the lessee "*is answerable for the deteriorations or losses occurring during his enjoyment, unless he proves that they took place without his fault*.").
- The tenant is also **responsible for damage caused by the persons he lives with or his sub-tenants** (Art. 1735 CC: "*A lessee is responsible for the deteriorations and losses which occur through the act of persons of his household or of his sub-tenants.*")
- The obligation to leave the premises in a good state of repair is an **obligation of result**. This means that a material proof of degradation is sufficient to trigger a presumption that the tenant has failed in his obligation of maintenance (Trib. Arr. Lux., 18 January 2008, No. 112066).
- However, the tenant is **not liable for any damage due to normal wear and tear** of the premises (Trib. Arr. Lux., 31 October 2003, No. 81109).
- Moreover, damages awarded to the landlord can be reduced if the latter has not done anything to mitigate that damage (Trib. Arr. Lux., 18 January 2008, No. 112066).

b. Importance of the departure inventory

- Crucial for **both the tenant and the landlord** to draw up a departure inventory
- **For the tenant**: if the state of repair and cleanliness is not assessed on the day of the departure, the cost of clean up or repair work could be demanded by the landlord and the tenant won't be able to prove the general state of the premises at the time he left.
- **For the landlord**: if equipment has been damaged, the landlord will have great difficulty establishing the responsibility of the tenant without a departure inventory reporting such damage.

c. The landlord's rights in the event of a deterioration of the premises

- The fact that the landlord **received the keys back without making any comments** does not mean that he has accepted the general state of the premises. The owner may claim compensation for rental damage within days or weeks following the handing back of the keys.
- Besides, the owner may **deduct money from the rent guarantee** if the tenant does not comply with his obligations under the tenancy agreement, which includes violations of the maintenance and repair obligation (Art. 5(2) of the 2006 Law).
- The landlord can also ask for **compensation for unavailability** i.e. for the loss of enjoyment during the necessary time needed for the restoration of the premises before re-letting.

IV. Ongoing reform

- **Draft bill of law n° 6610** deposited with the Luxembourg Parliament on 6 September 2013 and amended by the Government on October 2014
- Extension of the list of premises **excluded from the Law: furnished and unfurnished dwellings at the disposal of natural persons by of social rental management body**
- **Acknowledgment of the competence of the mayor** (*Bourgmestre*) - and no longer of the local council (*Collège des bourgmestre et échevins*) - **regarding the change of use of a real estate property:**
  - ✓ Any owner of a real estate property which should normally be used for residential purpose must also in the future have the prior authorisation of the mayor (*Bourgmestre*) before using all or a part of his real estate property for office or commercial purpose, even if the relevant real estate is dedicated to a public service
  - ✓ Regarding the real estate properties normally dedicated to residential purposes but used for office or commercial purposes or allocated to a public service at the date of the coming into force of the bill, their owners will have 5 years from this date to comply with the new legislation
- Bill currently under review and discussion by the Housing Commission of the Parliament

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