

# Landlord and Tenant Law in Germany

## Things you should know about landlord and tenant law

### **1. Termination of all rental agreements should begin with your servicing Housing Office.**

Please contact your local Housing Office as soon as you receive PCS orders. The following information is intended to familiarize you with the laws that govern housing contracts entered into under German law (and all contracts entered into while in Germany are governed by German law). The Housing Office can assist with most standard termination cases, please contact the Ansbach Legal Assistance Office if a specified dispute arises.

### **2. Terminating the rental agreement.**

- a. In residential leases only written termination notices are valid.
- b. The tenant's notice period depends on the lease contract:

If it contains the following typical housing termination clause the tenant can leave the premises one month after his written notice was received by his landlord:

“The rental agreement can be terminated anytime in compliance with statutory notice periods. In addition, the tenant is granted the right to terminate the rental agreement by advance notice of one month's effective the last day of the calendar month under the following conditions: a) transferring to a new duty station, b) the government demands immediate occupancy of US government controlled accommodations no later than the effective date of termination, or c) unforeseen emergencies, retirement, or the early return of family members. Termination has to be in writing and may be sent by registered mail.”

If there is not such a clause in the contract, the tenant's notice period is three months. The three-month period applies independent of when the contract was concluded. Mailbox rule: the German law has the mailbox rule, but in order to keep a deadline you have to drop off the letter during normal business hours/during a time during which it can be expected that the mailbox will be emptied. Dropping off a letter at 23:59 in order to keep a deadline is therefore not good enough. The termination notice is to be received by the landlord on or before the third working day of the first month to become effective.

- c. The tenant and the landlord are free to enter into a termination agreement at any time. If all parties can agree on the issues, they are not bound by the statutory minimum period for a termination.
- d. Please note that a fixed term lease can only be terminated before the end of the lease period stated in the rental agreement if the landlord agrees to it.

### **3. Utilities and operating costs.**

- a. The tenant will have to pay only for those utilities and operating costs mentioned in the rental agreement. The landlord might have put a clause in the agreement referring to Para. 2 BetrKV. This is an umbrella provision that lists exclusively all applicable utilities and operational costs in 17 categories: public charges (e.g., real estate taxes), water supply costs (e.g., costs for exchanging the meter, service fees), drainage costs, sewage costs (e.g. rainwater), central heating costs (e.g., costs involving emission checks, service fees), hot water costs (e.g., service fees), costs for combined heating and hot water systems, lift associated costs (e.g., electricity costs, service fees), garbage and street cleaning fees, building cleaning costs for common areas and vermin control fees, gardening costs, costs for common area lights, chimney sweeping fees, insurance premiums (e.g., property and liability insurances), janitor costs (costs (2) two (10) and (16) cannot be charged separately if the janitor performs these services). Costs for a common antenna or a satellite dish system, laundry room costs (e.g., electricity costs, service fees), miscellaneous fees (e.g., costs for servicing a sauna or swimming pool,...).

If the rental agreement refers to Para. 2 BetrKV the landlord can charge the tenant with the above-mentioned costs.

- b. Utilities are just advance payments. Consequently they are only estimates. The landlord will have to present to the tenant a detailed list of the overall actual utility costs. Such a list has to be presented within 12 months following the (annual) billing cycle; otherwise the landlord is prevented from asking for additional amounts to cover the actual annual utility and operational costs. Likewise the tenant has 12 months, following the receipt of the landlord's list on utility and operational costs to present any objections he/she might have. Depending on whether there is a plus or an amount still owed on the annual utilities and operational cost bill, the tenant will either have to pay the rest of the amount owed or be entitled to a reimbursement of any surplus.
- c. The parties could have agreed on a fixed amount of utilities as well. This has to be stated clearly in the contract.

- d. It is always recommended that the tenant read the meters for water, electricity and gas him/herself when asked by landlord or public utility company. Often the public utility companies rely on telephonic transmittal of the readings and only check the meter when the tenant moves out. If the reading has been done incorrectly before, the tenant will have to pay the balance at that time. Furthermore, the tenant might want to try to switch off electricity to his/her quarters temporarily in order to find out if any electricity for common light areas is run through his/her meter.
- e. A detailed list of the overall actual utility costs will also have to provide information concerning the exact manner in which those costs are split between the tenants, the actual calculations, and the credit for the tenant's advance payments. The landlord can base the apportioned share of the overall costs on actual consumption or the size of the apartment.
- f. For tax relief information consult with our VAT – Office.

#### **4. Rental Security Deposit.**

- a. German landlords generally ask for a deposit. This deposit must exceed the equivalent of three monthly net rents. The tenant has the right to make the rental security deposit payments over a three-month period in three equal monthly shares.
- b. If the landlord and the tenant agree, instead of paying the rental security deposit into an account, the tenant may present a bank guarantee to the landlord. A good compromise is usually to put the security deposit in a joint savings account which can only be touched with both the landlord's and the tenant's consent.
- c. Unless the landlord agrees, the tenant may not set off the rental security deposit against any rent payments due. An exception may apply in case of the landlord's bankruptcy. By contract, the landlord may use the rental security deposit if the tenant defaults on his/her rent. Thereafter the tenant has to settle the rental security account again.
- d. A tenant is entitled to a return of the deposit only after the premise has been turned back to the landlord (including all keys issued), after the final utility bill is paid, and after eventual damages done to the premises during the time of the lease by the tenant are settled.
- e. The landlord has been granted a reasonable period of time – usually 6-12 months (!) – to examine possible claims (damages/unpaid bills) against the tenant, to include the final utility bill.

- f. The moving out protocol should help to speed up this progress and lead to at least a partial repayment of the rental security deposit; interest remains accruing on the portion still withheld. In the worst-case scenario the actual costs are settled in an annual bill, which must be presented within a twelve-month period following the end of the (annual ) billing year. Contractually shorter periods can be agreed upon.
- g. It might be helpful to bring a witness to the move-out inspection and take pictures of the premises when moving out just in case to have some evidence later if the landlord claims damages against you that were not existent when you moved out.
- h. If the premises have been sold, the new owner/landlord has to pay back the rental security deposit to the tenant, even if the former owner/landlord did not transfer it to him/her. In any case, the former owner remains liable as a secondary debtor if the tenant cannot obtain the rental security deposit from the new owner/landlord.

## **5. Damages to the Premises.**

- a. Normal wear and tear means deterioration that results from the intended use of a dwelling but does not include deterioration that result from negligence, carelessness, accident, or abuse of the tenant's household, by residents, pets, or by guests.
- b. There is a reputable presumption that damages to an apartment were caused by the tenant. The tenant is responsible for any damages exceeding normal tear and wear. The standards for what constitutes normal tear and wear are often in dispute. Stains on walls, cigarette burns on the carpet or damage done to floors caused by pointed heels would not be considered normal wear and tear.
- c. The tenant's only defenses are that the damages were preexisting or are consistent with normal tear and wear. The argument of preexisting damages can be best supported by a moving in protocol, listing that defect was already in existence.
- d. Please remember to not sign off on the movers unless you have double checked if they did any damages when moving your property out of the apartment/house of the landlord. Your landlord will claim these damages against you. It's your responsibility to get reimbursed by the moving company.

## **6. Decorative Repairs.**

The German term for decorative repairs is "Schönheitsreparaturen". Decorative repairs include any kind of painting and redecoration within the apartment before the tenant moves out.