



MASARYK UNIVERSITY FACULTY OF LAW

Lease

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Lease contract

- Under lease contract a party (the lessor) lets a thing for temporary use to another party (the lessee) for a rent over a fixed period when the lessee may use the thing or the fruits (profits) of such thing. The lessor is obliged to pass the leased thing to the lessee in a condition fit for the agreed use, unless for the customary use.
- The lessee is obliged to pay the rent fixed in the contract, or else the amount of rent as usual at the time of conclusion of the contract, taking into account the value of the leased thing and the manner of its use.



Lease of Flats I.

- **the idea of strong protection of the lessee**
 - I. detailed number of reasons why a lease can be terminated; and
 - II. legal concept of providing
 - a) new apartment,
 - b) new “place to stay”, or
 - c) shelter (difference is described below).



Lease of Flats II.

- Lease of a flat (apartment) **arises on the basis of relevant lease contract** under which the lessor lets the lessee use the flat in return for payment of rent, either for a definite period or without fixing the period of use.
- **The object of the lease of a flat may be only a flat.**



A Flat

‘A flat’ is neither a non-residential space nor any real estate, or its part, intended for recreation. The basic prerequisite for considering some real estate or its part as a flat is the existence of a final and conclusive occupancy permit defining such a part of real estate as a flat.



A lease contract of flat

- A lease contract must be in writing; otherwise it is null and void (Section 40 CCC).
- The lease of a flat may be agreed for an indefinite period of time, a definite period of time or for the time during which the lessee performs work for the lessor.

The lease contract must specify

- a) a description of the contracting parties
- b) a description of the flat
- c) the extent of its use
- d) the amount of rent or the manner of its calculation, as well as other payments for services related to the use of the flat or the manner in which they are to be calculated.



Security deposit

the lessor may require from the lessee to deposit pecuniary means as securement for rent and expenses for supplies and services related to using the flat and for payment of other expenses connected to lease of the flat (“security deposit”).



Termination

Generally, the lease can be terminated

- (1) by the agreement between contracting parties,
- (2) by the expiration of stated time,
- (3) by destruction of an apartment,
- (4) by merging of lessor and lessee,
- (5) by a notice of lessor,
- (6) by a notice by lessee,
- (7) by withdrawal of a contract.



Written notice by lessee

- The lessee can terminate a lease, by giving **written notice**, which does not have to contain reasons that have led to this legal act.
- Notice of termination can apply to both a lease contract, which was made for either a specific period of time or an indefinite period of time.
- **Period of notice cannot be shorter than three months** and its end must correspond with the end of a calendar month. Moving out itself is not considered as notice.



Written notice by lessor I.

- Lessor can terminate a lease only with written notice that **must contain detailed causes of this act**. Notice of termination can be based only on causes that are explicitly stated in CCC.
- Notice must be delivered to the lessee.
- Lessor's notice must contain:
 - a) **Specific date of termination** that cannot be shorter than three months, and agree with the end of a calendar month.
 - b) **Reason** for termination.
 - c) **Instruction to a lessee** about the right to bring an action for voidance of lessor's legal act (only if lessor gave the notice without prior court approval).
 - d) **Obligation of lessor** to provide a new apartment (only if lessee is entitled for one by law).



Written notice by lessor II.

- It is important to pinpoint the essential differences between termination of a lease by lessor
 - **with prior court approval**
 - **without approval**
- If a lessee does not agree with notice that has been given without a prior court approval, he may file a claim in a court that has merit and has competent jurisdiction to examine the notice, within sixty days since the notice has been delivered.
- The lessee does not have to move out of his apartment until there is a new apartment ready for him (only if he is eligible by law to get one), and until the proceedings for voidance of lessor's notice of termination have been effectively accomplished.



Termination without a prior court approval I.

- 1) Lessee or other persons, who share an apartment in question, act grossly “contra bonos mores” and this undesirable behavior must be in the building where the rented apartment is located, even though a written warning note has been given already to them (CCC, § 711, par. 2, letter A).
- 2) The second statutory cause which allows a lessor to give a notice of termination to lessee without a prior court approval is when lessee grossly disobeys his duties that are imposed on him from the force of a lease contract.

Primarily when:

- a) a lessee is late on payments and;
- b) there is an unpaid due amount for rent or other payments related to the usage of apartment in question, which exceeds three times the amount of regular monthly payment,
- c) when a lessee has not recharged a deposit, that was used to cover his arrears of payment according to § 686a, par. 3 of CCC; (CCC, § 711, par. 2, letter B).



Termination without a prior court approval II.

- where lessor is allowed to give a notice without court approval is when a lessee is using two or more apartments, except cases where there can be no fair request on lessee to use only one apartment; (CCC, § 711, par. 2, letter C).
- lessee does not use an apartment at all, without significant reasons, or uses it just rarely, again with no serious reasons; (CCC, § 711, par. 2, letter D).
- the apartment in question is considered to be an “apartment designed for persons with special needs” or an apartment in the “building designed for persons with special needs,” in the case when a lessee is not a disabled person; (CCC, § 711, par. 2, letter E).



“bonos mores” or “good manners”

- The concept of “bonos mores” or “good manners” is used in Czech Civil Law very often.
- The Czech Supreme Court defines this concept in its judicial acts as: “...*complex of social, culture and moral norms that have shown in a historical progress, which are constant and comprehend fundamental historical tendencies and are accepted by a clearly recognized majority of society and are of the quality of basic norms.* (Judgment of the Czech Supreme Court from June 26th 1997, file number 3 Cdon 69/96.)



Termination with a prior court approval

- **Lessor needs an apartment** for himself, his spouse, his children or grandchildren, son-in-law or daughter-in-law, or for his parents or siblings; (CCC, § 711a, par. 1, letter A).
- **If lessee has stopped working for lessor** and lessor needs the apartment in question for a new employee; (CCC, § 711a, par. 1, letter B).
- Or in cases where the **termination of a lease is based on public interest**, or if necessary repairs must be done and it would not that allow further usage of the apartment; (CCC, § 711a, par. 1, letter C).
- In the case, that the **apartment is directly connected with a place that shall be used together with a business** or with other entrepreneur activities and the owner wants to used it for this primary purpose; (CCC, § 711a, par. 1, letter D).



Lease of Non-Residential (Business) Premise (Space)

- Non-residential spaces are mainly rooms or a suite of rooms designated by the competent building authority for purposes other than housing.
- A contract of lease of such rooms must be in writing and must contain
 - the object and purpose of the lease,
 - rental amount,
 - method and terms of payment
 - the period for which the contract is concluded, unless it concluded for an indefinite period.
- The lessee may sublease such space only with the lessor's consent.



Termination I.

- If the non-residential lease contract is concluded for **an indefinite period of time**, each of the parties is entitled to give a termination notice without being obliged to provide reasons unless otherwise concluded.



Termination II.

- If the lease is concluded for a **definite period of time**, it usually expires when the period is over.
- Nonetheless, the lessor is entitled to terminate the contract before the concluded period is over (unless otherwise agreed on in the contract) if:
 - the manner in which the lessor uses the non-residential premises does not comply with the contract;
 - the lessee defaults on their dues regarding rent or services that go with it for a longer period than one month;
 - the lessee who is supposed to provide services to lessor as an exchange for the lease does not provide such services in time;
 - the lessee or other persons who use the non-residential premises with the lessee disturb others or a peace despite having been warned in writing;
 - the usage of the non-residential premises is connected to usage of an apartment that the lessee is obliged to vacate;



Termination III.

- it has been decided that the building shall be torn down or rebuilt, which will not allow further usage of that non-residential premises;
- the lessee subleases the non-residential premises or its part to third party without a consent of the lessor;
- it involves a lease of non-residential premises in a real estate property that has been given to a person entitled under the Act No. 403/1990 Coll. on moderating the consequences of some of the proprietary injustices;
- it involves a lease of non-residential premises in a real estate property that has been handed over to the original owner under the Act No. 229/1991 Coll. on readjusting the proprietary rights to land and other agriculture properties;
- the lessee has changed the line of business being carried out on the premises without having it approved by the lessor.



Termination IV.

- **the lessee** can terminate the lease contract that has been concluded for a definite period of time (unless otherwise concluded) if:
 - the lessee loses ability to be engaged in such activities which the non-residential premises have been leased for;
 - the non-residential premises become insufficient for the usage stated in the contract (supposing it has not happened by the fault of the lessee);
 - the lessor grossly violates their obligations under the Section 5, par. 1 of the Act No. 116/1990 Coll. in a wording of actual version.



Termination V.

- The notice must be given in writing, otherwise it would be null and void (Sec. 40 Czech Civil Code).
- The contractual parties are entitled to negotiate stricter reasons for notice, or to be more precise, they can eliminate the possibility of terminating contract by given a notice.



Questions

1. Is it obligatory to make all lease contracts in writing? Which ones?
2. Describe, in principle, the concept of leasing a flat?
3. How can lessor terminate a lease contract of a flat?
4. How can lessee terminate a lease contract of a flat?
5. What are the requirements of a notice by lessor?
6. What does it mean if the court gives prior approval of a notice?
7. What does it mean if the lessor is obligated to provide an adequate flat?
8. Explain the concept of "bonos mores" or "good manners" in the Czech Civil Law in respect to a lease of a flat?
9. How can lessor terminate a lease contract of a non-residential premises?
10. How can lessee terminate a lease contract of a non-residential premises?



Literature for study:

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