

The rent index: Rent increase limiter and price driver in one

How the rent index came about, how it has changed and what it lacks today – a brief cultural history of the instrument in rental policy

The rent index is an important instrument of rent policy. It is used to calculate the "local comparative rent". This indicates how much the rent may rise on the free housing market. Tenants can use the rent index to reject excessively high rent demands. That gives them a certain security. However, the rent index contains an automatic price increase mechanism, as only rent levels that have been newly set in the last six years are taken into account in the calculation. Unchanged rents, which tend to be lower, are not included. As a result, today's new contract rents form tomorrow's standard local comparative rent and drive the rent spiral for all apartments. In the Berlin rent index, prices rose by almost 60 per cent between 2003 and 2021.

Since its introduction almost 50 years ago, the rent index has been controversial. Tenants' organisations are calling for all rents to be included in the rent index, so that the entire housing market is actually represented. Some housing companies, on the other hand, are fighting the rent index legally, in order to be able to enforce much higher rent increases with expert opinions and comparable apartments. One solution could be a rent register in which all rents are recorded. A politically determined rent cap would make the rent index superfluous.

Where does the rent index come from?

Rent indexes have existed since the mid-1970s. This was based on a number of changes to tenancy law made by the SPD-FDP federal government under Chancellor Willy Brandt. On 1 January 1972, the Tenancy Cancellation Protection Act (Wohnraumkündigungsschutzgesetz) came into force. It ensured that tenants may only be given notice of termination with a "legitimate interest".

Previously, landlords were allowed to terminate tenancies at any time without giving reasons. Landlords used this, in particular, for the so-called "change notice": They sent the tenants a notice of termination and at the same time submitted a new tenancy agreement with a higher rent. If the tenants were unable or unwilling to pay, they had to leave. The principle of freedom of contract was upheld: This means that landlords and tenants were free to negotiate the rent with each other. In practice, however, there was no balance of power even then. Tenants could not negotiate the amount of rent, but had to accept what the landlord wrote in the

tenancy agreement. The rent amount for new contracts was not limited by law. As a result, rents rose rapidly. In 1970, the German Tenants' Association (DMB) observed that rents for older buildings in urban areas had risen by 150 per cent since 1962.

Change notices were abolished with the Housing Dismissal Protection Act of 1972. In return, landlords were given the right to adjust the rent to the "local comparative rent" by means of a unilateral declaration. The local comparative rent should represent the average rent level of apartments with similar fittings and in similar locations. However, the law did not initially regulate how this value is determined. The Rent Increase Act ("Miethöhegesetz") of 1974 codified the rent increase procedure. It states that, in addition to expert opinions and comparative apartments, rent indices can also be used to determine the standard local comparative rent.

From the DMB's point of view, the introduction of the comparative rent system was a "great moment for tenants" compared to the previously unprotected situation. The first rent indexes appeared in West German cities in 1975.

West Berlin did not get a rent index until 1987. Until then, the rent control introduced after the war still applied to old buildings. New-build apartments built from 1948 onwards in Berlin were predominantly constructed with social housing subsidies and therefore had state-limited rents.

In East Berlin and the Former East Germany (GDR), rents were gradually brought into line with the comparative rent system from 1990 onwards by means of transitional regulations. The first rent index for Berlin's eastern districts was published in 1997. The first overall rent index for Berlin was published in 2000, although it still had separate tables for the eastern and western districts. Since the 2005 Berlin rent index, a distinction is no longer made between East and West – with the exception of apartments built between 1973 and 1990.

Why do you need a rent index?

The rent index is used to determine the standard local comparative rent. This value can be read from the rent index table for each individual apartment. The location, apartment size, age and fixtures and fittings – for example balcony, flooring or fitted kitchen – are taken into account. The local comparative rent is the maximum for regular rent increases in current tenancies. Tenants can, therefore, use the rent index to assess whether they have to agree to a requested rent increase. Landlords can use it to determine how much they are allowed to raise the rent. The rent index is intended as a "pacification instrument": It is intended to prevent every dispute over rent increases from ending up in court.

Although rent increases can also be justified with an expert opinion or with comparable apartments, landlords must always refer to the rent index applicable to the specific apartment.

Not every rent may be increased up to the standard local comparative rent. At the same time, a cap applies in Berlin: Within three years, the rent may only be

increased by up to 15 per cent, even if the local comparative rent is not yet reached.

The rent index is also needed to apply the rent cap. The rent cap stipulates that when renting an apartment, the rent may not be more than ten per cent above the standard local comparative rent. Anyone who has signed a tenancy agreement with a higher rent can refer to the rent index and subsequently reduce the rent to the maximum permissible amount. Unfortunately, tenants cannot easily enforce this in practice due to many legal exceptions.

You also need the rent index if you want to report a rent overcharge under commercial criminal law. Such an offence is deemed to have been committed if the rent is more than 20 per cent above the standard local comparative rent, and the landlord has taken advantage of the tenant's emergency situation. This is also difficult to prove. However, an amendment to the law is being discussed that will make it easier to prosecute rent increases in future.

The rent index only applies to privately financed apartments without a social commitment, i.e. not to subsidised social housing or apartments that have been modernised with public subsidies. Such apartments have a fixed rent. The Berlin rent index does not apply to rented apartments in detached or semi-detached houses either.

How is the Berlin rent index created?

A new Berlin rent index is published every two years. The Senate Department for Urban Development, Building and Housing has commissioned a research institute to collect and analyse data from landlords and tenants. The data from around 12,000 apartments are included in the rent index.

Only rents that have been increased or newly agreed in the previous six years are taken into account. In order to ensure that particularly expensive and cheap rents do not distort the overall picture statistically, the most expensive and the cheapest eighth of the rental values surveyed are disregarded in the calculation.

A rent index working group discusses details, such as which residential area a particular neighbourhood belongs to or what influence various amenities have. Three tenants' associations – Berliner Mieterverein, Berliner Mietergemeinschaft and Mieterschutzbund Berlin – and three landlords' associations – BBU Verband Berlin-Brandenburgischer Wohnungsunternehmen, BFW Bundesverband Freier Immobilien- und Wohnungsunternehmen and Haus & Grund – are represented in this working group. Ideally, both sides support the result.

Because the Berlin rent index is compiled according to recognised scientific principles, it is considered a "qualified rent index". This means that it is the measure of all things in disputes about the amount of rent. A "simple rent index" drawn up with less effort and with a smaller database would not have this great evidential value.

How is the Berlin rent index structured?

The centrepiece of the Berlin rent index is the large rent index table. It is divided into eight building age groups and four apartment size ranges, each of which is further subdivided into the residential location categories "simple", "medium" and "good". The table, therefore, has 96 fields. The construction age refers to when the apartment was first ready for occupancy – in the case of subsequently converted attics, this is, therefore, not the year of construction of the house. A distinction is made according to the age of the building, because the buildings from the different eras sometimes differ greatly in their rental structure. The classification according to apartment size is made because apartments with more space are generally slightly cheaper per square metre than small apartments. For the categorisation into the three residential areas, there is a street directory that clearly assigns each Berlin address. A good residential location exists, for example, if the house is located in a favoured, well-connected and green district. Basic residential areas, on the other hand, are densely built-up neighbourhoods with little green space, some of which are interspersed with businesses or have poor transport links.

In the rent index fields, the net cold rent per square metre is given both as a mean value and as an upper and lower value. In the 2021 rent index, for example, the average value for an old apartment ready for occupancy by 1918 in a medium residential area with a living space of between 40 and 60 square metres is EUR 7.51, the lower value is EUR 5.47 and the upper value is EUR 10.36. Where exactly within the wide range between the lower and upper value the local comparative rent for a particular apartment lies depends on the furnishings. This is assessed using the "Orientation guide for range categorisation" that is part of the rent index. In the five categories of bathroom/toilet, kitchen, apartment, building and living environment, features that increase and decrease the residential value are offset against each other. Depending on how strongly the individual characteristics predominate, it is determined how far the deviation from the mean value is in the direction of the lower or upper value. If the increasing and decreasing features are balanced in all categories, the average value of EUR 7.51 in the above example represents the standard local comparative rent. If the furnishings are so good that the features that increase the residential value prevail everywhere, the rent can be increased up to the upper value of EUR 10.36.

What is considered to increase the residential value and what is not, therefore, has a major influence when determining the standard local comparative rent. The individual features are, therefore, the subject of a tough debate when drawing up the rent index. In the bathroom, for example, "structural radiators as towel warmers" and "wall-hung WC with cistern embedded in the wall" are considered to increase the residential value, although this has long been standard in bathroom modernisations. Landlords can easily push the rent towards the upper value with these fairly cheap conversions.

Why does the rent index act as a driver of rent increases?

Over the last 20 years, the average median values of the Berlin rent index have made great leaps, usually far exceeding the increase in the general cost of living.

The 2021 rent index is an exception: As rents were generally limited in 2020/21 due to the Berlin rent cap, no new data could be collected. For this reason, the values from 2019 were extrapolated for the 2021 rent index using the factor of the general rate of price increases (plus 1.1 per cent). From 2003 to 2021, the increase totalled 59.4 per cent.

The publication of a new rent index is usually followed by a wave of rent increases. Landlords are taking advantage of the opportunities for rent increases, and have often postponed upcoming rent increases until a new rent index is published. Many tenants, therefore, perceive the rent index as a price driver and "rent increase index".

This is mainly due to the fact that only the changes in rents over the last six years are included in the rent index. The rent index, therefore, reflects new lettings and rent increases in recent years, but excludes unchanged rents. Prior to 2020, only rents from the last four years were taken into account. From the tenant's point of view, the extension of the observation period to six years was already a small success. However, tenants' associations are calling for all rent levels to be included in the rent index calculation so that the entire market is truly represented.

Landlords, on the other hand, also want to increase existing rents to the current market level as quickly as possible and, therefore, only want to have newly set rent levels in the rent index. Unlawfully high rents based on unpunished breaches of the rent cap are still included in the rent index statistics.

Development of the average median values of the Berlin rent index

Year	%	€/m ² net cold
2003		4.24
2005	+ 5.9	4.49
2007	+ 5.8	4.75
2009	+ 1.7	4.83
2011	+ 7.9	5.21
2013	+ 6.3	5.54
2015	+ 5.4	5.84
2017	+ 9.4	6.39
2019	+ 5.3	6.72

Year	%	€/m ² net cold
2021	+ 1.1	6.79

Development of the average median values of the Berlin rent index

Why is the Berlin rent index under constant legal attack?

In recent years, landlords have often tried to take legal action against the Berlin rent index. However, even in the few cases in which Berlin district courts considered the Berlin rent index to be unqualified, they nevertheless accepted it as a simple rent index. And a simple rent index is still a "sufficient basis for estimation" for the courts to determine the standard local comparative rent.

By attacking the rent index, landlords are trying to push through higher rent increases by justifying them with an expert opinion or with comparable apartments. If this is admitted in court, it is very disadvantageous for tenants, because they usually have nothing to counter expensive expert opinions and in Berlin there are always three similar comparable apartments that are even more expensive. In contrast, a rent index based on 12,000 rental data is undoubtedly more valid and fairer.

Berlin's rent index is particularly under fire because the gap between the rents actually paid and the rents achievable on the market has widened over the last 15 years. Berlin is also by far the largest rental market in Germany. 84 per cent of the population live here by way of rental agreement. A rent index that applies to 1.4 million apartments is also monitored by experts throughout Germany.

The attacks against the Berlin rent index reached a new dimension in 2022, when a Regensburg-based institute filed a lawsuit against the tendering of the Berlin rent index for 2023 and 2025. The company is promoting a different calculation method, the so-called regression rent index, and believes that the tried-and-tested table rent index required in the Berlin tender is not a suitable method for a qualified rent index. This academic methodological dispute between statisticians kept the Court of Appeal busy for months, which finally dismissed the case in October 2022. However, this has blocked the preparation of the 2023 Berlin rent index, as the social research institute that had already been commissioned was unable to begin its work due to the pending legal dispute. The rent data should have been collected in September in order to be able to present a new qualified rent index on a regular basis in May 2023. To avoid legal uncertainties, the tenants' and landlords' associations initially want to agree on a simple transitional rent index.

How can the rent index become fairer?

Tenants' associations have long been calling for an unassailable legal definition of what a qualified rent index must look like in order to put an end to the backlash against the rent index.

One alternative could be a rent register. This could include the rents paid for all apartments, as well as the living space, furnishings and location. There are models for such a centrally managed database in Scandinavia, Austria and Switzerland. A rent register would provide a comprehensive overview of the rents actually paid and could be a reliable basis for a rent index. A rent register also offers more transparency. For example, tenants could use the register to see how high their previous tenants' rent was and thus recognise whether their rent level is in breach of the rent cap. A rent register could also be used to combat vacancies and tax evasion. The red-green-red Senate coalition had planned to review the introduction of a rent register in 2021, but has since abandoned the plan. The Greens and the Left Party continue to call for a rent register, as does the Berlin CDU.

If rents were politically limited, a rent index would become superfluous. The Berlin rent cap introduced in 2020 was an attempt to freeze all rents, but was stopped by the Federal Constitutional Court in 2021 because Berlin, as a federal state, is not responsible for this. As a result, a campaign was launched in favour of a nationwide rent freeze, with the aim of not increasing rents for six years. So far, the federal government has refused such demands, but even if a temporary rent freeze were to be imposed, a rent index would then be needed again.