The Small Handbook on Living and Renting

The most important principles of German tenancy law

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Overview

Foreword: Fair housing in Berlin? How do you live in Berlin and how does it work here?

Berlin rents. Of the 1.9 million flats in the entire city, 1.5 million are residential rental units. This corresponds to 81.5 per cent. Across Germany, 57.9 per cent of households are tenant-occupied. All rented flats are subject to the tenancy law applicable to the whole of Germany and therefore to federal law. Accordingly, tenancy law is the same in all parts of Germany. However, the federal states, cities and municipalities have a few options to issue special regulations in building and tenancy law for their region and thus influence housing and tenancies. There is no standardised rent policy within the EU. The way people rent varies throughout Europe.

Owner models

Berlin's apartment blocks are owned either by private individuals, large property groups, cooperatives or state-owned housing associations.

State-owned housing associations are housing companies that belong to the city. They are intended to create a balance with the private sector.

Co-operatives are companies in which individual contributors together form a group and own the company. There are also co-operatives in the housing sector. Members of the co-operative pay membership fees and can rent a flat from the co-operative at fair prices. Co-operatives usually, but not always, cover their costs. They do not want to make a profit.

Condominiums

Houses in Germany can belong to one owner alone or be divided into condominium units. In this case, each flat belongs to different owners. These private individuals are connected to each other in a so-called condominium community (WEG). As a community, you are responsible for maintaining the building. However, they can rent out their own flats individually or live in them themselves. The same right applies to tenants of a so-called owner-occupied flat or an ordinary flat in a house. It is therefore fundamentally irrelevant whether the rented flat is a condominium or not.

Shared flats

There are many shared flats in Germany, abbreviated as WGs. Students who cannot yet afford their own flat often live in shared flats, as do older people who share a flat. The tenancy agreement for such a shared flat is either concluded with one tenant alone (main tenant), who in turn lets individual rooms to other people (subletting) and also has permission to do so. The main tenant is then solely responsible for the rent payments and other obligations. However, several people often become tenants in the tenancy agreement. They are then all contractual partners and share responsibility for the flat. Difficulties can arise if one of them wants to move out. The more people who are tenants and the more clearly it is a typical case of a shared student flat, the higher the chances of being allowed to replace people in the contract. Regardless of how

many people rent a flat together and regardless of whether rooms are rented directly from the owner or from a main tenant: The same tenancy law always applies.

The purchase of a residential unit does not cancel the tenancy agreement

If a flat or house is sold, the new owner usually also becomes the lessor of those who have rented the flat. Important: The tenancy agreement does not end due to a change of ownership!

Every change of ownership must be entered in the land register. Tenants have the right to inspect the land register at any time and find out who owns their house or flat. All Berlin districts have their own land registry for all properties in their area.

Social housing and social residence permits

Accommodation is rented on the free market and is not subject to any state regulation. The only exception is the so-called social housing in Berlin. They are reserved for people on low incomes and can be rented if applicants present a so-called "Wohnberechtigungsschein".

A social residence permit (WBS) is a document that low-income earners can obtain. You must have German or EU citizenship for this. You must also have been registered in Berlin for more than one year. Non-EU nationals can also obtain a WBS under certain conditions if they have lived in Berlin for more than a year or have fled to Berlin.

Commercial tenancy law

German tenancy law distinguishes between residential tenancy law (renting rooms for private living) and commercial tenancy law (renting rooms for work, for running hotels or holiday flats or for sale). In residential tenancy law, there are numerous protective provisions in favour of tenants that do not apply in commercial tenancy law. For example, some major German cities – including Berlin – have a rent cap. It ensures that flats do not have to be re-let at a random price, but at a regulated price. This regulation does not apply to commercial rental units. Commercial leases are usually limited in time and are renegotiated after a few years or end on their own. Residential tenancy agreements are generally open-ended. This means that they do not expire on their own and must be cancelled if they are to end. There are separate rules for this, which are different for lessees and lessors.

The commercial letting of flats to tourists has been prohibited for several years and is now only possible in exceptional cases (maximum 90 days per year) and after registration.

Partial commercial letting

Many properties are built from the outset as commercial properties (department stores, shops) or as residential buildings (apartment blocks). Building law makes a preliminary decision as to whether this area may be used for commercial or residential purposes. Subsequent changes must be permitted by building law. However, many properties may be used for both commercial and residential purposes. In Berlin, for example, it is often the case that a flat may be used for residential and commercial purposes at the

same time (offices, shops, surgeries with adjoining living spaces). This is often used by lessors to demand an (unlimited) commercial surcharge in addition to the (limited) residential rent. Lessors also want to use this method to secure the option of later commercial use in the long term. However, this is not permitted if the flat is in fact only rented for residential purposes and no business can or should be carried out there. In principle, the following applies: A tenancy agreement with provisions on part-commercial use is atypical and can undermine tenants' rights.

Property management

Property management companies are usually responsible for letting and managing rental flats. These are small or medium-sized service companies. They are commissioned by private owners and take over the management of the property. On behalf of the owners, they conclude contracts with service providers, pay fees (waste management, water), commission repair work and take care of the letting. Large property groups have their own property management companies in their corporate network. However, small individual lessors often manage their property or flat themselves. Private lessors must implement the same tenancy law regulations as large corporations.

Flat advertisements, viewings and tenancy agreements can be carried out between private persons, by large property management companies for private owners or by property companies themselves. Brokerage services can also be utilised by both parties.

Be careful when looking for a flat

People looking for a flat should be careful when they come across supposedly good offers on internet platforms or in advertisements. Fraud has become common here due to the tense market situation. Cases have come to light in which people looking for accommodation have been asked to pay a deposit in order to be allowed to view a flat (often combined with a bank account abroad) or to pay fees in order to take part in the application process. Admission fees to housing agencies and the conclusion of subscriptions are also demanded.

Advice centres for tenants

In Berlin, there are municipal advice centres for tenants in every district. Tenant organisations also have offices in almost all parts of the city where their members can go. The tight housing market is leading to an increase in problems for tenants. They can hardly ever solve them on their own. Tenants should therefore always seek advice in the event of difficulties or uncertainties.

1. The tenancy agreement

A tenancy agreement is first and foremost an ordinary contract to which the same legal principles apply as for purchase agreements, mobile phone contracts or contracts for work and services. They are – theoretically – freely negotiable and the parties must adhere to the agreed content for the duration of the contract (in tenancy law this can be many decades). Subsequent amendments to the contract are only possible if both

parties agree or if the law permits subsequent amendments. Otherwise everything remains as agreed.

In practice, as with all other contracts, these are usually form contracts in which an individual agreement is made about the specific flat, its condition, its furnishings and its rent, but the majority is regulated by so-called general terms and conditions, over which tenants generally have no influence.

Tenancy agreements are generally not subject to any particular form. They can be concluded verbally and then executed. They therefore require neither a personal signature nor a written contract. Only fixed-term tenancy agreements must be concluded in writing if they are to run for longer than one year. If they are not concluded in writing, they are deemed to be open-ended tenancy agreements.

Why tenants should protect themselves with a contract

In practice, you will find both hand-signed contracts and those with a scanned signature or no signature at all. Many tenancy agreements for rooms in shared flats and for subletting are agreed verbally or fixed via text messages. If the flat has then been used for a longer period of time, lessors can no longer claim that no contract was concluded. If a flat is then to be cancelled, the same regulations apply for termination (e.g. in writing) as for a contract concluded in writing. Tenants with a verbal tenancy agreement are therefore protected against termination in exactly the same way as tenants with a written tenancy agreement and cannot simply be shown the door. However, if there is a dispute about the details of the verbal agreement, both sides will have a hard time proving it. Tenants are therefore generally advised to conclude a written contract, even if it is in very rudimentary form, for example in the form of a simple, handwritten note. In any case, existing text records such as chat histories, bank transfer slips, receipts, adverts and emails should always be printed out and kept. If the lessor refuses to issue receipts for payments, the payments should be made in the presence of witnesses (e.g. friends) in order to be able to prove them later in the event of a dispute.

In practice, it is advisable to draw up a written tenancy agreement because the tenancy agreement must also be presented regularly to third parties (e.g. registration office, job centre, BAföG office). Here, the reference to verbal contracts often leads to difficulties in processing applications.

Consumer protection for tenants

As a rule, tenancy agreements are of course concluded in writing. Lessors use pre-formulated contract texts that tenants have to sign with only a few customisation options. Due to the massive housing shortage in Berlin, tenants have effectively had no opportunity to negotiate their contracts for some time now. The principle of contractual freedom can therefore only rarely be utilised. Agreements that give tenants a permanent right to sublet rooms, for example, or declarations by lessors in the contract that they will waive their right to terminate a tenancy agreement permanently are rarely found in contracts today. However, tenants are not defenceless. Standard contracts are subject to the law on general terms and conditions, and therefore the EU consumer protection standard applies to tenants. Surprising and disadvantageous clauses are therefore invalid. Thus, in the course of concluding contracts, there are currently neither tenant-friendly deviations from the legal standard (because these

cannot be enforced during contract negotiations) nor particularly negative deviations (because these clauses are then invalid). A frequent case is the allocation of minor repair costs. If a dispute arises over the so-called small print, it is often worth having it established whether the contractual clauses are permissible.

Obligations of the tenant

By concluding a tenancy agreement, the lessor undertakes to let the flat to the tenant from a certain point in time and to maintain it in the condition in which it was handed over. Tenants are authorised by the tenancy agreement to use the flat as their sole residence and are obliged to pay the agreed (or permitted) rent. They are also obliged to report any defects (damage) immediately. Emergency numbers can often be found in the hallway. In the event of burst pipes, storm damage, heating failure and other emergencies, it is essential to use these before calling other expensive emergency services. Otherwise there is a risk of being stuck with the costs for the emergency service.

Rights of the tenant

The contract authorises tenants to determine who may enter the flat. This also applies to the lessor. The lessor may not keep a key to the flat and may only enter the flat with prior notice, stating reasons and in the presence of the tenants.

In the case of repairs or permitted modernisation measures, the lessor may have a right to tolerate construction measures vis-à-vis the tenant.

The right to use the flat has limits. Tenants cannot sublet or remodel the flat at will.

Tenants

The tenancy agreement specifies who exactly is to be the tenant. If there is a written tenancy agreement, only those tenants who are listed by name as tenants in this tenancy agreement and have also signed the agreement by hand are tenants. If more adults are to live in the flat than the number of tenants, this must be authorised and, if possible, recorded in writing. Moving in with a partner also requires the formal consent of the lessor. Children simply live with you.

Renting together

Tenants must be aware that entering into a tenancy agreement with other co-tenants means a close bond between them: The contract can only be cancelled jointly, and any changes to the contract or disputes about the contract can only be made jointly. If one of the tenants wants to move out, the lessor can release them from the contract, but does not have to. Only in a few exceptional cases (for example, in the event of divorce) can the lessor be forced to release a person from the contract. It is therefore possible that someone will remain in the tenancy agreement for many years, even though that person no longer lives in the flat. As long as their name is still on the tenancy agreement, the lessor can also demand payments from this person (rent, compensation).

There is also no right to add further tenants to the tenancy agreement at a later date. The lessor cannot object to spouses or partners moving in. However, the lessor does not have to include these in the contract retrospectively.

Duration of the tenancy agreement

The tenancy agreement is valid for as long as the tenants live in the flat. There is no possibility for the lessor to demand a new tenancy agreement during the current tenancy and thus change the conditions. The tenancy agreement remains valid even if the lessor changes (transfer of ownership of the flat).

Document the condition of the flat

The contract, usually in combination with a transfer protocol, determines the fixtures and fittings of the flat. If fitted kitchens or cellar rooms are also rented out, this must be set out in writing so that it can be checked later. If the tenant replaces items belonging to the lessor (sinks, kitchen cupboards, electrical appliances) with the tenant's own items, the tenant should keep those items belonging to the lessor so that the tenant can return the flat in its original condition later. Installed parts such as floor coverings, tiles, sanitary equipment, plasterboard walls or similar may not be removed/replaced without authorisation.

As tenants are liable for compensation if they cause damage, liability insurance should always be taken out. The lessor is only liable for damage to the tenant's furniture, floor or fitted kitchen if the lessor is responsible for the damage. If unforeseen damage occurs, for example a burst water pipe, the lessor often does not have to pay. There is household contents insurance for these cases. Especially in older residential buildings and whenever tenants have invested a lot of money in the flat because it was rented in poor condition, it is highly advisable to take out household contents insurance.

2. Fixed-term contracts – the exceptional case

The law generally provides for the conclusion of open-ended – i.e. lifetime – tenancy agreements. The conclusion of fixed-term tenancy agreements – i.e. tenancy agreements that expire after a certain period of time or on a certain date – is a legal exception. These exceptions are precisely specified in the law and there are no others. Of practical relevance are the time limit reason "personal use" and the time limit reason "remodelling or demolition". Personal use means that the lessor needs the flat for the lessor's own personal purposes after the rental period. If a tenancy agreement is limited in time due to personal use, this personal use must be sufficiently explained and already exist when the agreement is concluded. The lessor must describe exactly that the lessor needs the flat immediately after the end of the time limit for the lessor's own purposes (usually residential purposes) concerning the lessor personally or a family member or a similarly close person. This person must be named or precisely described. The same applies to the time limit reason "remodelling" or "demolition". The planned measures must be described in detail. These must be so extensive that they would not be possible in an inhabited state.

Tenancy agreements that end at a specific point in time without any reason, or that state a legally permissible reason but do not describe it in detail, are deemed to be open-ended tenancy agreements. The tenant then does not have to move out at the end of the tenancy and does not have to sign a new tenancy agreement.

Tenancy agreements with extension clauses

Tenants often receive a contract containing several consecutive leases. From the start of the tenancy, they are only ever presented with a fixed-term tenancy agreement, which contains a kind of extension option unless one of the two contracting parties objects before the end of the term. The extension is then often accompanied by a rent increase, and the tenancy can be terminated by the lessor at any time for no reason. Such contracts are not provided for by law in Germany. Tenants can almost always demand an open-ended tenancy agreement.

If an effective reason for a fixed term is stated, this reason for a fixed term must actually materialise. If the reason for personal use or the building plans for the conversion no longer apply, the contract is cancelled permanently. If the dates are postponed, the time limit is postponed.

The tenant has the right to ask the lessor at the earliest four months before the expiry of the time limit whether the reason for the time limit still exists. The lessor does not have to provide any information on the lessor's own initiative as to whether the lessor really wants to use the flat personally after the end of the rental period. If the lessor does not provide an answer or provides an untruthful answer when asked, the continuation of the tenancy agreement can be demanded. If necessary, a court must decide on this.

A fixed-term tenancy agreement – usually for personal use – cannot be terminated prematurely for personal use. Even if the personal use is demonstrable and understandable. The lessor is then bound to the agreed minimum term. The minimum term also applies to the tenant. The usual notice period of three months (without cause) does not apply to fixed-term tenancy agreements. The tenant can only terminate prematurely if there is either a right to terminate without notice (e.g. due to serious defects) or if special termination rights apply. The lessor also has the right to terminate a fixed-term tenancy agreement without notice (e.g. due to rent arrears).

Fixed-term tenancy agreements that are to run for longer than one year must be agreed in writing. Otherwise they are deemed to be open-ended tenancy agreements.

As with any other contract, verbal promises made by the lessor are always difficult to prove. Especially if the opposite has been agreed in writing. Verbal agreements on the extension of the tenancy are better than nothing, but are often of little value.

3. Subleases

The area of subletting contains numerous legal problem areas and can affect very different constellations. As in other major cities, a veritable subletting market has emerged in Berlin. Numerous flats are being withdrawn from the regular housing market by both owners and tenants – with both positive and negative consequences.

Subletting does not apply if children or spouses live in the flat or join them later. The typical permission to sublet is also not required if a partner is to move into the flat with you. All that is legally required here is consent to the person moving in.

Visitors are also not subtenants. So if you only have a guest in your flat for a few weeks and do not receive any money from them, you do not need permission to sublet. There is also no obligation to inform the lessor about this.

Of course, the main tenant remains responsible for the rent payments to the lessor in the event of subletting and is also liable for any damage to the flat.

3.1 Permission to sublet

In order to take in a subtenant, the main tenant of the flat requires the lessor's authorisation. The subtenant should also obtain such authorisation (or contractual permission). Subletting without permission to do so constitutes a serious breach of contract and can lead to termination of the main tenancy agreement without notice. In this case, the main tenant and the subtenant both lose the living space. A subtenant who has relied on the main tenant having permission to sublet and now has to move out can demand compensation from the main tenant (e.g. for moving costs or a higher rent).

When is the main tenant entitled to sublet?

The classic case of subletting initially concerns shared flats. Here, the person subletting (main tenant) also lives in the flat and lets one or more rooms. If this is not generally permitted under the tenancy agreement, the main tenant must have such permanent subletting authorised by the lessor. There is always a right to authorisation if there are changes in the tenancy that make a new, different or first-time subletting necessary for the main tenant: For example, if a partner, children or subtenants move out or your income situation changes. This is referred to as a "legitimate interest" in subletting. Anyone applying for permission to sublet in such a case must explain this legitimate interest and, if necessary, prove it in subsequent court proceedings. Authorisation must be applied for a specific person, stating personal details (name, current place of residence, date of birth).

Subletting a one-room flat

Another classic case is the subletting of a (further) room or even the entire one-room flat during a stay abroad or other longer (but temporary) absence. Here, too, the tenant must explain the tenant's justified interest and explain that the tenant's life situation has changed and that this only happened after the start of the tenancy. Important: You must not give up your own access to the flat altogether. It must be ensured that the subtenant is able and willing to continue to look after the flat, even if the current centre of the subtenant's life is currently located elsewhere and has been for some time. For example, it may be sufficient for the subtenant to keep a key, leave their own belongings and furniture in the flat and remain accessible to the lessor.

According to the law, there is no entitlement to permanently and completely sublet a flat while the main tenant moves to another flat within the same city. This constellation is only possible if this has been contractually agreed (preferably in writing) – then a new owner of the flat is also bound by the agreement – or has been authorised by the lessor as a gesture of goodwill or has been knowingly tolerated for years and decades. New owners can revoke existing authorisations under strict conditions. They are not

obliged to tolerate subletting without authorisation simply because previous lessors allowed it.

Short-term renting to tourists (e.g. because the flat is only needed on weekends and is empty during the week) is permitted, as these are not "subtenants" within the meaning of the law.

Subletting surcharge

Many lessors in Berlin charge a subletting surcharge for authorised subletting. This is not provided for by law and is only permitted in rare exceptions. Tenants can sue for permission without a subletting surcharge or pay the surcharge first and then demand it back. It should be noted that payments can only ever be reclaimed if they were paid with the addition "subject to reservation".

Contractual provisions on subletting permission often restrict tenants' rights too much if a subletting surcharge is generally demanded or permission is limited to a certain number of people from the outset. Such contractual provisions are then not applicable.

3.2 Subleases

The sublease entitles the subtenant to live in the flat like a normal tenancy agreement. The same statutory regulations and contractual interpretation rules apply to the amount of rent, the allocation of ancillary costs and other agreements (e.g. cosmetic repairs, use of the cellar, deposit).

However, the law does contain some special regulations on the limitation and termination of subleases. These regulations are quite confusing and are difficult to visualise due to the numerous possible living situations.

In principle, the following applies:

a) Fixed-term subleases

Subleases, like normal tenancy agreements, can also be limited in time. The contractually agreed term then applies. The contract must not and cannot be cancelled. The rent must be paid for the entire term. For the time limit to be valid, it depends on whether a legally stipulated reason for the time limit, usually personal use, is sufficiently specific and then also occurs. Four months before the end of the rental period, the subtenant can request information from the sublessor as to whether the reason for the time limit still exists. If the reply is received late, the tenancy shall be extended by the duration of the delay. Often the reason for the time limit does not exist or no longer exists. Then the contract is converted into an open-ended tenancy agreement and can then only be terminated in accordance with the statutory provisions.

b) Open-ended subleases

An open-ended sublease for an entire flat in which the subtenant does not live can be terminated by the subtenant with three months' notice, just like a normal tenancy agreement. The subtenant must comply with the statutory notice periods (three, six or nine months, depending on the duration of the tenancy) and state a legal reason for

termination. The most common reason here will be "personal use" because the main tenant wants to return to the rented flat. Notice of termination must be given in writing, stating the reasons.

If the main lessor also lives in the flat (classic shared flat), the main lessor may also terminate the (unfurnished rented) room in the shared flat without a legally permissible reason (personal use, rent arrears, breach of contract, etc.). The motives for termination are therefore irrelevant (disagreeable person, dissolution of the flat-sharing community, giving up the flat, etc.). However, the notice period of three months is extended – depending on the duration of the tenancy – to six or nine months if the tenancy is terminated without stating a reason for termination.

If the main tenant also lives in the flat and rents a furnished room to a subtenant, the main tenant can terminate the tenancy without giving notice. The termination period is then only 14 days. However, this also applies to the subtenant, who can also give notice and therefore only has to pay rent for a fortnight.

c) Subleases and main tenancy agreements

The sublease is legally to be regarded as an independent contract. Nevertheless, the sublease effectively has the same fate as the main tenancy agreement. If the lessor or main tenant cancels the main tenancy agreement, the sublease remains in place, but the flat must be returned. The subtenant may be entitled to claim damages from the main tenant. The lessor may be entitled to rights under which the subtenant must move out (eviction claims). In turn, the tenant can counter the eviction claim by arguing that the tenancy was not effectively terminated and that they are therefore entitled to continue living in the flat. In all constellations, it depends on the individual case, the interests at stake and the circumstances that led to the termination.

Subtenants must be aware that subletting rooms and flats severely restricts their own room for manoeuvre. Termination of your own main tenancy agreement or a termination by the lessor on short notice must be reconciled with the current subtenancy. It is hardly legally possible to synchronise the terms. The financial advantages of subletting are offset by a high potential for conflict, liability issues and numerous legal pitfalls.

Subtenants must be aware of their less protected legal position and the high potential for conflict with lessors and main tenants. Conflicts can also arise because an authority takes action against unauthorised (commercial) subletting (AirB&B) or residents complain about frequently changing and disruptive subtenants.

d) Rental price

The so-called rent freeze also applies to subleases. There are no special features here. Difficulties only arise with the question of how the permissible rent (local comparative rent) is to be determined, as the kitchen/other rooms are shared and the furnishings may also have to be taken into account. However, case law has developed comprehensible criteria for this. Short-term subletting can be a special case. See the section on rent.

4. Rent

4.1 Gross rent and net rent

The rule in Berlin is the agreement of a net rent plus advance payments for ancillary costs. A rent per square metre is agreed for the pure rental of the flat (base rent). In addition, the tenants then pay monthly advance payments (instalments) on the operating costs and heating costs incurred in the current year, depending on their individual living behaviour.

The operating costs include costs for refuse collection, property tax, insurance for the house, cold water, electricity, lift, maintenance costs, cleaning costs, caretaker costs, etc. This can result in additional costs of around one to over two euros per square metre per month. The cost burden varies greatly depending on how the flat is furnished. Ancillary heating costs include the costs for the central heating system and, as a rule, the costs for hot water generated by it.

However, rented flats often also have their own gas heating systems. The flat is then equipped with a boiler and the tenants conclude a separate contract with a gas supplier for its use. The heating and hot water preparation then runs individually via your own boiler. Advance payments to the provider are also common here. Electricity for the flat is usually also purchased individually by the tenants from an electricity supplier.

With the net rent model plus service charge agreement, lessors must settle the advance payments annually. You must determine whether the deductions were sufficient and whether credit balances or additional claims have arisen as a result. Corresponding additional payments to the lessor and credit balances of the tenants must then still be paid.

Check the invoicing of ancillary costs

Tenants have the right to inspect and check the invoices and contracts on which the service charges are based. If you consider the invoice to be incorrect – and many invoices are incorrect – the first step is to check the receipts in order to be able to argue precisely against specific cost items.

If a central heating system supplies the flats in the building with heat and hot water, the consumption values of the individual tenants are measured via heat cost allocators on the radiators and water meters in the bathroom or bathroom and kitchen. These devices must be read annually on site or wirelessly. As errors, mix-ups or malfunctions often occur here, tenants should regularly keep an eye on their water meters and heat cost allocators and compare the measured consumption with consumption in other rooms, at different times of the year and after major water withdrawals and check whether the values appear plausible. For disputes with the lessor, it can be helpful to photograph the status of the measuring devices.

Subtenants and ancillary costs

A net rent plus advance payments for ancillary costs can also be agreed in the subletting relationship. The subtenant is then obliged to settle the advance payments

on the basis of the lessor's service charge statement. In shared flats, a pro rata allocation per square metre, per head, per room is conceivable.

Typically, a flat-rate rent arrangement is found in subletting relationships and especially in shared flats. The rent already includes the ancillary costs; it is not necessary to settle any advance payments made. Additional payments can therefore not be demanded. However, frugal behaviour does not pay off either. Such agreements often include other cost items, such as WLAN or electricity, in the rent. This is permissible.

However, ancillary costs such as heating costs and hot water may not be included in the sublet as a lump sum. This is against the law, but is not sanctioned. As long as the contracting parties agree on the total rent including all ancillary costs, there is therefore no need for action. However, tenants, including subtenants, are always entitled to conversion of such a gross rent including additional costs such as heating to at least a gross rent excluding such costs. The rent is then made up of a base rent and an additional lump-sum charge. However, advance payments must be made for heating and hot water and consumption-based bills drawn up for these, insofar as this is possible.

4.2 Rent increases

Rent increases can affect both the base rent (net rent excluding heating and other ancillary costs) and the ancillary costs.

The adjustment of advance payments for ancillary costs is unproblematic and can be made in both directions. For example, lessors can demand higher advance payments in an appropriate amount following higher additional payments for ancillary costs. If there is a credit balance for tenants, they can demand a reduction in the advance payments.

The law provides several options and different formal requirements for increasing the base rent. Rent increases due to increased comparative rents, graduated rent increases and index-linked rent increases are conceivable. Of course, the parties can also voluntarily agree on higher rent. Requests for rent increases must always be made in text form and are either automatic or require the tenant's consent. Lessors can and must sue for consent if they are entitled to consent and tenants refuse consent.

Graduated rent

If a graduated rent is agreed in the tenancy agreement, the rent increases annually by a certain percentage to a certain amount. Tenants must ensure that they pay the increased rent at the specified time and change their standing order, for example.

Index-linked rent

Index-linked rent increases are based on the consumer price index, which is calculated throughout Germany. They allow the rent to be adjusted in accordance with the increase rates charged there. Recently, lessors have been able to demand substantial rent increases due to the high inflation rate, for which no statutory caps apply. If an

index-linked rent increase has been justified and formally duly requested, the increased rent is due accordingly.

Berlin rent index

In Berlin, rents are usually increased on the basis of the Berlin rent index. It is the result of city-wide surveys used to determine average rents. The rent index takes into account the location, size and furnishings of the flats. This results in the "local comparative rent" for a flat. If the current rent is below this value, it can be increased up to the comparative rent. However, it may not increase by more than 15 per cent in three years and not more than once a year.

4.3 Rent control

A special feature in Berlin is the so-called ‘rent brake’. This legal regulation prevents flats from being let at rents far higher than the local comparative rent. For new tenancies, a surcharge of only ten per cent on the local comparative rent is permitted. It does not matter that tenants have undertaken in the contract to accept a higher rent. Tenants can subsequently complain about this rent – without the risk of termination. The law uses the phrase “object to the rent". For this complaint (letter of complaint), the law specifies a number of requirements that must be observed by tenants. They must state the rent that they consider to be lawful. They must therefore determine the correct rent (the so-called permissible new letting rent) and demand that the lessor apply this retroactively and in future. That means: Tenants can not only have their rent reduced, but also reclaim rent that has been paid in excess. As with rent increases, the starting point for the calculation is the Berlin rent index. The rent freeze also applies to subleases and contracts for furnished flats.

The legal regulations for the rent freeze have been revised numerous times since their introduction. Depending on when tenants concluded their contract, different regulations on exceptions, information obligations and reclaim options currently apply. Special circumstances may arise if the flat was modernised before the new tenancy and the previous rent was already higher than the permissible new rent. In the case of temporary, short-term lettings and new builds, the rent cap may be excluded altogether.

Lessors often try to circumvent the rent freeze and often only respond to tenants' complaints when a court is also involved. The fact that the excessive base rent for gross rents including ancillary costs and gross rents excluding ancillary costs (inclusive rents) or furnished flats is difficult to calculate at first glance is particularly often exploited. Tenants must first determine how high the furnishing share or the service charge share of the rent actually is.

Despite all the exceptions and different regulations, new contracts should always be checked for a breach of the rent cap.

5. Termination of Open-ended Tenancy Agreements – The normal case

Tenancy agreements for an indefinite period can be cancelled by tenants and lessors.

Termination must always be made in writing. This applies to both sides. According to the legal requirements, written means not only in text form (e.g. e-mail), but also with a handwritten signature of all tenants or lessors. If the property management acts on behalf of the lessor, a power of attorney with a handwritten signature from the lessor must be enclosed.

5.1 Lessor's notice of termination and tenant's objection to hardship

The lessor can only terminate the contract if the lessor has a legal reason for termination. There are no other grounds for termination than those specified in the law. The most important reason is breach of contract. In most cases, this is a breach of the obligation to pay the rent on time and in full. Unauthorised subletting can also constitute such a breach of contractual obligations.

In the event of gross breaches of duty, termination without notice may be justified. Without notice means that there is no further time to wait. The contract then ends from one day to the next and the tenant has to leave the flat at short notice. Lessors often combine termination without notice with a so-called termination with notice. Termination in due time means termination in compliance with the notice period (three, six or nine months). In the event that a court later declares the termination without notice to be invalid – for example, because the breach of contract was not so serious – the contractual relationship may still end after a delay of a few months because the termination with notice has become effective.

Personal use

If the tenant is not in breach of contract, there is ultimately only the option of termination if the lessor needs the flat for the lessor's personal use. Other legal cases have practically no significance. The reason for termination for "personal use" is therefore very frequently invoked. The lessor does not have to want to live in the flat, but can also claim personal use for close relatives such as children who have reached the age of majority or parents in need of care. Termination for personal use is also possible for sublet rooms if the subtenant needs the flat or room for personal use again.

Notice of termination for personal use can only be given with due notice. It therefore never gives the right to immediate termination without notice. Depending on the length of residence, the notice period can then be three months, six months (after more than five years) or nine months (after more than eight years).

It is inadmissible to give advance notice of termination for personal use, i.e. for a possible future need. The need must already exist at the time of termination. It must also refer to precisely this flat. If a lessor owns several flats, it must be justified that exactly this flat is needed and no other flat is available.

The abuse rate in the area of termination for personal use is extraordinarily high. This is because the termination for personal use is ultimately the only way for the lessor to

terminate existing tenancies that have become unpopular – for example, long-term tenants with low rents.

In the event of termination, a court can therefore also be called upon to review the alleged personal use. For this purpose, the court can and must hear witnesses and examine evidence. If affected tenants have the feeling that a termination for personal use is only a pretence, they should quickly collect documents, witness statements, photos or other evidence to prove that this is misuse and that the lessor does not actually need the flat as claimed.

A tenant can raise a so-called hardship objection in the form of an objection to termination for personal use. Such an objection must be lodged two months before the end of the rental period and should not be made prematurely. An early objection allows the lessor to take the eviction proceedings to court before the notice period expires.

As a rule, a successful objection to hardship on health grounds can only be raised in the case of particularly old age or particularly serious physical and mental illnesses (disabilities, suicide risk).

The law also stipulates that a hardship objection can also be raised if no alternative accommodation is available and no suitable accommodation has been found since the date of termination despite an intensive, proven search. In Berlin, the courts require a city-wide search for accommodation at considerable expense. People and families of average health have to put up with moving away from the city centre districts, changing schools and kindergartens, long commutes to work, a lower quality of living and more expensive rent. Offers of help from the authorities must be accepted. If you are entitled to a certificate of eligibility for housing, you must apply for one. If you are eligible for housing benefit, such financial resources must be accessed in order to facilitate the search for accommodation.

Whether the lessor actually has a personal requirement and whether there is an objection of hardship for the tenants concerned is always a question of the individual case and is assessed, examined and decided on a large scale by the Berlin courts on a daily basis. It is not normally advisable to move out prematurely without a fight after termination for personal use. Not least because the possibility of lodging an objection and conducting a judicial review procedure saves valuable time in the rented flat.

5.2 Tenant termination

The tenancy may be terminated in writing by the tenant at any time and without cause. In this case, the termination period is always a maximum of three months. If shorter periods have been agreed in the tenancy agreement, these shall take precedence in favour of tenants. Notice of termination must always be received by the third working day of a month. Then this month already counts towards the termination period.

Once the flat has been vacated and handed over (by returning the keys), this does not automatically end the tenant's obligation to pay rent until the end of the contract term. Also, the rent payment cannot be stopped because a deposit has been paid. There is also no right for tenants to be released from the contract early or to provide a new tenant.

However, if the parties agree on an earlier end to the contract or if the lessor continues to let the flat or room within the term of the contract, the obligation to pay the rent also ends.

6. Moving Out and Transfer of Accommodation

Legal problems often arise when moving out of a flat. The flat must be returned in the condition stipulated in the contract. There is ample room for debate as to what the contractual condition is.

On the one hand, contractual clauses on the subject of cosmetic repairs play a role here. These clauses should regulate who paints and varnishes the flat at the end of the tenancy. The following applies as a rough guide: If a flat has been handed over freshly renovated and occupied for several years with average intensity, such a flat must also be returned to a freshly renovated state. The tenant can hire a specialist company or do it alone. The following also applies as a rough guide: Tenants must replace what they have demonstrably damaged (burnt worktops, damaged tiles, damaged parquet). The gradual wear and tear of the flat (worn floors, small stress cracks in tiles, worn hinges and locks) is not the tenant's responsibility.

Disputes usually arise in flats that have only been lived in for a particularly short time or have been subject to above-average wear and tear, for example due to intensive shared flat use. Disputes also arise if a flat was partially renovated or was already in a particularly poor condition when it was rented and it is now almost impossible to determine how this condition has deteriorated further as a result of the new use.

Here too, a legal judgement can only be made on a case-by-case basis. It is always advisable to document the condition of the flat as well as possible when you rent it (witnesses, photos, handover protocol) and to do the same at the end of the tenancy. The parties should clarify from the outset who owns which fixtures and fittings, what is taken over from the previous tenant and must be disposed of by the tenant at the end, and what is considered "co-let".

If the lessor requests work from the tenant after the flat has been handed over (painting, clearing out, cleaning), the lessor must always request this and set a date by which the lessor expects the work to be completed. It is always advisable to agree early on in what condition the flat should be left in.