

By **BERK ÇEKTİR**

16.12.2009

Rental agreements under Turkish law (1)

I think it's a good idea to write an article covering the general aspects of rental matters. The following series of articles will cover some basics on rental agreements and will hopefully serve as a rough guide for expats, providing at least some insight into renting a house in Turkey.

I would also like to state that the purpose of this series is to cover residential rentals only; commercial rental agreements are a totally different story. As with everything, rental agreements are subject to exceptions, but seeing how many of them will not often be encountered by expats, I will not go into detail on them.

How is a rental agreement drawn up?

Rental agreements are, generally speaking, not subject to any form requirement, with some exceptions.

Rent payment time

Landlords usually ask for upfront payment, meaning you pay the rent on the first day for the coming week/month. The payment date and time depend totally on your agreement with the landlord. You can agree to pay your rent one year in advance or pay each month, for example.

Get a receipt upon each payment

The best way to get a receipt is to make all such payments through bank transfers. In fact, receiving rent in cash if it amounts to over TL 500 per month carries a fine. A communiqué issued on July 29, 2008 says that, beginning from Nov. 1, 2008, it is a statutory obligation to receive rental income through a bank or postal office money order. The purpose of this declaration is to avoid undeclared rental income. The communiqué states that the landlord is obliged to collect the rent for the residential property via bank account if the monthly rental income is TL 500 or higher. Breakdowns or calculation charts drawn up by banks and postal offices are enough to substantiate payment. Documents printed out from a bank's Web site are also accepted as proof of payment.

If you are still asked to pay in cash, don't pay your rent unless the landlord gives you a bank account. If the receiving party does not agree to accept the money via bank transfer, get a written receipt stating: a) amount of payment; b) date of payment; c) reason for payment; d) full and correct name of receiving party; e) full and correct name of paying party; and f) signature of receiving party.

Deposit payment

Here is the point that hurts the most when it comes to a rental agreement. In the eyes of the property owner, his/her property is intact and wonderful and excellent in all

ways. It therefore needs no repair and no paint job, and everything is working properly. The landlord therefore always asks for a deposit that s/he will probably not return at the end of the term. Be prepared to not get it back. I would recommend you take photos of the house on the day you move in -- especially if there are items that need to be repaired. Keep the photos in your files for future use to defend your claims.

Get a separate receipt for the payment of the deposit. The rental agreement may not show that you have actually paid the deposit.

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By **BERK ÇEKTİR**, 21 December 2009

Rental agreements under Turkish law (2)

In my previous article, I mentioned that it is a good idea to get a separate receipt for the payment of a deposit and that a rental agreement may not be evidence that you have actually paid a deposit.

The wording in the standard agreement only states that “a sum of ... TL shall be paid as deposit upon the signing of this agreement.” As you can see, it does not say that the deposit has actually been paid; it refers to a future action which should take place upon signing. This requires the tenant to get a separate receipt for the payment of a deposit or to change the wording of the agreement in line with the payment.

Increase in rent rates

In regard to an increase in rent rates, I will avoid mentioning figures here as some readers will misunderstand and mistakenly take it as a determined constant number. I strongly recommend that you go through a professional -- and if you cannot afford it, to a Turkish friend at least -- and find out the rate of rent increases through the Turkish Statistics Institute (TurkStat).

Language of the agreement

You should not sign an agreement that you do not understand. It will not be clear what has been agreed with the landlord unless you are proficient in speaking and reading Turkish. I would advise you not to enter into contracts written in Turkish unless you have an excellent command of the language or you get assistance from a professional. You should contact a lawyer, or if you cannot afford it, at least consult your real estate agent about the wording of the agreement you are signing. If you have used the services of a real estate agent when renting a house, they should do this inclusive of their services. However, never forget that the real estate agent will be eager to close the deal and may not be too careful about translation. It is solely up to you whether you trust them or not.

Don't forget that you will be signing a valid and binding contract or agreement even though it is in Turkish. You could try to get the agreement in both languages on the same page which may help you in case of a problem

Bills for utilities

I received a question from a dear reader named John, and it might be a good time to respond to this question now. It reads: "Why is it that the electricity company in Turkey forces the new tenant [or the landlord] to pay the outstanding electric bill of a previous tenant rather than pursuing the actual debtor? This matter has always seemed grossly unjust. Thanks, John." Dear John, it is unjust, but a fact. The electricity company should get the appropriate security first when the contract commences and should cut off the electricity as soon as possible when bills go unpaid. As far as I know, the utility companies' new practice is now based on an upfront payment, or in other words, "pay as you go" or "go as you pay."

It might be a good idea to check if there is any amount due from the former tenant and ask the landlord to clear it before you move into the house.

If you want to register the utilities in your name, you must submit a valid residence permit to the utility company.

23 December 2009

Rental agreements under Turkish law (3)

This will be the final part of this series on rental agreements. I will check all questions and recent legislation and update this series every year since this is a very common matter for almost all expats who are either tenants or landlords.

Notifications

Notifications regarding rental agreements are generally made through a notary public. This is not a general form requirement, but using a notary public is preferred.

In some cases, sending notifications through a notary public is a form requirement regardless of whether the rental agreement is a written agreement or not. In the event a tenant is making rental payments later than the agreed date of payment or if there is no payment, the landlord should notify the tenant through a notary public. The notification should refer to the payment date and proof of the late payment.

Addresses for notification

The addresses in an agreement are always important so the parties to the agreement know each other's addresses. During the term of the rental agreement, the address is the premises. The address of the tenant may be more important since the tenant may be subject to a notice (for instance for not paying for repairs that were made after the premises were vacated) after the agreement is terminated. In such cases, it might be a good idea to write down a second address that one can use after the termination of the agreement. This will help you avoid a large bill from a lawyer several years after the termination of the agreement.

Termination

The parties can terminate the agreement according to the termination clause. This clause is usually in favor of the landlord. However, Turkish law provides a special way for the landlord to ask the tenant to vacate a rented premises.

When you terminate a contract, make sure that you have really terminated it. This means that you should have written proof of termination.

Declaration for vacating

Most landlords will expect the tenant to sign a declaration that the tenant will

leave the premises at the end of the term. This declaration is actually not really binding under Turkish law if it is signed only by the parties but without any official authority's participation. Such a declaration is only valid if it is signed before a notary public on a later date, after the rental agreement is signed.

There are various precedents from the Turkish high court stating that such a declaration that is signed at the same time of entering into a rental agreement should not be valid. The reason that this declaration can be invalid is granted by Turkish law on the basis of balancing the parties' power. When signing a rental agreement, the tenant is deemed to be the weaker party. Turkish law automatically protects tenants' rights since the tenant may be under the pressure of the landlord. Usually the tenants are ready to accept various conditions required by the landlord that they would not accept under normal circumstances.

There are several other matters to write about concerning rental agreements such as the power of signature. Make sure that you are signing the contract with the correct person.

I am planning to write a more comprehensive article later next year.

Finally, I strongly recommend that you consult a lawyer when signing a rental agreement or any declaration that may contain hidden clauses that could put you in trouble in the future.

NOTE: Berk Çektir is a licensed attorney at law and available to answer questions on the legal aspects of living in Turkey. Send enquiries to b.cektir@todayszaman.com. The names of the readers are disclosed only upon written approval of the sender.