

Bridging conflicts between landlords and tenants – a pilot scheme in Norway

1. Background information on the housing market

The rental market for housing in Norway differs from the market in the majority of other countries. Most homes in Norway are owner-occupied. Relatively few are rented. Since the 1950's all political parties have agreed upon owner-occupied housing as a political goal. The housing market in Oslo is different from the country as a whole.

Oslo 2001	Norway 2001
266 900 dwellings	1 961 548 dwellings
70,5 % owner occupied	76,6 % owner occupied
29,5 % tenures/tenancies	23,3 % tenures/tenancies

Co-operative ownership was until recently a combination of part-ownership and a right to rent a flat. New legislation in 2005 has changed this form of ownership into owner-occupied.

For flats being built before 1940 there has until recently been a rental price-regulation in the largest cities.

For the most part rented housing is the domain of young people who have not yet established themselves with a family and permanent employment, and therefore have no wish to bind themselves to fixed property. The number of older people moving into rented flats after selling their owner-occupied home is slightly increasing.

In the rented housing market a current trend is that short-term/time-limited rentals of up to 3 years are becoming the norm, rather than the non time-limited rental contracts that previously were the norm.

Another characteristic in the Norwegian market is that there are only a small percentage of professional landlords compared to the number of private landlords of individual dwellings. The percentage of public housing rentals – council houses and flats – is also relatively small.

	Oslo	Norway
Private persons	47 %	56 %
Private professionals	21 %	10,7 %
Public housing	16 %	16,3 %
Others (priv. org. etc)	16 %	17,6 %

2. The Rent disputes tribunal in Oslo and Akershus

The Rent disputes tribunal in Oslo and Akershus (HTU) was established in 2001 as a pilot scheme. The political purpose was to give landlords and tenants quicker solutions at a lower cost in rental disputes, than through the ordinary courts.

The initiative to establish HTU was taken from the Norwegian Tenant's Organization, the Norwegian National Federation of House Owners and the Consumer Council of Norway. HTU is an independent administrative unity with some of the characteristics of a court of law. The employed mediators have the degree cand. jur. from the University, they have experience as judges or barristers in lower courts (tingretten), and have participated in

special studies in disputes settlements mechanism (especially mediation). HTU is an alternative to the Conciliation Boards and the courts in Oslo and Akershus.

Settlements and decisions from HTU are legally enforceable like law court judgments. A decision may however be forwarded to the ordinary courts within a month. All decisions are published on www.htu.no.

3. Jurisdiction

Disputes in housing, but not in business premises, can be handled. In order to solve the conflict both landlords and tenants are authorized to take the initiative. A fee/charge has to be paid.

The contract or agreement between the parties has to be a rental contract under the old or the new housing law. Only few cases are now regulated by the old housing law from 1939. HTU deals with real disputes, but does not give judicial advice to one of the parties. HTU also gives information on the housing laws to the public, but only on general basis.

4. Mediation method

During the mediation process HTU is using an interest-based method, developed at Harvard University and practised in the USA for many years. The same method is in Norway also used in court-sponsored mediation, and by mediation boards. Mediation is voluntarily for the parties in a housing-dispute.

In this form of mediation the parties are encouraged to look forward at what serves their interests best rather than concentrating on what has happened in the past with the aim of proving who was right.

- Focus on interests
- - not on rights and positions
- Focus on the future
- - not on the past
- Let the parties make propositions
- Solutions will be the parties own choice
- It is easier to live up to, and parties will be more satisfied

The role of the mediator is to assist the parties in negotiations to solve the conflict, not to give advice. The parties will be encouraged to consider alternative agreements that might be acceptable for both of them.

If they wish the parties can be assisted by lawyers or another representative in the mediation meeting, but this is not necessary.

5. The orange example

An often-used example used to illustrate interest-based mediation is two people in quarrel over an orange. Neither will give up.

- The traditional courts will resolve the dispute by considering which of the parties has the right to the whole orange. The party that can prove his ownership with more than a 50 % probability, presenting witnesses, receipts or similar, has his claim upheld and is awarded the whole orange.
- In traditional conciliation the parties normally meet each other halfway, so that each party gets half an orange.
- In interest-based mediation, the mediator attempts to identify the underlying interests of the two parties. If one party needs the orange peel to bake a cake and the other

party just wants the juice, the way is open for a win-win situation where both parties have their needs and wishes fully covered.

6. Mediation procedure

- Starts with joint meeting
- An informal and safe tone is established
- Active participation from both parties
- Parties speak one at a time
- Separate meetings with one party at a time
- Mediator will focus on the interests
- A voluntary settlement can be the result, and the case will be closed

The mediation starts with a meeting between both parties and the mediator. The mediator will try to establish a safe and secure negotiating framework in a slightly informal tone, while at the same time certain fixed procedures are followed. The parties are given the opportunity to speak in turn and present their points of view on the case; alternatives may be presented in brief.

Each party then speaks to the mediator on a one-on-one basis. During these meetings the mediator encourages the parties to focus on their underlying interests.

The mediator attempts to build bridges by presenting a number of ideas for solutions. The mediator does NOT put forward concrete proposals, but attempts to persuade the parties to move in the direction of a solution.

Various solutions are discussed. The parties then participate in a new joint meeting. The mediator puts the agreed solution in writing which both parties will sign. In the majority of cases agreement is reached.

The length of the meeting varies from case to case, from 2 hours and up to two days. As a general rule meetings start at 10.00, and a light lunch is served at 12.00.

7. Advantages

Mediation

Some advantages with the Rent disputes tribunal and the mediation that is offered:

- lower costs for the parties
- quicker solutions
- emotions and needs are taken into consideration
- both parties can be (more or less) satisfied
- usually none of the parties are losing completely

Mediation opens for possibilities not available in the ordinary courts.

The parties are given the opportunity to avoid the risk of a lengthy process in the ordinary courts.

Parties often claim that it isn't the money that's important, but the principle.

Cases of this type have occasionally been resolved by donating the money to a charitable cause that has the support of both parties. Both parties have then their **interests** taken care of.

Occasionally the tenants in cases regarding contract termination have been able to buy the property rather than move out. In cases involving debt, it is common practice that the owed amount is split into instalments. Creditor will often “grant debtor a discount”, by reducing the claim, when paid voluntarily. The advantage for creditor is to avoid enforced payment proceedings, which as often as not fail to attain the desired objective anyway.

Mediation often gives both parties the feeling that they have won because both can gain something through the settlement that they cannot get through a court decision. Another very important function of mediation is that the parties start a dialogue, something they fail to do when left to their own devices. This is of particular importance when the rental contract is to be continued.

8. Decisions

If the parties fail to reach settlement through mediation, the case will be decided on a judicial basis by the HTU appointed committee. There will be a change of executive officer. The parties will be encouraged to present any written documentation they believe to be relevant. Whatever has been uttered verbally during the mediation cannot be used, as it is not known to the executive officer who writes the decision.

The HTU committee will be set with the executive officer and one representative appointed by the Norwegian National Federation of House Owners and one by the Norwegian Tenants Association respectively. These representatives are laymen, normally not law-educated.

The committee will be responsible for obtaining the necessary information. When the case has been sufficiently clarified a decision can be forwarded. The case handling is executed in writing only. With the exception of cases concerning contract termination, parties are not given the opportunity to participate in verbal meetings with the committee.

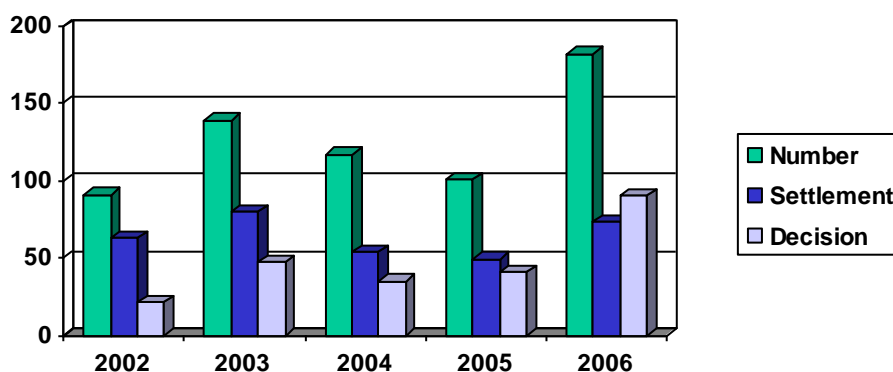
The decision can be brought before the ordinary courts within one month. If this is not done, the decision has the same effect as a legally enforceable judgment. Until now only ten of the 253 HTU decisions have been brought to the ordinary courts.

9. Statistics

Total number of disputes from 2001 until 2006 is 686.

373 settlements

253 decisions/rulings



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