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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

National Report for

LATVIA

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Part 1: Housing situation and housing policies

The Latvian housing market is characterized by a high share of dwellings in the ownership of private persons; moreover, inhabitants mostly own apartments rather than other types of immovable property (approx. 65.4 %).

The Latvian housing situation and housing policy were influenced by the Soviet regime established in Latvia from 1940 till 1990, as well as the following property reforms (denationalisation, restitution and privatisation) undertaken by the Parliament and Government of the independent Latvian state later. This all resulted in split of property rights on a building and land plot (Latvian: *dalītais īpašums*) in some cases. The split of property rights means that there are at least two different owners of an immovable consisting of a residential building and a land plot: one of them owns the building, another one – the land plot. In practise, it means that tenants have to compensate the immovable tax which shall be paid for the land plot, on which the residential house is situated in which they rent the residential space, besides, they shall also pay compulsory lease payments for using the land plot in addition to rent and payment for utilities. In other words, this is true only if the owner of the land plot is not one and the same natural or legal person. The owner of the land plot and the building may agree on different conditions of the lease of the land plot, but, if no agreement could be reached, the owner of the building obliged to lease the land plot with no right to opt out.

The current supply and demand situation seems to be sufficient, no problems have been reported.

1. The current housing situation

1.1. General Features

- ***Please describe the historic evolution of the national housing situation and housing policies briefly***

  In particular: Please describe briefly the evolution of the principal types of housing tenures from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatisation or other policies).

The Latvian housing situation and housing policy was influenced by the Soviet regime established in Latvia from 1940 till 1990.

25% of the present housing sector was built during the time of the first independence of Latvia, i.e., 1940, 70 % of it in the Soviet time[1]. From 1946 till 1982, 540700 apartments with the total living area of 26.5 millions square metres were built in the both: urban and rural areas. The statistics of 1982 provided that 91 % of built apartments had water-supply and sewerage, 74% - central

[1] *"Puse Latvijas iedzīvotāju dzīvo pārapdzīvotās un nedrošās mājās".* http://www.kasjauns.lv/lv/zinas/95689/puse-latvijas-iedzivotaju-dzivo-parapdzivotas-un-nedrosas-majas-video *; Siltinot ietaupīto noēd kredīts.* <http://nra.lv/ekonomika/latvija/54347-siltinot-ietaupito-noed-kredits.htm?view=comments>, 2 September 2013.; the Alliance of local municipalities of Latvia. Mājokļu politikas pamatnostādnes"/"The main concepts of housing policy". <www.lps.lv>, 2 September 2013.

heating, 87 % - gas, 68 %- hot water[2]. However, these residential spaces were mostly rented because Soviet laws prohibited to use (also own) private property to gain profit[3]. The concept of property and ownership adopted by the 1936 Soviet constitution (also known as the "Stalin" constitution) had a purely economic essence. The ownership was a part of material relations where the main owner and manager of material goods was the state[4]. To note, many immovables were nationalized or confiscated by the Soviet authorities, this circumstance significantly influenced the present housing sector of the independent Latvia. To continue about the Soviet time, ownership relations of private actors were not completely abolished because it was possible to own personal property: different movables, savings, as well as one family living house and auxiliary buildings[5]. Thus single family residential houses could be owned by private persons, but other living dwellings, for example, apartments were used on basis of rental agreements concluded with the state or other public authorities. Before ending of the Soviet era inhabitants of the soviet Latvia spent 2.5 % of the overall income on housing, heating and utilities connected with housing, at the same time he state subsidized the housing sector in the amount of 148.2 million roubles (approx. 715 million euro) in a year [6].

After the regaining of independence in the nineties the property reform has been started. The property reform aimed renewal of social fairness, protection of the rights of land owners and users. The reform changed the share of immovables owned by private actors and public authorities. The legislator of the independent Latvia took different measures to eliminate losses caused by the previous regime and restore justice, but there was no aim to compensate all losses caused by the Soviet regime. The Constitutional Court of Latvia has concluded in this relation:"*The State of Latvia is not responsible for violation of human rights, including nationalization of property, which was realized by the occupational government. The Republic of Latvia has no possibility and no duty to completely compensate all the losses, inflicted on persons by the occupational government*."[7]

The property reform meant privatisation and denationalisation (restitution) of immovable property: buildings and land plots - in rural and urban areas. The property reform as a complex and permanent procedure comprising the entire national economy of Latvia, as well as was determined by historical, socio-economical and legal circumstances. When performing property reform in rural areas, its objective was to reorganise the legal, social and economic relationships of land property and the use of land in the countryside during a gradual privatisation in order to promote the renewal of the traditional rural lifestyle of Latvia, to ensure the economic use and protection of natural and other resources, preservation and raising of soil fertility, increase of qualitative agricultural product production[8]. In urban areas the reform's aim, as it follows from the Law on Land Reform in the Urban Areas of the Republic of Latvia (Latvian: *Likums "Par zemes reformu Latvijas Republikas pilsētās*"[9]) was a gradual denationalization of the state property, privatization and restitution of illegally received state property disposing to rearrange the ownership relation remained after the Soviet era, to promote the development of cities, land protection and rational use of land (Article 2 of the law indicated).

Although the Latvian legislator - *Saiema* (Parliament) uses two different terms: denationalisation and restitution, there is no essential difference between these two notions because a former owner or his heirs were entitled to gain an immovable nationalized or confiscated without any

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[2] the Alliance of local municipalities of Latvia. Mājokļu politikas pamatnostādnes"/"The main concepts of housing policy". <www.lps.lv>, 2 September 2013.*;* П.П. Еран (ред.) Советская Латвия. Рига: Главная редакция энциклопедий, 1985,p.27, 461

[3] Apsītis R., Birziņa L., Grīnbergs O. *Latvijas PSR valsts un tiesību vēsture (1917-1970)*, Rīga, Zvaigzne, 1970, 221.lpp.

[4] Бочкарев С. А. Понятие собственности в уголовном праве. *ГОСУДАРСТВО И ПРАВО, 2009, №7, с. 106-112*

[5] *Latvijas PSR Tieslietu Ministrija. Latvijas Padomju Socialistiskās Republikas Civilkodekss. Oficiālas teksts ar pielikumiem, kuros ievietoti pa pantiem sistematizēti materiali*. Rīga, Avots, 1988, 58.lpp.

[6] Буйвид Э. Латвийский путь: к новому кризису. Сборник статей. Рига, 2009 с.10-11

[7] Judgement of the Constitutional Court of the Republic of Latvia of 8 March 2006, Case No. 2005-16-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

[8] Judgement of the Constitutional Court of the Republic of Latvia of 28 November 2011, Case No. 2011-02-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

[9] 20.11.1991. *Likums „Par zemes reformu Latvijas Republikas pilsētās".* <http://likumi.lv/doc.php?id=70467>, 2 September 2013.

consideration in the both cases. The main difference of the two notions concerns the legal grounds on the basis of which a particular immovable has been taken away by the Soviet power.

The Law on the Denationalisation of Living Building Properties in the Republic of Latvia (Latvian: *Likums "Par namīpašumu denacionalizāciju Latvijas Republikā*[10]") was adopted and stipulates that living buildings shall be denationalised, if they were taken away on the basis of the following decrees:

1. The Latvian SSR Supreme Soviet Presidium Decree of March 14, 1941 "On the Inclusion of Country, Large-Scale and Kulak Farms into the State Fund";

2. The Latvian SSR People's Commissars Council Decree No. 359 of March 14, 1941, "On the Approval of the List of Country, Large-Scale and Kulak Farms to be Included in the State Fund";

3. All regulatory enactments issued pursuant to the decrees mentioned above;

4. All Latvian SSR Supreme Soviet Presidium decrees.

In addition to the Law on Denationalisation, the Law on the Restitution of the Living Building Properties to the Former Owners (Latvian: "*Likums „Par namīpašumu atdošanu likumīgajiem īpašniekiem*"[11]) was passed, Article 1 of this Law determined that under it property rights are restored on immovables which in 1940-1980 were transferred into the possession of the state or other legal persons, ignoring property rights of owners and realizing administrative politics.

One could notice that the laws on denationalisation and restitution relate to living buildings, this true because land plots were returned separately. The Latvian legislator issued two laws regarding the restitution of land plots in rural and urban areas: the Law on Land Reform in the Rural Areas of the Republic of Latvia (Latvian: *Likums "Par zemes reformu Latvijas Republikas lauku apvidos*"[12]) and the Law on Land Reform in the Urban Areas of the Republic of Latvia (see above). The general principle of the restitution of land plots was similar to residential buildings: a former owner or his heirs were entitled to submit an application about restoration of property rights on a particular land plot without any consideration. A former owner was entitled to apply for restoration of ownership, if he was an owner the immovable on July 21, 1940 (Article 7 of the Land Reform in the Rural Areas of the Republic of Latvia, Article 9 of the Law on Land Reform in the Urban Areas of the Republic of Latvia).

As mentioned, single-family residential houses could be owned by private persons and constituted personal property in the Soviet time. In these cases former owners or their heirs generally applied for restoration of the property rights on land parcels under such living buildings.

The denationalisation and restitution processes mainly influenced inhabitants of apartment houses. Firstly, landlords of the tenants of multi-apartment residential houses changed. Secondly, due to the reform property rights on a building and land plot (Latvian: *dalītais īpašums*) were split, i.e., there are two independent owners of the two objects: the building and land plot, which have been legally separated, moreover, these owners are not co-owners.

As a natural consequence of the denationalisation (restitution), all apartments could be divided in the following groups:

1. Free apartments;

[10] 30.10.1991. *Likums "Par namīpašumu denacionalizāciju Latvijas Republikā. <http://likumi.lv/doc.php?id=70829>*, 2 September 2013.
[11] 30.10.1991. *Likums „Par namīpašumu atdošanu likumīgajiem īpašniekiem".* <http://likumi.lv/doc.php?id=70828>, 2 September 2013.
[12] 21.11.1990. *likums "Par zemes reformu Latvijas Republikas lauku apvidos*". <http://likumi.lv/doc.php?id=72849>, 2 September 2013.

2. Apartments rented in living buildings denationalised or restituted to private persons;

3. Apartments rented in the State owned buildings.

In case the first group of apartments, the house-owners were given rather great freedom and had the right to freely determine rental payments in each case, if they decided to conclude a rental agreement.

Tenants of the third group had the priority right to privatise i.e. to purchase from the state apartments used according to a rental agreement which were often concluded in the Soviet time. The Law on Privatisation of State and Local Government Residential Houses (Latvian: *likums "Par valsts un pašvaldību dzīvojamo māju privatizāciju"*[13]) determined the procedure of the privatisation of apartments. The privatisation is one of ways of property right acquisition for a consideration, in its course the ownership passed from the state or a municipal institution to a private person[14]. An apartment could be privatised together with a part of a land plot (German: *ideeller Anteil des Grundstucks*) on which a residential apartment house is erected or without it (Article 7 -8 of the Law on Privatisation of State and Local Government Residential Houses). One of the main obstacles to privatise a apartment together with a part of the land plot was that property rights on a land plot is already owned by another private person, for example, in the case when the ownership has been restored in accordance with the Law on Land Reform in the Urban Areas of the Republic of Latvia.

There were problems connected to tenants of apartments of the denationalised (restituted) buildings because new owners of such buildings were interested in rent increase. Under Article 12 of the Law on Denationalisation of Living Building Properties in the Republic of Latvia, Article 12 of the Law on the Restitution of the Living Building Properties to the Former Owners, Article 8 of the Law on Residential Tenancy (Latvian: *Likums "Par dzīvojamo telpu īri"*[15]) a rental contract regarding a residential dwelling concluded before the denationalisation or restitution is binding for a new owner to the full extent. Article 28.5 of the Law on Residential Tenancy states that a new owner he may terminate a contract in a unilateral way, if the owner needs the denationalised (restituted) property for living. In this way all lease agreements passed from a former owner (the State or other public authority) on a new owner, i.e., legal succession based on law took place. To stress, that this particular rule on succession relates to all returned residential property.

The state authorities feared that a number of tenants evicted from denationalised or restituted living dwellings could increase, if lease payment increase is too rapid and/or high. As a result so called "the ceiling of lease payments" (Latvian: *īres maksas griesti*) or the maximum amount of rental payments was determined by the Cabinet of Ministers. These restrictions had generally binding character as law does. The restrictions regarding lease payments were imposed to avert mass turning out of tenants from their apartments. The prohibition to require and receive a higher lease payment than it was set by the Cabinet of Ministers diminished the household expenses and thus protected the poor and needy pre-reform tenants in circumstances when there was a shortage of cheap dwelling space.

To mention, tenants of the denationalized houses could not privatize the apartments, therefore the restriction of rental payments was one of the mechanisms, which ensured balance between the interests of the tenants and landlords and reached a socially fair aim. The restrictions of rental payment should be temporary, but only in the year 2007 the Constitutional Court declared the said lease restrictions as unconformable with the Constitution and invalid[16].

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[13] 21.06.1995. *likums "Par valsts un pašvaldību dzīvojamo māju privatizāciju".* <http://likumi.lv/doc.php?id=35770>, 2 September 2013.
[14] 17.02.1994. *likums "Par valsts un pašvaldību īpašuma objektu privatizāciju*". <http://likumi.lv/doc.php?id=57971>, 2 September 2013.
[15] 16.02.1993. <*Likums "Par dzīvojamo telpu īri".* http://likumi.lv/doc.php?id=56863>, 2 September 2013.
[16] Judgement of the Constitutional Court of the Republic of Latvia of 8 March 2006, Case No. 2005-16-01, <www.satv.tiesa.gov.lv>, 2 September 2013

The fact that living houses – apartments were privatized with privatising land plots under these apartment houses gave an opportunity to third natural or legal persons – outsiders to privatize land plots under apartments.

Although the property reform was one of the first priorities of the Latvian state, it led to the formation of so called split of property rights on a building and land plot (Latvian: *dalītais īpašums*). The split property means that there are at least two different owners of an immovable consisting of a (living or non-residential) building and land plot who are not co-owners, since one of them owns the building, another one – the land plot[17]. The law concerning denationalisation or restitution of land plots offered an opportunity to receive compensation or an equal land plot unit if during the Soviet time a building or several buildings has been constructed, thus the person applying for restitution of a land plot could choose if it wishes to acquire the particular land plot owned before confiscation or denationalisation by the Soviet authorities. Nevertheless, there were owners or heirs who chose to acquire the land plot together with an "encumbrance" - residential house on it.

Under the Latvian Civil Law a building constitutes an essential and natural part of a land parcel. (Article 968 of the Civil law), if the building is firmly attached to the land plot, it establishes together with the respective land plot one unity (German: *wesentlicher Bestandteil des Grundstuckes*). However, because of the reform the Latvian legislator decided to introduce another solution and modify the principle referred to above in the following cases:

1. Buildings are erected on the land plot returned to the former owner or a heir within the property reform;

2. Buildings are acquired in course of the privatisation, privatising them separately from the land plot;

3. Buildings are erected on a land plot owned by the state or a local municipality which was transferred into permanent use, i.e., in use with the right to build on the land plot;

4. Buildings are erected on a land plot in accordance with construction law provisions, if such buildings are a part of privatized companies, which had been owned by the state or a local municipality;

5. Buildings are erected on a leased land plot, if a lease contract is concluded for ten or more years, as well as grants the right to erect buildings on the land and acquire property rights on them[18].

Due to the split of property rights the compulsory lease was introduced. It means that owners of a building (or buildings) and a land plot are forced to enter lease contracts with owners of land on which buildings are situated (German: *Kontrahierungszwang*)[19]. The compulsory lease was mostly established in the interest of owners of land plots, however, it aims to grant the right to use the land plot to the owner of the building, for example, the right to approach the building situated on the land plot of another person. Owners of a land plot and building may agree on different conditions of lease, but, if no agreement could be reached, owners of a building obliged to lease a land plot with no right to opt out. If an amount of lease payments cannot be contracted by the parties involved, it must be determined by law. This amount is calculated considering a cadastre value of the land plot and the proportional total area of an apartment in case of apartment houses. The cadastre value is normally set by the state institution for one year. This value shall not be confused with the market value of an immovable. Usually the cadastre value is lower than the market value and serves for

[17] Švemberga A. Būt vai nebūt dalītam īpašumam Latvijā. *Jurista Vārds* Nr. NR. 49 (800). 3.12.2013. <www. juristavards.lv>, 14 March 2014.
[18] Likums „*Par atjaunotā Latvijas Republikas 1937.gada Civillikuma ievada, mantojama tiesību un lietu tiesību daļas spēkā stāšanos laiku un kārtību*"
[19] Judgement of the Constitutional Court of the Republic of Latvia of 13 February 2009, Case No. 2008-34-01, <www.satv.tiesa.gov.lv>, 2 September 2013

different public purposes, for example, for determination of the payable immovable task for a current year.

Similarly to the case of limitations of rental payments made by tenants in the denationalised or restituted houses, there were restrictions on increase of compulsory lease payments for use of the land plot determined by law. Originally law stated to what amount an owner of a land was entitled to ask for compulsory lease increase, if no agreement could be reached. The particular regulation on limitation of compulsory lease payments was contested in the Constitutional Court. The Constitutional Court pointed out that the provision has a legitimate aim and tends to protect owners of apartment houses from rash lease payment increase, on the other hand, there are less restrictive measures how the aim could be achieved, in addition, not all owners of apartments are socially unprotected. For this reason the Constitutional Court declared the said lease restrictions as unconformable with the Constitution and invalid[20]. The restriction has been contested two times in the Constitutional Court because after the first judgement of the Court the Latvian parliament adopted the same legal provisions once more which were also recognized to be invalid by the Constitutional Court[21]. To stress, the matters examined by the Constitutional Court related to the limitation of increase of growth of compulsory payments due to growth of a cadastre value, but they do not apply to the amount lease payment when the parties cannot agree on an amount. At the moment lease payments amounts to 6% from the cadastral value of an immovable – land plot per year[22], if no voluntary agreement can be reached. Owners of buildings (apartments) are also obliged to compensate the immovable tax for a land plot. This latter obligation is based on the idea that owners of buildings (apartments) and not an owner of a land plot actually use the land plot.

The compulsory lease is not satisfactory for all parties concerned. According to the annual report of the Latvian ombudsman[23] about the year 2012, owners of apartments (in total more than 350 people had signed the submissions), suppose that the State acted unfairly against the owners of apartments in course of the land reform, allowing the former land owners and their heirs to regain land plots or giving to their ownership the land, on which the houses belonging to other persons are located[24].

Owners of apartments or buildings, including residential and non-residential buildings, are forced to pay lease which may be inadequately high, but owners of land plots cannot use their property and gain benefit from it. The largest manager of residential houses of the capital city - Riga provided the data (2013) according to which 1800 of multi-apartment houses (approx. 50% of all apartment houses of Riga) are situated on land plots owned by third persons, i.e., the owners of apartments have to pay compulsory lease payments[25]. One of the reasons is that in the Soviet time cities expanded, many modern living houses, in particular, in Riga have been built on land plots which the state nationalized or confiscated[26]. To add, up to now the share of persons living in apartments was highest among the EU Member States in Latvia (65.3 %)[27].

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[20] Judgement of the Constitutional Court of the Republic of Latvia of 15 April 2009, Case No. 2008-36-01, <www.satv.tiesa.gov.lv>, 2 September 2013

[21] Judgement of the Constitutional Court of the Republic of Latvia of 27 January 2011, Case No. 2010-22-01, <www.satv.tiesa.gov.lv>, 2 September 2013

[22] Article 12 of the Law on Land Reform in the Urban Areas of the Republic of Latvia; Article 12 of the Law on Apartment Property (28.10.2010. Dzīvokļa īpašuma likums. <http://likumi.lv/doc.php?id=221382>, 2 September 2013.)

[23] The Ombudsman of the Republic of Latvia is an official elected by the Parliament, whose main tasks are encouragement of the protection of human rights and promotion of a legal and expedient State authority, which observes the principle of good administration. < http://www.tiesibsargs.lv/ >, 14 March 2014.

[24] *Annual Report on the year 2012 by Ombudsman of the Republic of Latvia*. < http://www.tiesibsargs.lv/ >, 14 March 2014.

[25] *Piespiedu nomas attiecības - smaga realitāte 1800 ēku dzīvokļu īpašniekiem* < http://www.db.lv/ipasums/nekustamais-ipasums/piespiedu-nomas-attiecibas-smaga-realitate-1800-eku-dzivoklu-ipasniekiem-386824>, 14 March 2014.

[26] *Raidījums: politiķi nezina kā pārtraukt uzņēmēju vieglo peļņu no piespiedu nomas maksas par zemi zem ēkas.* < http://www.delfi.lv/news/national/politics/raidijums-politiki-nezina-ka-partraukt-uznemeju-vieglo-pelnu-no-piespiedu-nomas-maksas-par-zemi-zem-ekas.d?id=43270265#ixzz2wzfyLpWi>, 14 March 2014.

[27] *Housing conditions*.<http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Housing_conditions >, 14 March 2014.

Selling and buying of land plots with an apartment house or houses on it is a very good business because the only condition of collecting lease payments and the immovable tax compensation is the ownership without other additional investments[28]. There have been even cases when the insolvency administrator of one insolvent company that owned the land plot in Riga from 2004 till 2012 on which three residential houses are situated has brought a court action in 2013 against the owners of the apartments, asking to recover lease payments, the immovable tax and default interest, as well as court costs for the last ten years[29]. The outcome of the court case was that the ordinary courts have obliged each owner of the apartments mentioned to pay compulsory lease payments, to compensate the immovable tax, to pay default interest, as well as court costs in an approximate amount of EUR 670.00[30]. Considering that the official average wage amounted to 660-716 in 2010-2013, not to mention, the minimal wage set by the Cabinet of Ministers each year, in 2010-2013 was EUR 284.57, the sum of EUR 670.00 is quite high for Latvia.

The split property is problematical therefore the Cabinet of Ministers, who has the legislative initiative in Latvia, has recently proposed the following means of solving this problem:

- Transfer the obligation to pay the immovable tax for the land plot from the owner of the building to the owner of the land plot;

- Provide accurate criteria of setting an amount of lease which are lacking now for the cases when no agreement can be reached;

- Refusal of the fixed lease payment in amount of 6% from the cadastral value and introducing the rule that an amount of lease could be 6% or less depending on particular circumstances of each case;

- Division and separation of a part of the land plot which is necessary to use and maintain a building (an apartment house)[31].

Up to now the Latvian government and the legislator could not find a proper solution of the issue in question, mostly because of the lack of financial means which could be used for compensation paid to the owners of the land plots, if necessary[32].

Another most recent development is connected with the market of the first class residential immovables since the Immigration Law states that a foreigner may receive the residence permit in Latvia for not more than five years if he or she acquired she has acquired in the Republic of Latvia and he or she owns one or several immovable properties in the planning region of Riga or cities, the total value of the immovable property being at least EUR 142300.00, or one or several immovable properties outside the planning region of Riga or cities, the total value of the immovable property being at least EUR 71150, if the following conditions exist concurrently:

1) This person does not have and has never had payment debts of immovable property tax;

2) The total purchase price was paid via a bank account;

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[28] Ibid.

[29] *Likuma sprukās: no iemītniekiem vēlas piedzīt 10 gadus neprasītu zemes nomas maksu.* <http://www.delfi.lv/news/national/politics/likuma-sprukas-no-iemitniekiem-velas-piedzit-10-gadus-neprasitu-zemes-nomas-maksu.d?id=43032288#ixzz2wzjBp2Al>, 14 March 2014.

[30] 12.12.2013. Rīgas pilsētas Vidzemes priekšpilsētas tiesas spriedums lietā nr. C30402613; 20.03.2013. Rīgas apgabaltiesas lēmums lietā nr. C30402613

[31] Ministru Kabinets. *Informatīvais ziņojums „Par tiesiskā regulējuma izstrādes gaitu, kas paredz atteikšanos no dalītā īpašuma"*. www.mk.gov.lv,

[32] *Saeima un Tieslietu ministrija nespēj palīdzēt cilvēkiem, kam jāmaksā piespiedu zemes nomas maksa*. < http://financenet.tvnet.lv/zinas/496902-saeima_un_tieslietu_ministrija_nespej_palidzet_cilvekiem_kam_jamaksa_piespiedu_zemes_nomas_maksa>, 14 March 2014

3) The immovable property which has been acquired from a legal person or natural person registered in the Republic of Latvia, who is a citizen of Latvia, a non-citizen of Latvia, a citizen of the Union or foreigner, who is staying in the Republic of Latvia with a valid residence permit;

4) The total cadastral value[33] of immovable properties acquired in the planning region of Riga or cities was not less than EUR 42690.00 at the time of acquisition thereof or the total cadastral value of immovable properties outside the planning region of Riga or cities was not less than EUR 14230.00 at the time of acquisition thereof. If the cadastral value is less than that indicated in this Sub-clause, the total value of immovable properties shall not be less than the market value of immovable properties specified by a certified assessor of immovable property.

As a result of this the demand for luxury tenures in Riga and one of the closest city on the coast of the Baltic Sea - Jurmala increased[34], nevertheless, there is no obligation to live permanently in the property bought, therefore they are rented out or remain empty.

- ***In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)***

The ratio of emigrated and immigrated people is negative in Latvia because of different circumstances and events in historical, political and economical life of the country more people leave for other countries than move into Latvia. Please find below the data showing how many persons have left and came to Latvia.

LONG-TERM MIGRATION[35]		
	Immigration	**Emigration**
1991	14,684	29,729
1992	6,199	59,673
1993	4,114	36,447
1994	3,046	25,869
1995	2,799	16,512

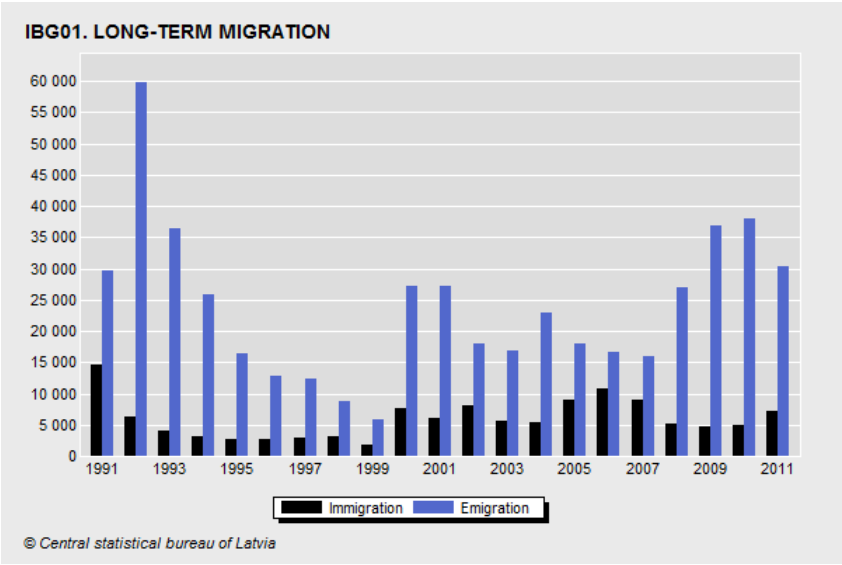
[33] The cadastre value is not the market value, the first value is set by the public institution and serves for different purposes, mostly for taxation. The cadastre value is usually lower than the market value. For more information, please see the Part 2.

[34] *Rīgā aug pieprasījums pēc ļoti dārgiem luksus dzīvokļiem.* <http://www.kasjauns.lv/lv/zinas/131225/riga-aug-pieprasijums-pec-loti-dargiem-luksusa-dzivokliem>, 2 March 2014.

[35] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.

1996	2,747	12,828
1997	2,913	12,333
1998	3,123	8,874
1999	1,813	5,898
2000	7,653	27,136
2001	5,983	27,246
2002	8,137	17,986
2003	5,566	16,830
2004	5,441	22,972
2005	9,053	17,939
2006	10,703	16,665
2007	9,076	15,882
2008	5,158	27,026
2009	4,747	36,935
2010	4,903	38,072
2011	7,253	30,380

Within the period of the two last decades from 1991 till 2011, the highest emigration was in the year 1992 and afterwards in the year 2010. According to the diagram of the Central Statistical bureau of Latvia about immigration there is a flow out of inhabitants[36].



At the beginning of the 90s the migration process were connected with the dissolution of the Soviet Union, in this time people who resided in Latvia during the Soviet time moved to their native countries which re-established their independence as well; people moved mostly to Belarus, Russia and Ukraine.[37] After the year 1995 the emigration level sank although the negative ratio has been preserved.

After Latvia's accession to the European Union, emigration increased, however, before the crisis emigration sank again and immigration grew due to wage increase: 9.7% (2005), 15.6% (2006), 19.9% (2007) and 6.2% (2008)[38]. In the year 2008 emigration started to grow again and decreased only recently, thus, if in 2008 approx. 1.1 million people between 15 and 64 years lived in Latvia, in 2013 the number decreased for approx. 10.1% or 111 000 inhabitants. The reason of emigration was a high level of unemployment when people were forced to look for jobs in other countries.

In the group of young people (23-31 years old) emigration is the highest at the moment. Reduction of this social group amounts to more than 14%. The most popular destination is the United Kingdom and Ireland[39].

In general, starting from 2000 13% or 307000 of population left Latvia because of low salaries, opening of EU labour markets to Latvian workers and a sudden increase in unemployment. The Latvian government tried to eliminate the negative consequences working out the re-emigration plan and focusing on the following groups:

- Specialists necessary for the Latvian internal market;
- Families with kids;

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[36] Black colour shows the amount of people who came to Latvia, but blue colour - who left.

The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.

[37] Statistics for the year 2005 provided by the Central statistical bureau of Latvia, Source: http://www.csb.gov.lv,

[38] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.

[39] Data provided by the Central statistical bureau of Latvia, Source: http://www.csb.gov.lv; *Housing Europe Review 2012*. <http://www.housingeurope.eu/www.housingeurope.eu/uploads/file_/HER%202012%20EN%20web2_1.pdf>, 2 March 2014.

- Young people who are studying (or studied) and working abroad[40].

The latest researched shows though that 93% of all respondents consider the plan of the Latvian government to be unsuccessful. 28% of the respondents replied that they would like to return back to Latvia, but unfortunately it seems impossible; 24% of the respondents pointed out that they are not coming back; 20% of the respondents said that they could return, if Latvian introduced a fair and progressive tax system and a not-taxable sum amounted to min. EUR 600.00; 8% are coming back to Latvia in the nearest future; 4% of the respondents would like to return, but will consider this possibility later; 1% answered that they are forced to return, although does not wish to do so; finally 15% of the respondents emigrated have not provided any answer[41].

The migration from and outside the European Union, including refugees, is low. There are no sufficient data available on this particular topic.

- ***Overview of the current situation***

- ***What is the number of dwellings? How many of them are rented vs. owner-occupied? What would be the normal tenure structure? What is the most recent year of information on this?***

The data of the Central statistical bureau of Latvia show that in 2009 which is the most recent year of information there were 1035126 residential dwellings[42]. The statistics of 2009 says that there are 461 dwellings per 1000 inhabitants[43].

According to the statistical data for the year (2011-2012) approx. 84.9% of the whole the housing stock is in ownership and 15.1 % are rental dwellings[44].

- ***Types of housing tenures***

  - ***Home ownership***

  - ***How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)***

[40]Ministru kabineta 30.07.2013.rīkojums Nr. 356 “Par Reemigrācijas atbalsta pasākumu plānu 2013.-2016.gadam”. <http://likumi.lv/doc.php?id=258715>, 2 September 2013.; *Reemigrācijas atbalsta pasākumu plāns*. <http://www.lm.gov.lv/upload/sabiedribas_lidzdaliba/demografisko_lietu/reemigracijas_atb_da.pdf>, as well as <http://www.em.gov.lv/images/modules/items/Reemigracijas%20atbalsta%20pasakumu%20plans%20DA_13_12_2012.pdf>>, 2 September 2013.

[41] *Aizbraukušie reemigrācijas plānu uzskata par neveiksmīgu.* <http://www.tvnet.lv/zinas/latvija/500715-aizbraukusie_reemigracijas_planu_uzskata_par_neveiksmigu>, 14 March 2014.

[42] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.

[43] *Housing Europe Review 2012*. <http://www.housingeurope.eu/www.housingeurope.eu/uploads/file_/HER%202012%20EN%20web2_1.pdf>, 2 March 2014.

[44] *Housing conditions*.<http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Housing_conditions >, 14 March 2014.; *Līdz gada beigām plāno pilnveidot īres normatīvos aktus.* <http://www.apollo.lv/zinas/lidz-gada-beigam-plano-pilnveidot-ires-normativos-aktus/511472>, 2 September 2013.

The traditional Latvian dream was to live in a thriving and self-sufficient single-family farmstead. That required plenty of farmland around the home, along with a sizeable tract of forest as well as a small road leading out onto the main thoroughfare. Such conditions dictate that no neighbour will live closer than half a kilometre from you. Even nowadays, Latvians consider themselves lucky if they can spend a substantial portion of their lives out at their country homes, where nobody will bother them[45]. Unfortunately official national statistics on the question how financing of home building is arranged are not available. Practically, the models of the financing of building differ. For example, one family house building can be financed by a person or persons who are intending to live in this house. Own savings, personal loans, mortgage etc. or mix of the mentioned resources can be used. In the case of building an apartment house many professional constructors and subcontractors are involved who are mostly experienced businessmen. In these cases domestic and foreign investments, loans etc. can be used. In accordance with the information provided by Eurostat, the share of the tenures financed by mortgage and loan is approx. 8.3 % of 100% of all tenures, while immovables owned without any encumbrances such as mortgage or loan amounts to 72.4% of 100%[46]. However, indebtedness of Latvian households is lower than the average EU-27 level, at the same time indebtedness of Latvia is higher than in Lithuania, but lower than in Estonia[47].

At the moment, the most popular source of financing the building of family homes or apartments is a loan which frequently is connected with a surety (guarantee) provided by third persons, mortgage or other means which secure paying off a debt. Already existing or future immovable property can be pledged. Bank financing is very common, however, personal loan and private financing sources are also used, but not so often.

Banks cover expenses, which connected with the financing for the building of homes, in part issuing loans to private persons. Under consumer law a loan, the amount of which is equal to 100 minimum monthly wages or higher and for which repayment is ensured with an immovable property mortgage, shall be issued in an amount of not more than 90 % of the market value of the relevant immovable property. The creditors may ask for a numerous securities in this connection. Involving of a guarantor is also popular for securing paying off a credit. A guarantee is a contractual duty to be liable for the debt of a third person to a creditor without, however, releasing the third person from the debt.

There is also the state programme which seeks to improve the housing lending system by providing support by the state (as a guarantee) to expand credit availability to specific categories of population for dwelling procurement and stimulating renovation of apartment houses.

Tenants of denationalized houses, families with children and inhabitants of apartment houses may apply for support under this programme (the ALTUM programme).

Tenants of denationalized houses and families with children may receive guarantees for procurement or construction of dwelling, whereas inhabitants of apartment houses – for reconstruction and repairs of their apartment houses (for instance, roof repairs, replacement of heating system, heat insulation of walls, replacement of windows, etc.).[48]

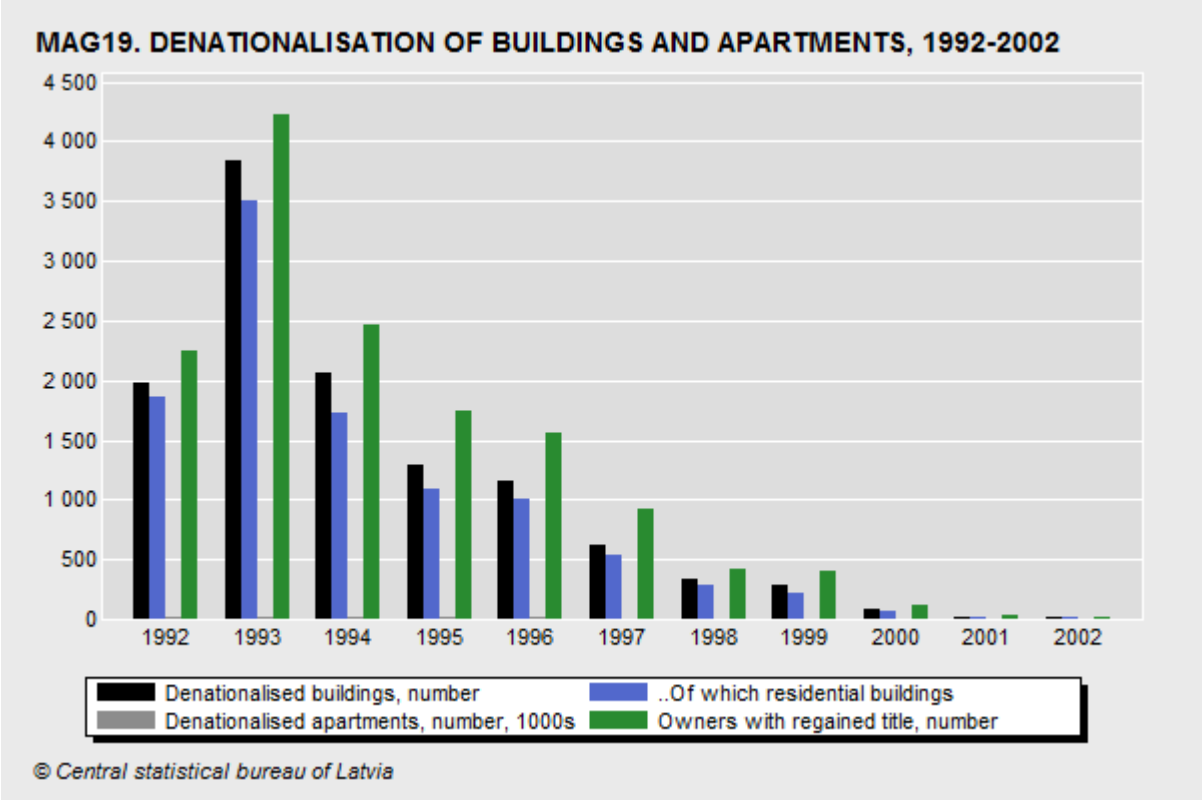
[45] Olte U. *Latvia's most colourful snowless winter attractions*. Baltic Outlook inflight magazine. February 2014, 62-63
[46] *Housing conditions*.<http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Housing_conditions >, 14 March 2014.
[47] *Housing Europe Review 2012*. <http://www.housingeurope.eu/www.housingeurope.eu/uploads/file_/HER%202012%20EN%20web2_1.pdf>, 2 March 2014.

[48] the ALTUM-programme. < http://www.altum.lv/public/29505.html>, 2 September 2013.

- ***Restituted and privatised ownership in Eastern Europe***

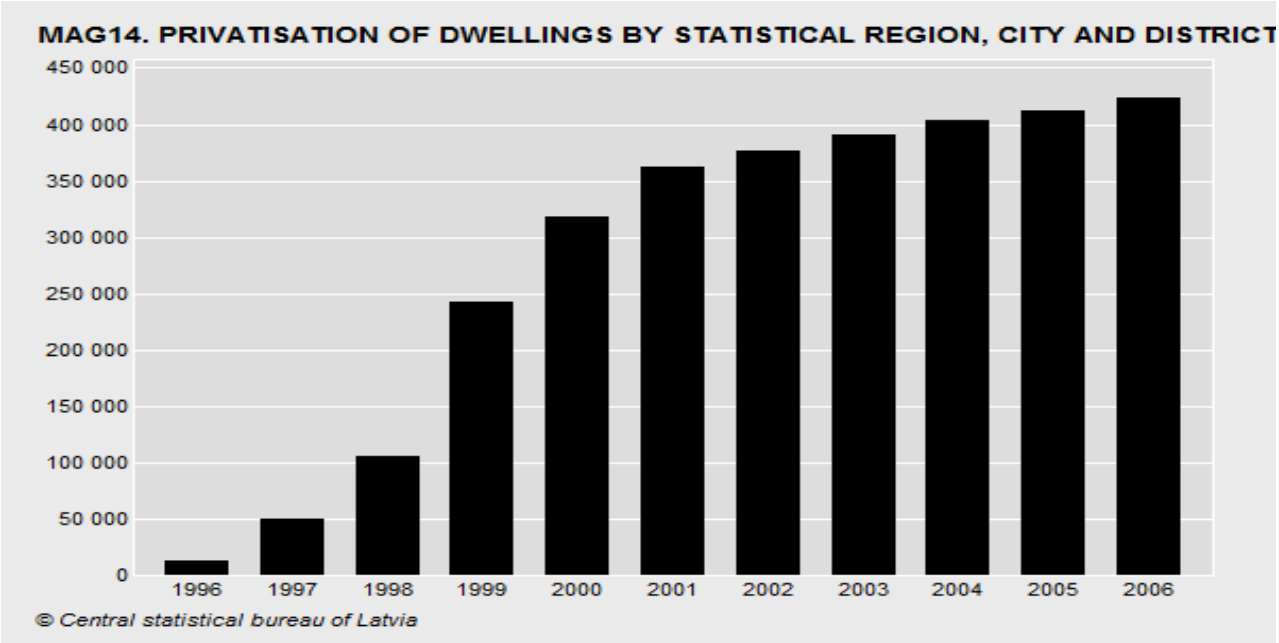
After Latvia regained the independence in 1990, the main goal was to change command economy to market economy, it meant serious changes in all areas, thus the legal basis for the restitution (denationalisation) and privatisation in urban and rural areas was created.

Please find below the statistical data about the denationalised buildings and apartments from 1992 till 2002[49]:



Please find below the graphic about the number of privatised apartments in different years[50]:

[49] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.
[50] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.



As already mentioned, the tenants occupied the dwellings before, in the Soviet time, had priority to privatize the residential space. Within the process of the privatisation inhabitants could use privatisation certificates or vouchers[51]. One certificate amounted to EUR 39,84 and could be used to buy a property from the State or a municipality. According to law:

- Each citizen of the Latvian State or was entitled to receive 1 certificate per each year, if his permanent residence was Latvia, from May 9, 1945 till December 31, 1992;

- Each citizen of the Latvian State was entitled to receive 1 certificate per each year, if his permanent residence was not Latvia, for each year of its permanent residence in Latvia up to December 31, 1944;

- In addition, each citizen who was a citizen of Latvia on June 17, 1940, as well as they heirs, might receive additional 15 certificates;

- Furthermore, each person born in Latvia with permanent residence was Latvia from May 9, 1945 till December 31, 1992 obtained one certificate for each year spent in Latvia;

- Besides, if a person born in Latvia did not live in Latvia from May 9, 1945 till December 31, 1992 it could gain one certificate for each year of its permanent residence in Latvia up to December 31, 1944;

- Moreover, persons who are not citizens and moved to Latvia in the Soviet time received one certificate for each year of permanent residence in Latvia, however, for 5 certificates less than they ought to gain since they had to compensate the Latvian State use of the infrastructure created;

[51] 16.03.1995. *Likums "Par privatizācijas sertifikātiem".* <http://likumi.lv/doc.php?id=34503>, 2 September 2013.

- Eventually, if a person being a permanent resident moved to Latvia after its retirement (55 years old – women; 60 – men) and did not work for consideration at least five years, it had no right to claim certificates[52].

The right to obtain immovables by non-citizens (Latvian: *nepilsonis*) on different stages was restricted. On April 12, 1995 the Latvian Parliament passed the Law "On the Status of Former USSR Citizens, Who are not Citizens of Latvia or Any Other State" (Non-Citizen Law). Regaining of independence after the period of occupation of Latvia gave the legislator the possibility to determine the citizen aggregate of Latvia. Continuity of Latvia as the international legal subject created the legal basis for not automatically granting the status of the citizen to a certain group of persons. The legal basis of continuity of Latvia is fixed in the May 4, 1990 Supreme Council Declaration on the Renewal of the Independence of the Republic of Latvia (Independence Declaration). It regulates both – the legal status of Latvia in the understanding of international law and judicial fundamental issues. The aggregate body of Republic of Latvia citizens was determined by October 15, 1991 Supreme Council Resolution "On the Renewal of the Republic of Latvia Citizens Rights and Fundamental Principles of Naturalization" It is pointed out in the Resolution: Although the Republic of Latvia was occupied on June 17, 1940 and the state lost its sovereign power, the aggregate body of the Republic of Latvia citizens, in accordance with the Republic of Latvia "Law on Citizenship" of August 23, 1919, continues to exist. The resolution envisaged both – the procedure for determination of the aggregate body of the Republic of Latvia citizens and the fundamental principles for naturalization. Taking into consideration continuity of Latvia as an international legal subject, there was reason for renewing the aggregate body of Latvia in the same way as it was determined in 1919 "Law on Citizenship". Thus, Latvia did not grant citizenship to persons, who had it before occupation of Latvia, but renewed the right of these persons *de facto.* It follows from both – 1991 Supreme Council Resolution "On the Renewal of the Republic of Latvia Citizens Rights and Fundamental Principles of Naturalization" and the Citizenship Law, passed in 1994 that the aggregate body of the citizens was renewed and not determined anew. In 1994 Citizenship Law the issue on those aliens and stateless persons, who up to the time the Law "On Entry into and Residence in the Republic of Latvia of Aliens and Stateless Persons" took effect (July 1, 1994) had received permanent residence permit in the Republic of Latvia and in accordance with the valid normative acts were registered in the Resident's Register, remained unregulated. Thus there was the necessity to determine a specific status for those persons, who had entered the territory of Latvia during the years of occupation, lost the USSR citizenship and did not acquire any other allegiance. Granting of the status of a non-citizen to a certain group of persons was the result of a complicated political compromise. Besides, when adopting the Non-Citizen Law Latvia had to observe also the international human rights standards, which prohibit increasing the number of stateless persons in cases of state continuity. After passing of the Non-Citizen Law appeared a new, up to that time unknown category of persons – Latvian non-citizens. Latvian non-citizens cannot be compared with any other status of a physical entity, which has been determined in international legal acts, as the rate of rights, established for non-citizens, does not comply with any other status. Latvian non-citizens can be regarded neither as the citizens, nor the aliens and stateless persons but as persons with "a specific legal status". Latvia has clearly indicated that non-citizens shall not be regarded as stateless persons, as Article 3 (the Second Paragraph) of the Law on Stateless Persons determines that persons, who are subjects of the Law "On the Status of Former USSR Citizens, Who are not Citizens of Latvia or any Other State", cannot be regarded as stateless persons. Latvian representatives at the international institutions have also

[52] 16.03.1995. *Likums "Par privatizācijas sertifikātiem".* <http://likumi.lv/doc.php?id=34503>, 2 September 2013.

consequently defended the stand that the status of a non-citizen cannot be equaled with the status of a stateless person. Non-citizens shall not be regarded as stateless persons, because – in accordance with Section 1 of the Immigration Law – alien is a person, who is not a Latvian citizen or a non-citizen of Latvia.[53]

Thus, for example, up to October 5, 1995 non-citizens were not entitled to buy tenures owned by the State or a local municipality if they have resided in Latvia at least 16 years.

As it follows from law explained and the judgement of the Constitutional Court of Latvia cited above, the Latvian State supported nationals in the first line so that they have financial means to re-gain, i.e., to purchase immovables, including, but not limited to, from the independent State.

Below you can find the table regarding the development of privatisation processes in Eastern Europe[54]:

TABLE 1
DEVELOPMENT OF PRIVATELY OWNED DWELLINGS IN CENTRAL AND EASTERN EUROPEAN COUNTRIES FOLLOWING THE PRIVATISATION PROCESS

COUNTRY	% DWELLINGS PRIVATELY OWNED (BEGINNING OF REFERENCE PERIOD)	% DWELLINGS PRIVATELY OWNED (END OF REFERENCE PERIOD)	REFERENCE PERIOD
BULGARIA	92.9	9.8	1993-2001
ESTONIA	Nav	95	2002
HUNGARY	Nav	97.7	1997
LATVIA	43.1	83	1993-2002
LITHUANIA	84.4	97.6	1993-2002
CZECH REPUBLIC	Nav	47	2001
POLAND	44	58.9	1988-2006
ROMANIA	90.8	97.5	1993-2002
SLOVAKIA	50	89	1991-2004
SLOVENIA	66.9	88	Before-after privatization

Source: UNECE, Bulletin of Housing Statistics for Europe and North America 2006; for Slovenia Ursic, Katja (2003) Social housing in Slovenia. Paper presented at UNECE Workshop on Social Housing, Prague, 19-20 May 2003; for Slovakia: Elena Szolgayová, communication with the author (2008)

Due to denationalisation (restitution) of residential houses a change of owners: from the State to private persons – took place. Up to now the state subsidizes the particular group of the tenants granting one-time payment if they move out from denationalized dwellings. In the context of privatization it has to be mentioned that such tenants could not obtain property rights buying apartments which they occupied in the Soviet time because property rights were restored to former owners or their heirs. They are considered to be more unprotected in comparison with other tenants' group, for his reason, the minister of the Ministry of Economics requested subordinates to provide explanations about the necessity of the new draft tenancy law, which proposed to abolish the protection of these tenants at all[55] (for more information, please see Part 2).

To stress again, the main problem which followed denationalisation and privatisation, as it has been already shown, is the split of property rights and the compulsory lease which is characteristic for the current rental market.

- ***Rental tenures***

[53] Judgement of the Constitutional Court of the Republic of Latvia of 7 March 2005, Case No. 2004-15-0106. <www.satv.tiesa.gov.lv>, 2 September 2013.
[54] *Housing Europe Review 2012*. <http://www.housingeurope.eu/www.housingeurope.eu/uploads/file_/HER%202012%20EN%20web2_1.pdf>, 2 March 2014.
[55] 05.02.2014. *Ekonomikas ministrs uzdevis sniegt skaidrojumu par Dzīvojamo telpu īres likuma likumprojektu*. <http://em.gov.lv/em/2nd/?lang=lv&id=33820&cat=621>, 14 March 2014.

- ***Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?***

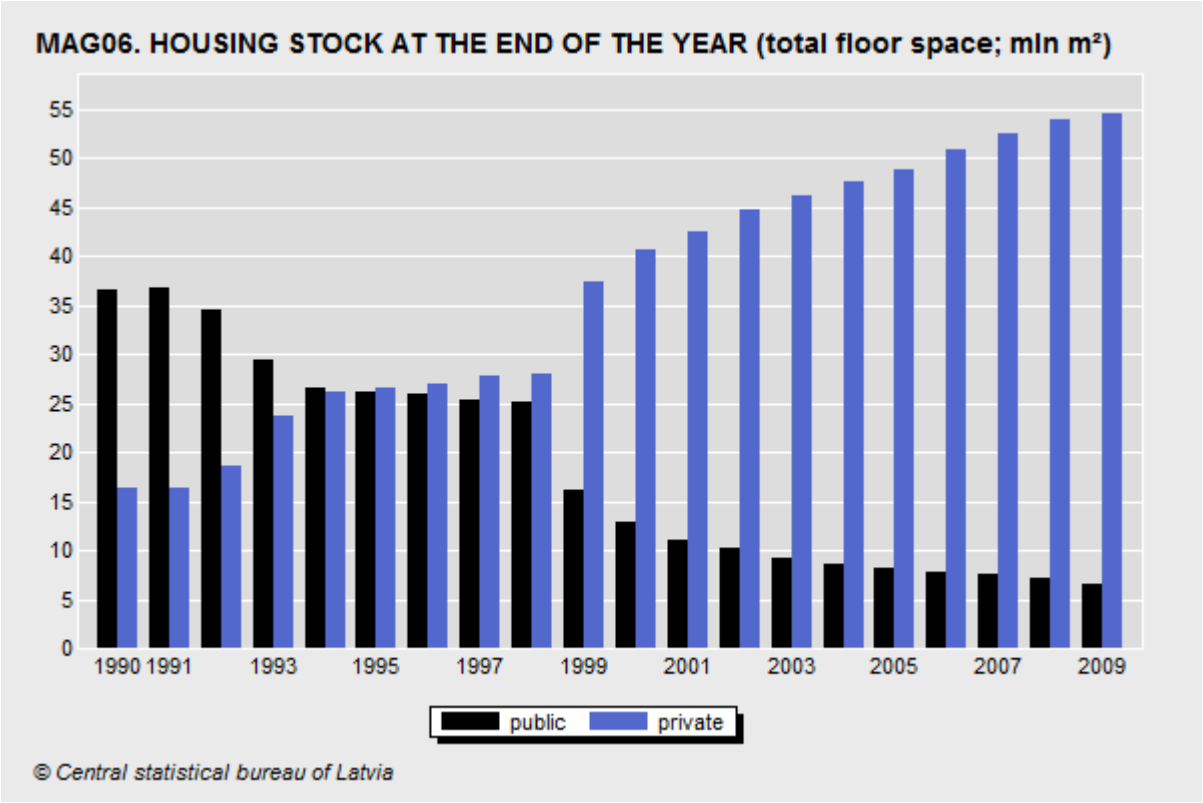
In Latvia rental tenures with and without a public task are distinguished. The public tasks can be following:

1) Rent of residential spaces owned by a local municipality;

2) Rent of a social apartment;

3) Rent of temporary residential space.

According to the statistical data[56] below the percentage of rental tenures owned by the state or local municipalities is decreased in the last twenty years:



The share of social apartments and social dwelling houses in the housing stock amounts approx. to 0.4% of the total housing stock and only 2.5 % of rental stock [57].

- ***How is the financing for the building of rental housing typically arranged? (Please be brief here as the questionnaire returns to this question in Part 1.3)***

[56] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.
[57] *Housing conditions*.<http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Housing_conditions >, 14 March 2014.; *Līdz gada beigām plāno pilnveidot īres normatīvos aktus.* <http://www.apollo.lv/zinas/lidz-gada-beigam-plano-pilnveidot-ires-normativos-aktus/511472>, 2 September 2013.

Different models to finance the building of rental houses can be used. The most popular means is bank loans combined with surety or mortgage. Personal loans and other private financing sources are not common. In the specific cases the state can give a surety to support, for example, new families within the framework of the ALTUM programme[58].

- ***Intermediate tenures: do you classify intermediate forms of tenures between ownership and renting, e.g.***
  - ***Condominiums (if existing: Different regulatory types of condominiums)***
  - ***Company law schemes: tenants buying shares of housing companies***
  - ***Cooperatives***

In Latvia you do not classify intermediate forms of tenures between ownership and renting in regards to residential premises[59].

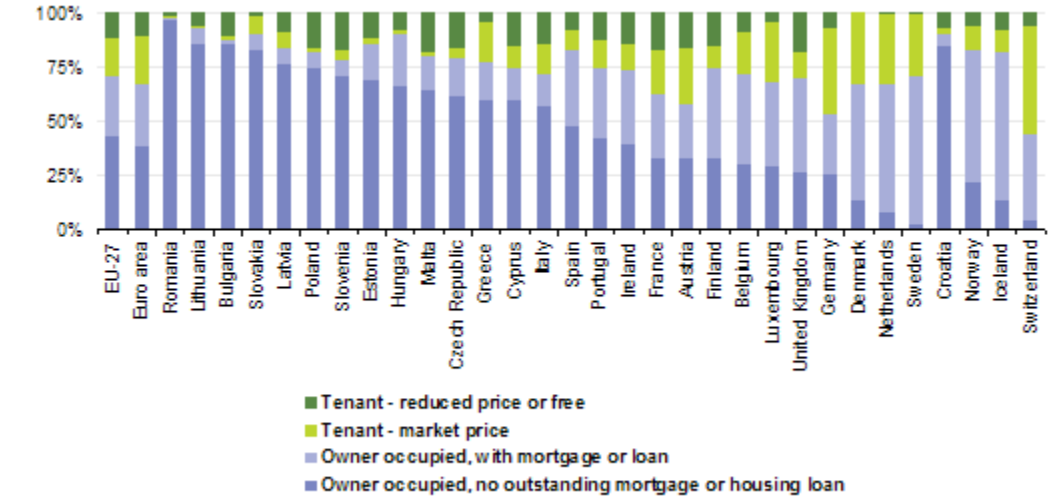
- ***What is the market share (% of stock) of each type of tenure and what can be said in general on the quality of housing provided?***

  Please consider the following criteria: type of building (single family versus multifamily versus high-rise; plus definition); construction period; number of rooms, number of square meters or average number of rooms or average useful floor area per dwelling and per person; availability of bath/shower, hot running water and/or central heating, etc.)

The share of persons living in flats was highest among the EU Member States in Latvia (65.4 %), in 2010 the highest overcrowding rates in EU were registered also in Latvia (57.1 %).

Population by tenure status, 2010 (% of population)

[58] the ALTUM-programme. < http://www.altum.lv/public/29505.html>, 2 September 2013.
[59] *Housing Europe Review 2012*.
<http://www.housingeurope.eu/www.housingeurope.eu/uploads/file_/HER%202012%20EN%20web2_1.pdf>, 2 March 2014.



Source: Eurostat (online data code: ilc_lvho02)

In Latvia 22.6 % of the population faced severe housing deprivation, with the share rising to and peaking at just over one in four persons (2010, in 2009 the number was 22,7 %).

In Latvia the total dwelling stock was in 2009 1042 and multifamily dwelling stock of total dwelling stock was 744 (out of 1000). Social rental stock is 0.4 % of total housing stock and social rental stock 2.5 % of rental stock. Number of dwellings per 1000 inhabitants is 461 (2008). Bath and shower have 60,3 % of dwelling stock, hot running water 61.6 % of dwelling stock, central heating 61.2 % of dwelling stock. Number of private households is 863,4 (2009) and average number of persons per households 2.5% (2009).

Furthermore according to the statistics approx. 25% of all households are occupied by single families and this number is growing. In the year 2011 and 2012 this percentage is 30%. If we speak about multi-families, we can see the opposite development. If in the year 2006-2009 11-12% of all households were multi-families, then in the last years the number of such families has essentially decreased for 3-4%.

The average number of rooms per person was 0.8 in 2005-2010. The positive development is that this number has grown and amounts to one room per person in 2011-2012.

Approx. one fourth of the Latvian population lives in a dwelling with a leaking roof, damp walls, floors or foundation, or rot in window frames of floor. The same share of population, i.e. 25% has neither a bath, nor a shower in their dwelling. The share of single families who lack bath or shower is higher than by multi-families.

The statistics also shows that the total number of family having neither a bath, nor a shower, nor indoor flushing toilet in their household has decreased. In year 2005-2007 the share of such families amounted to 18-19%, but in the following years amounts to 14-15%. In this case the share of single families who have neither a bath, nor a shower, nor indoor flushing toilet is higher than in case of multi-families.

- ***Which actors own these dwellings (private persons, profit or non-profit organisations, etc.)?***

Private persons mostly own these dwellings, nevertheless different state or municipality institutions can also be owners of such dwellings[60].

- ***Are there lobby groups or umbrella groups active in any of the tenure types? If so, how are they called, how many members, etc.?***

There are no lobby groups or umbrella groups active in any of the tenure types.

- ***What is the number (and percentage) of vacant dwellings?***

Unfortunately no official data is available, considering migration processes there can be many of them.

- ***Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?***

There have been problems within the denationalisation and privatisation process, as a result several acquisition and further alienations were recognized as null and void[61]. Consequently, the stability of civil circulation has been threatened, because buyers could loose the bought immovable property and paid purchase prices in some cases with a small possibility to get restitution. The jurisprudence is stabilising at the moment and the principle of good faith acquisition has the priority in most of the cases.

Furthermore, persons renting out residential spaces try not to pay taxes. Some landlords intentionally ask to pay rental and other payments in cash to hide their income from state authorities. If the tenant agrees, later he can face the situation that the landlord terminates the contract, if the tenant cannot prove that he has made payments for four months. The landlord can be confronted by the tenant's blackmailing to disclose all information to the State Revenue Service. In 2012 the State Revenue Service had information about 2068 natural persons at its disposal, who probably rented residential dwellings without registration or notification of the tax authorities in this connection. Therefore the State Revenue Service requested explanations from 1898 natural persons, why they have not registered their economic activities, requested to register their economic activity in 1393 cases and imposed administrative fines on 30 natural persons for tax provision violation[62].

Summary table 1 Tenure structure in Country **Latvia**, most recent year 2012

Home ownership	**Renting**			**Interme-diate tenure**	**Other**	**Total**
		Renting with a public task, if	Renting without a public task, if			

[60] *Housing Europe Review 2012*. <http://www.housingeurope.eu/www.housingeurope.eu/uploads/file_/HER%202012%20EN%20web2_1.pdf>, 2 March 2014.
[61] Latvijas Republikas Augstākā Tiesa. *Par Civillikuma 1415.panta piemērošanu*. 2008, www.at.gov.lv 7 October 2013.
[62] Latvijas notāru un SKDS pētījums. <www.latvijasnotari.lv>, 2 September 2013.

		distinguished	distinguished			
84.9%	15.1 %	0.4%	14.7%	-	-	100%

1.2 Economic factors

- *Prices and Affordability:*
  - ***What is the typical cost of leases and its relation to average disposable income? (Explanation: If lease is 300€ per month and disposable household income 1000€ per month, the lease-to-income ratio is 30%).***

The average income in Latvia is as follows[63]:

	2011	2012	2013
Brutto (in euro)	660	685	716
Netto (in euro)	470	488	516

The lease-to-income ratio varies from 10.2 % (2007) till 17.3% (1999). Please find below the statistics about the lease costs. Please find below the table which shows the typical cost of leases and its relation to average disposable income of households[64]:

HOUSEHOLD CONSUMPTION EXPENDITURE (%)																
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Costs of lease	14.3	15.0	16.6	17.3	16.3	14.3	13.0	12.7	12.6	12.0	12.2	10.2	11.9	15.5	16.3	16.6

The costs of Latvian inhabitants spent on housing are a little bit less than the average costs in Europe (2009), the latter amounts to 22.9% (out of 100)[65]

[63] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.
[64] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.

- ***To what extent is home ownership attractive as an alternative to rental housing***

As mentioned before, the rental market only amounts to 15.1% of all households. In respect that 84.9% of all dwellings are in ownership, it can be concluded that home ownership is more attractive in Latvia, it is also obvious that the ownership is more popular than renting.

- ***What were the effects of the crisis since 2007?***

Despite the information provided by the Latvian government on a rapid economic recovery, an improvement of the economic indicators, the social reality and the statistical data suggest that still more than one half of the population in Latvia feels an economic stress, in some regions even 76.4 % to 77.7% households. Data, however, suggest that the economic stress in households is not becoming weaker, quite on the contrary, continues to grow. 40% of Latvia's population, including 43% of the children and 33% of the pensioners are exposed to the risk of poverty and social exclusion[66].

According to another data the proportion of people who are neither income poor nor deprived ranges from 50–59% in Latvia[67], the proportion of individuals combining both income poverty and deprivation reaches 16% in Latvia [68].

- ***Investment: Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?***

  - ***In particular: What were the effects of the crisis since 2007?***

As mentioned, the newest development is connected with the increased interest of investors from the former Soviet countries who are willing to receive the residential permit in Latvia, investing in the first class dwellings. In this regard, mainly construction provides particular dwellings for the market at the moment. Unfortunately no statistics is available on this

- ***Is the market supply of rental housing sufficient?***

No information is available.

  - ***What is the number/percentage of families/households in need?***

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[65] *Housing Europe Review 2012*. <http://www.housingeurope.eu/www.housingeurope.eu/uploads/file_/HER%202012%20EN%20web2_1.pdf>, 2 March 2014

[66] *Annual Report on the year 2012 by Ombudsman of the Republic of Latvia.* < http://www.tiesibsargs.lv/ >, 14 March 2014.

[67] *Income and living conditions in Europe* edited by Anthony B. *Atkinson* and Eric *Marlier, 142.* < *http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-31-10-555/EN/KS-31-10-555-EN.PDF*>, 14 March 2014.

[68] *Income and living conditions in Europe* edited by Anthony B. *Atkinson* and Eric *Marlier, 144.* < *http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-31-10-555/EN/KS-31-10-555-EN.PDF*>, 14 March 2014.

Approx. 19% of all families or households are in need. Please find below the statistics about the percentage of households in need in different years[69]:

	2004	2005	2006	2007	2008	2009	2010
Total	19.3	23.2	21.1	25.7	25.7	21.3	19.3

- ***What is the definition of 'need' as used here (possibly in terms of areas of scarcity of dwellings versus shrinkage areas)?***

Need or material deprivation is defined as circumstances denying households' access to certain material goods. These circumstances are lack of money, unsatisfactory housing conditions and enforced refusal from use of durables[70].

- ***Among those in need, what is the number/percentage of immigrants?***

No official data is available.

- ***How is need expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?***

Material deprivation is decreasing at the moment, the crisis influenced depth of poverty, as a result inhabitants of Latvia cannot afford different goods or services. Before the crisis, unemployment rate amounted to 6.5% in 2007, this number grew up to 19.8% in 2010, at the moment the unemployment rate is 9.5% (December 2013)[71].The amount of inhabitants at risk of need has decreased from 21% in the year 2009 to 19% in the year 2011. It is the lowest rate of the risk of material deprivation since 2004 in Latvia. This result was achieved by the state social aid such as pension, unemployment benefit etc. If there were no the state social aid, the rate of people at the need risk could be 46%.

Among the EU countries the index of poverty is the second high after Bulgaria.

In the year 2011 the income of households has essentially decreased within the last four years, because of it many households could not afford substantial expenditures, respectively pay arrears on mortgage or lease, utility bills or hire purchase installments[72]:

[69] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.
[70] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.
[71] Nodarbinātības valsts aģentūra. <http://www.nva.gov.lv/index.php?cid=6&new_lang=en#profesijas>, 2 September 2013.
[72] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.

THE RATE OF HOUSEHOLDS, WHICH COULD NOT AFFORD TO COVER CERTAIN EXPENSES DUE TO THE LACK OF MONEY (%)							
	All households						
	2005	2006	2007	2008	2009	2010	2011
To pay arrears on mortgage or lease, utility bills or hire purchase installments	22.5	13.8	10.3	13.0	20.0	23.8	24.0

The government is quite positive about future economic development. It is excepted that growth in number of households will stabilize.

- ***To what extent do local market divergences play a role? Are there areas of growth and decline?***

Due to the crisis the building (construction) area experienced the decline. Market divergences also influenced prices of immovables and a number of transactions. At the moment there is a slight growth of immovable transaction in the Riga city and outskirts of Riga, including satellite town of Riga - Jurmala. In other parts of Latvia there are no significant changes in this area.

- ***What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)***

Insurances play a small role in respect to residential dwellings, in general, this field of insurance is not very developed in Latvia. Demand for insurance services is low, but stabile. The main reasons are low purchasing capacity, the lack of knowledge about insurance, often refusal of insurance company to pay consideration, as well as the lack of awareness that it could be necessary to insure property against different risks.

- ***What is the role of estate agents? Are their performance and fees regarded as fair and efficient?***

The role of estate agents is quite small. Parties prefer to do business without estate agents to cut down on middleman expenses, if it is possible. The potential tenant or buyer can assign an estate agent who acts as an intermediary and assists with the conclusion of a contract. The role and scope of activities of the estate agent depend on an agreement concluded. Estate agents provide different services, for example, provide the assistance in finding a landlord, preparation and evaluation of documents required for the conclusion of the rental contract, coordination with a notary public and administrative institutions, etc. Usually the agent demands from 50% up to 100% of one monthly rental payment plus VAT as a salary for his activities, however, other agreements are possible.

To point out, some estate agents work in the “grey market”, that is, they are not estate-agents in the meaning of the Commercial Law, but only pay taxes from their activities as self-employed persons, at the same times law does not provides any sanctions or particular limitations in this regard.

As said, the scope of activities of estate agents mainly depend on a mutual agreement, but it is difficult to tell, insofar customers are satisfied or not, because no official statistics exists, besides because of agents of the grey market.

- ***Further effects of the Current crisis***

  - ***Has mortgage credit been restricted? What are the effects for renting?***

The answer to the question is rather affirmative than negative. It should be mentioned that only 16% of all households had mortgage credits, at the moment role of consumer credits is increased, but not of mortgage credits. In practise banks and other actors who are entitled to provide credits became more reserved issuing mortgage credits. First of all it is connected with capacity to return a credit which due to crisis decreased.

A new regulation on mortgage credits is being discussed now. The Ministry of Justice created a working group to analyse and improve the current regulation on mortgage credits. The working group has concluded that it is necessary:

- To determine a minimum information about a credit contract or mortgage which should be provided to a consumer before concluding a mortgage contract with a bank, as well as to determine the character of such information;
- To define more exactly rights and liability of a surety;
- To restrict rights to ask for other securities in addition to mortgage;
- To set the amount of the highest possible interest in mortgage credit contracts;
- To provide legal measures which will contribute to an adequate evaluation of a mortgaged immovable;
- To prohibit to ask for additional securities[73].

The mentioned tendency influences renting in the way that people who are not able to acquire an apartment or house have to lease dwellings.

  - ***Indicate the Current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?***

No current figures on repossession are available.

[73] *TM ar jaunu likumu rosina aizsargāt kredītu ņēmējus.* <http://www.delfi.lv/bizness/biznesa_vide/tm-ar-jaunu-likumu-rosina-aizsargat-hipotekaro-kreditu-nemejus.d?id=42807692>, 2 September 2013.

Different legal steps were taken in this area. Thus amendments in the Consumer Protection Law were taken. Among those amendments were additional requirements regarding credit contracts in which consumers are involved, in particular purchase of residential dwellings for living purposes. Furthermore licensing of private companies, which are not banks (credit institutions[74]), were introduced and as a result activities of private credit grantors were restricted.

The amendments also determine that a creditor is not allowed to ask to return a debt in full amount before the appointed time by a credit contract or ask for additional securities, if the consumer has not essentially infringed the credit contract. Essential breach of credit contract is assumed if the consumer delayed payments for more than 60 days or for more than three times in a year and each time for more than 30 days. The essential breach is also using not in compliances with a contract.

The further amendments concern the Credit Register which provide information about debtors, amount of debt, paying off debt, breach of credit obligations by debtors etc. Before the Credit Register which was introduced in the year 2008 there was another register of debtors which started to function in 2003. The following aims of the credit register are reached: it helps to consolidate the current regulation, stabilises the financial system of Latvia and provides information on capacity of a borrower to return a debt.

Then a new law on recovering of debts out-of-court was passed. This law helps to solve the following problems which a consumer can face:

- It eliminates costs which sometimes can considerably exceed an amount of a debt;
- The law prohibits the use of aggressive methods recovering debts, for example, threats, coming to a working place of a debtor etc.;
- The new law requires to provide full and true information about a debt or its component parts.

Moreover, insolvency of natural persons was introduced in 2008 to facilitate consequences which are connected with over-debts.

Besides, the struggle by the Parliament and the courts against onerous and disproportionate contractual penalties was not only a feature of 2013, but it was also connected with delay or the lack of performance of contractual obligations, for instance, obligations on re-payment of a loan, due to the crises; below we review the most important changes in this regard:

The Civil Law amendments are the first results of this battle. Notably, the new rules will also apply to old contracts, i.e., those entered into before 1 January 2014, if they continue without disputes after 1 January 2015.

The new rules distinguish between two different contractual penalties. One of these may be imposed for absolute non-performance of obligations under a contract, the other for delayed fulfilment of contractual obligations. Moreover, a contractual penalty for absolute non-performance may not be expressed as a multiple or as increased payments, nor may it be claimed only in an amount exceeding losses occurring due to non-performance unless the parties agreed to abolish the right to compensation for loss. The second type of penalty can be contracted as increased payments, though the total is limited to 10% of the principal claim. Moreover, a contractual penalty for undue performance can be claimed only in an amount that exceeds the amount of interest arising after non-performance occurs.

Additionally, under Supreme Court guidelines on resolving disputes about contractual penalties, the court can reduce the amount of a contractual penalty, even where neither party applies for it. Here are some selected items from the guidelines:

[74] For more information, please see Part 2

Particular contracts such as labour agreements may not require an employee to pay a penalty (with some exceptions). The courts have also more actively to apply legal rules about unfair terms in consumer contracts, even at their own initiative, as required by law. The ordinary courts should also pay attention to e.g. the proportionality of contractual penalties and other legal consequences of non-performance; interest payments already made by the debtor; profitability of investments in a specific field; possible infringements of the good faith principle in relations between two legally and factually equal partners[75].

[75] Latvijas Republikas Augstākā tiesa. *Tiesu prakse līgumsodu piemērošanā*. 2013, <www.at.tiesa.gov.lv>, 2 September 2013.

Summary table 2

	Landlord	Tenant
Crisis effects	+	+
Return on investment	+	
Affordability		+
Local differences (in need, RoI and affordability)	+	+
Insurance	+	+

1.3 Urban and social aspects

- ***Urban aspects***

  - ***What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)***

The most popular type of housing are apartments in the city Riga or in the region close to Riga, houses are more characteristic for rural areas. Apartment houses are mostly situated in cities, but non-apartment houses in the villages[76]. Because of different factors there are many apartments in suburbs of the city Riga, i.e., small towns situated close to administrative border of the city Riga. The tendency is that there are more rented houses (apartments) in the big cities and less in the villages.

  - ***Are the different types of housing regarded as contributing to specific "socio-urban" phenomena, e.g. ghettoization and gentrification***

Ghettoization of districts where social dwellings and houses are situated is characteristic[77]. It happens because social dwellings are often situated in districts with poor infrastructures to lower the construction costs of such dwellings.

There is no official data on the gentrification phenomena.

[76] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.

[77] Ekonomikas Ministrija. Sociālo mājokļu koncepts. <www.em.gov.lv>, 2 September 2013.

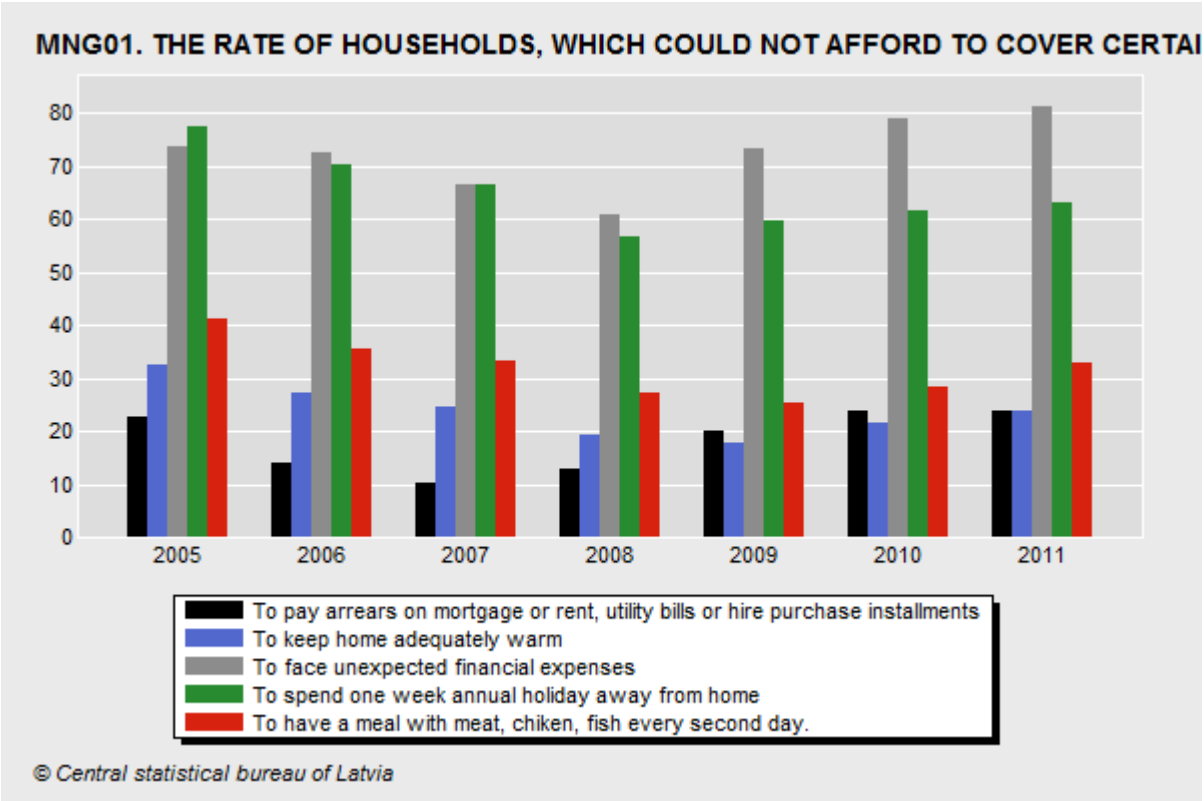
- ***Do phenomena of squatting exist? What are their – legal and real world – consequences?***

The phenomena of squatting does not exist in Latvia.

o **Social aspects**

- ***What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior?) In particular: Is only home ownership regarded as a safe protection after retirement?***

In the public opinion renting is considered as socially inferior, although home ownership cannot be regarded as a safe protection after retirement. Ownership can be influenced by inability to cover different costs. If there is an apartment or a house owned by a retired person, due to the lack of money he or she will most like exchange it for a smaller residential dwelling or start to lease premises, especially if the only source of finance is the state pension. Please find below the data about the rate of households, which could not afford to cover certain expenses due to lack of money[78]:



[78] The Central statistical bureau of Latvia. <http://www.csb.gov.lv>, 2 September 2013.

- ***What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatised apartments in former Eastern Europe not feeling and behaving as full owners)***

In Latvia there are problems regarding administration of ownership. Owners of privatised apartments are not wiling or able to administrate themselves apartment houses. In the year 2009 the Law Maintenance of Residential Houses was passed.

The law states that the administration (management) of a residential apartment house (including taking of decisions, entering into transactions related to the administration of the residential house) is the duty of the owner of the residential house. But only few houses started to administrate their property – apartment houses according to the proposed by the self-administration models, others prefer to use services of organisations which were established by local municipalities and which help to administrate residential houses. Article 21 of the Law on Maintenance of Residential Houses prescribes for the local municipality the right or the duty to appoint an assigned manager, in cases where the residential house owner does not perform the mandatory administrative activities (to which in accordance with Paragraph 6 of the Law on Maintenance of Residential Houses belongs the provision of heating, cold water and sewerage, as well as removal of household waste) and it has resulted/may result in threats to human life, health, safety, property or the environment, and/or the residential house management is performed in such a way that causes/may cause threats. The Law on Maintenance of Residential Houses regardless of the possession of a residential house provides the right to turn to the local municipality for any person whose rights have been infringed in relation to this Law or other regulatory enactments related to the fulfilment of maintenance of residential houses in such a way that endangers or might endanger their life, health, safety, property or the environment[79]. Thus, for instance, the major manager of residential houses of Riga is the private limited company established by the local municipality of Riga "Rīgas namu pārvaldnieks" which manages 4300 multi-apartment houses of Riga[80]. This company mostly manages those residential houses where the owners of apartment do not do it themselves because of different reasons. However, this company and alike seems to be more reliable than other private managers or companies because activities of other private managers of residential apartment houses are not controlled effectively, i.e., law rules are insuffiecient, what may cause different problems, including the obligation to pay double for utilities due to unlawful conduct of their manager. There have been a number of cases when owners and tenants of apartments were not aware whether managers of residential apartment fulfil their duties[81]. in the worst cases managers disappeared with all money[82], but owners and tenants had to cover payments for utilities once more.

Summary table 3

	Home ownership	Renting **with a public task**	Renting **without a public task**	Etc.

[79] *The annual report on the year 2012 of the Ombudsman of the Republic of Latvia*, 102-103. <http://www.tiesibsargs.lv>, 14 March 2014.
[80] SIA „Rīgas namu pārvaldnieks". <http://www.rnparvaldnieks.lv/index.php/par-mums>,14 January 2014.
[81] *No ūdens atslēgšanas izvairījās*. <http://www.kopaa.lv/pakalpojumi/no-udens-atslegsanas-izvairijas.html>, 14 January 2014.
[82] *Krāpnieku dēļ paliek bez karstā ūdens un iekuļas parādos.*

Dominant public opinion	is preferable	-	-	
Tenant opinion	is inferior	is inferior	is inferior	
Contribution to gentrification?	no data	no data	no data	
Contribution to ghettoization?	-	is typical	no typical	
Squatting?	no typical	no typical	no typical	

2 Housing Policy

2.1 Introduction

- ***How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?***

The housing policy is related to the following human rights: right to choose freely place of residence, the right to housing which is necessary to support health and welfare of a person and its family which, however, is not explicitly determined by the constitution, therefore is concluded from the principle of a socially responsible state (welfare state), the right to inviolability of the home and the right to property. Municipalities should secure the minimum standard of the right to housing.

The state and local municipalities of Latvia realize housing politics assuming that a person:

- Tries to provide himself or herself with a residential dwelling;

- Chooses a place of living according to his or her level of income;

- Tries to raise his or her level of income and welfare;

- Takes part in administration of dwellings owned or rented dwellings.

If a person cannot secure himself or herself with the dwelling, a respective local municipality should help in such cases, if a local municipality cannot fulfil this function, it should ask the state to grant subsidies for these purposes[83].

Housing policy is connected to the tax system in the way that the state grants tax privileges (the income tax, the immovable tax) for specific categories of persons, e.g., low income persons or for specific activities, e.g., renovation of a residential space.

[83] Latvijas pašvaldību apvienība. Mājokļu politikas pamatnostādnes. <www.lps.lv>, 2 September 2013.

- ***What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)***

Housing is a part of the following constitutional rights: ownership right and sanctity of the home. The right to housing stipulated in the international human right documents and the regulatory acts applicable in the Republic of Latvia should not be understood as the duty of the State to provide housing to each individual according to their demands and wishes; it means instead that the State has the duty to ensure compliance with the minimum standards of this right.[84]

The Constitutional Court has recognized that social rights are important, but the Constitution only provides for the specific and distinctive rights such as the right to social guarantees for old age, work disability, unemployment and other cases determined by law (Article 109 of the Constitution).

According to the Constitutional Court and the present doctrine, realization of human rights of the second generation, to which the right to housing belongs, depends on the economic situation and available resources of every particular nation.

State decisions in the sector of realization of economic, social and cultural rights, usually the political dimensions, are of importance – the legislator passes decisions in this sector being guided not so much by legal but political reasons, which are determined by the economic situation within the state and the necessity of the society, or a part of it, for the state aid or support of a certain kind. Alternatively, there are the notions of the legislator regarding the principles of rendering state social services.

The capability of the state to create an efficient and functioning social security system depends on the budgetary feasibility and the general economic situation. When the economic situation develops, the state holds the possibility to support separate residents to a greater extent. Consequently the state is also obliged to increasing financial and other types of investments of other kinds in the system of recognition of social, economic and cultural rights of individuals.

Nevertheless, the state cannot undertake the whole care about social, economic and cultural needs of an individual. In every person there is a hidden the need for independence or, at least a limited autocracy. The Constitutional Court indicated that almost everyone takes more delight in something obtained by him or her than in something granted. To a certain limit, everyone wants to be asked to protect self and kinsmen, take care of self and relatives, as well as look to the possibility of proving oneself to be able to cope with risky situations and to stand out before others. In essence, total care is equally contrary to the nature of a human being, as is being led by somebody.

From time to time it is suggested to include the right to housing in the constitution of Latvia, last time in 2012. Till now no amendments of the constitution were made.

2.2 Housing policy and actors

- ***Government actors***

[84]The homepage of the Ombudsman of Latvia. <http://www.tiesibsargs.lv/en>, 2 September 2013.

- ***Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?***

There are two levels national and local. The first level is the following:

- The Ministry of Environmental Protection and Regional Development worked out and coordinated housing policy till 2010. From 2010 the Ministry of Economics is responsible for housing policy on the national level;

- The Ministry of Environment is responsible for environmental protection so far as it is connected with housing policy;

- The Ministry of Welfware is responsible for welfare policy protection so far as it is connected with housing policy;

Local municipalities are on the second level and they realize the housing policy direct to inhabitants of their territories.

- ***Which level(s) of government is/are responsible for designing which housing policy (instruments)?***

Please see above, the previous question

- ***Which level(s) of government is/are responsible for which housing laws and policies?***

Latvia is a unitary state. The legislative power belongs to the Parliament (Article 64 of the Constitution); other constitutional actors have the right of legislative initiative in cases, set by Satversme and laws. On the other hand, the Cabinet of Ministers and local municipalities may issue regulatory enactments of the generally binding nature. The legislative competence of the Cabinet of Ministers is usually determined by law. The legislative competence of a local municipality can be also determined by law, sometimes by the Cabinet's of Ministers enactments. In addition, the competence to pass regulatory enactments is normally granted in the questions of the municipality's exclusive competence.

In the area of tenancy law the municipality has the following exclusive competence:

1) Social assistance (social care), provided to its residents, including, but not limited to assistance to residents in resolving housing matters (Article 15 of the Law on Local Municipalities);

2) Organisation of the provision of utilities (water supply and sewerage; establishing of the heating systems of residential houses; management of municipal waste; collection, conducting and purification of waste water)[85].

For information about the government's responsibility, please see above.

- ***Housing policies***

[85] *See also above*

- ***What are the main functions and objectives of housing policies pursued at Different levels of governance?***

The main objectives are the effective use of existing dwellings and development of the housing sector. These objectives are common for the both levels: the state and local level.

Within the framework of effective use of existing dwellings the following aims should be achieved:

- The legal basis concerning maintanance and supervision of apartement houses should be amended and improved;

- The state earmarked subsidies for measures which raise power efiency of apartement houses should be granted;

- The mehanism concerning crediting of renovation of apartement houses should be introduced;

- The educational system of managers of apartement houses should be introduced;

- The informational system for the society concerning dwellings should be introduced .
Within the framework of the development of the housing sector the following pobjectives should be achieved:

- The legal basis concrening construction should be improved;

- The social housing system which comlies with current demands should be created;

- Concurence in the private rental market should be improved improve;

- tax priviligies in case of apartement house renovation and acquisition of property should be granted.

The functions are divided among the state and local municipalities' institutions. The state institution works out and sets goals of housing policy, local municipalities realize housing policy as their exclusive function through assistance in solving residential space matters.

- ***In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation)?***

Yes. Home ownership is more preferable. The state grants tax privileges, if persons acquire an immovable property intended for habitation and use a credit to cover acquisition costs.

- ***Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?***

No

- ***Are there special housing policies targeted at certain groups of the population (e.g. migrants, Sinti and Roma etc)?***

No.

- ***Urban policies***

  - ***Are there any measures/ incentives to prevent ghettoisation, in particular***

No data.

  - ***mixed tenure type estates***[86]

No data.

  - "***pepper potting"***[87]

No data

  - "***tenure blind"***[88]

No data

  - ***public authorities "seizing" apartments to be rented to certain social groups***

No data

Other "anti-ghettoisation" measures could be: lower taxes, building permit easier to obtain or, in especially attractive localisation - as a condition to obtain building permit, condition of city contribution in technical infrastructure.

No data

  - ***Are there policies to counteract gentrification?***

No data

[86] Mixed tenure means that flats of Different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenised communities, and to strengthen diversification of housing supply.
[87] This mechanism is locating social housing flats among open market ones, so as not to gather lowest income families in one place. The concept is quite controversial, however in English affordable housing system was used for a long time to minimize the modern city ghettos problem.
[88] This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable form outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.

- ***Are there any means of control and regulation of the quality of private rented housing or is quality determined governed only by free market mechanisms? (does a flat have to fulfil any standards so that it may be rented? E.g.: minimum floor area, equipment, access to technical and/or social infrastructure and/or public transport, parameters such as energy efficiency, power/water consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)***

A residential dwelling shall be fit for rent, i.e., shall comply with the mandatory construction and hygiene requirements, be suitable for long-term human accommodation, as well as for placing household items. Tenants should receive the basic services which are inseparably related to the use of the residential space (heating, cold water, sewerage and removal of municipal waste) and which are necessary for the Latvian climatic circumstances.

The following criteria however, are of no importance: does minimum floor area, equipment, access to technical and/or social infrastructure and/or public transport.

The fulfilment of the regulated requirements is controlled in different ways: by Rental boards (since there is only one Rental board in Riga at the moment), local municipalities and courts.

Local municipalities may, by a council decision, establish a Rental Board, which perform the following functions:

1) In the cases provided for by law and the regulations issued by a local municipalities, draw up administrative protocols for persons who have violated laws, provisions of the Cabinet of Ministers and the binding regulations issued by a local municipalities, which regulate the renting out, maintenance and management of residential space;

2) Provide consultations and recommendations to house owners (leasers), apartment tenants (owners) and tenants (owners) of the non-residential space of residential houses;

3) Perform other functions referred to in the binding regulations issued by the relevant local municipalities.

Administrative commissions of a local municipality are entitled to examine the following administrative violation offences:

- Evasion from the duty as specified by law to maintain and manage a residential house;

- Failure to provide basic services to a tenant of a residential premise;

- Violation of construction regulations etc.

Local municipality's administrative commissions also examine administrative violation matters associated with violations of local municipality binding regulations in housing area. If an administrative violation is determined and a person is liable for committing administrative violation, an administrative sanction can be imposed.

In certain case a tenant is entitled to file a civil claim and submit it by a court in order to protect its rights and eliminate infringement of rights which is connected with the improper quality of private rented housing, for example, in cases where the landlord does not perform repairs which he ought to do. Sometimes the landlord may be also liable under the Criminal Law, then the State Police and other related institutions such as the Prosecutors' office is responsible for the criminal proceedings, if a case goes to the court, then the court applies the legal norms of criminal law.

- ***Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.: in order to prevent suburbanisation and periurbanisation? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)***

Local municipalities are obliged to help inhabitants in solving housing matters. There are no tools to regulate housing at regional level, in order to prevent suburbanisation and periurbanisation. It is also impossible to distribute local taxes so that villages can afford the limitation of housing areas[89].

Summary table 4

	National level	**2nd level (e.g. municipality)**
Policy aims	1) The effective use of existing dwellings 2)The development of the housing sector	
Laws	- The Law on Assistance in Apartement Matters - The Law on Social Apartments and Social Houses; - The Law on Residential Tenancy; - The Law on Protection of the Rights of the Child; - Provisions of the Cabinet of Ministers on the Amount and Procedure how the State Co-finances Power Efficiency Measures in Apartment Houses; - Provisions of the Cabinet of Ministers by which State Earmarked Subsidies are to be Granted to Local Governments for Solving Apartment Matters - Provisions of the Cabinet of Ministers on Subsidies To persons who Vacate Residential Space; - Generally binding provisions passed by local municipalities etc.	
Instruments	1. Assistance in purchase or construction of a residential space; 2. Assistance in the renovation and restoration of residential housing.	1. Allocation of allowance to cover payment for residential tenancy and payment for services associated with usage of the residential space; 2. Allocation of a one-time allowance for renovation of a residential space or residential house; 3. Allocation of a one-time allowance for vacation of a residential space; 4. Renovation of a residential space; 5. Assistance in purchase or construction

[89] For more information, please see above.

		of a residential space.

2.3 Subsidization

The following subsdization forms are applicable in Latvia

- Allocation of allowance to cover payment for residential tenancy and payment for utilities associated with usage of the residential space;
- Allocation of a one-time allowance for vacation of a residential space;
- Allocation of a one-time allowance for renovation of a residential space or residential house Assistance in the renovation and restoration of residential housing;
- Assistance in purchase or construction of a residential space;
- Renovation of a residential space[90].

2.4 Taxation

- ***What taxes apply to the various types of tenure (ranging from ownership to rentals)?***

One of taxes is the immovable property tax applicable to tenures. Latvian or foreign natural persons, as well as legal persons and groups of such persons (for example, association) , formed on the basis of a contract or other agreement, or their representatives should pay the immovable property tax, if they own or possess an immovable. The owner of immovable property is a person whose ownership rights to the immovable property have been registered in the Land Book or whose property rights (on buildings and engineering structures), until the renewal of legal force of the Land Book Law has been registered with a local government or with the State Land Service. To add, legal possessors pays this tax[91]. Since there are immovables entered in the Land Book because of different reasons, law provides that a person who possesses an immovable property is obliged to pay the immovable tax, though its ownership is not registered.

The immovable property tax is imposed upon tangible things which are located in the territory of the Republic of Latvia and which cannot be transferred from one place to another without being externally damaged – land, buildings, hence local municipalities receive this tax. The immovable property tax rate is 1.5 % of the cadastral value of a land and buildings; for residential houses 0.2 per % of the cadastral value, that does not exceed EUR 56915.00, 0.4 % of the cadastral share, that exceeds EUR 56915.00, but does not exceed EUR 106715.00, 0.6 % of the cadastral share, that exceeds EUR 106715.00.

A local municipality is obliged to grant tax abatement to taxpayers of the immovable tax, to which it has granted the status of the most deprived or low-income person or family – for the most deprived persons in the amount of 90 % of the calculated tax amount and for low-income persons – up to 90 % of the calculated tax amount for the period, during which the taxpayer complies with the status of

[90] For more information, please see below.
[91] For more information, please see the Part 2

the most deprived or low-income person, in relation with to residential houses, as well as to the auxiliary buildings of residential houses and garage owner co-operative societies, and garage owner associations and the garages of natural persons (excluding garages for heavy machinery and farm machinery), if they are not being utilised for the performance of economic activities. The amount of immovable property tax for politically repressed persons regarding land, as well as in relation with to residential houses, the auxiliary buildings of residential houses and garage owner co-operative societies, and garage owner associations and the garages of natural persons (excluding garages for heavy machinery and farm machinery), which have been in the ownership or possession of such persons for at least five years, shall be reduced by 50 %, if the immovable property is not utilised for economic activity. If the immovable property is partly utilised for economic activity, then the tax reduction shall not be applied to this part. Local municipalities may also determine abatements for separate categories of immovable property taxpayers in the amount of 90 %, 70 %, 50 % or 25 % of the amount of immovable property tax. Local municipalities may grant tax abatements as de minimis aid to those taxpayer categories which are performers of economic activities, pursuant to the conditions of the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid (hereinafter – Regulation No 1998/2006). If the amount of de minimis aid specified in Article 2(2) of the Regulation No 1998/2006 is exceeded, the local government shall receive a decision from the European Commission regarding the conformity of the individual aid project to Treaty prior to the granting of tax abatement. Local municipalities may also issue binding regulations, which provide for abatements for separate categories of immovable property taxpayers.

Income from the alienation of immovable property is not taxable, if the immovable has been in the ownership of the payer – natural person for more than 60 months (from the day when the relevant immovable property was registered in the Land Registry) and has been the declared place of residence of the person (which has not been declared as an additional address of the payer) for at least 12 months until the day of the entering into the alienation contract. If an immovable property, which is being alienated, has been inherited by legal, testamentary or lawful manner from a spouse, it is considered that the immovable property is in the ownership of the surviving spouse from the day when the relevant immovable property has been registered in the Land Book as the property of the estate-leaver.

Income from the alienation of immovable property is also not taxable when this income has occurred in relation to the division of property in the case of dissolution of marriage, if it has been the declared place of residence (which has not been declared as an additional address) of both spouses at least 12 months until the day of entering into the alienation contract.

When persons sell several entities of immovable property and perform it systematically with a view to gain profit the income tax should be paid.

The income from alienation of an immovable property, which is subjected to taxation, is difference between the value of property at time of disposal and the alienation value (15 %).

If an immovable property is acquired on basis of the gift contract, the alienation value is set according the gift contract. If there is no value indicated in the gift contract, the value amount to the actual cadastral value of immovable. The same provisions are applied, if an immovable property is acquired on basis of the gift contract and the giver is connected to the payer by marriage or kinship to the third degree, the income tax should be paid in full amount.

The personal income tax is to be paid, if the property title was renewed in the context of the land reform (see above).

The interest payments which are connected with the credit for acquisition of an immovable property raise the value of property at time of disposal.

Renovation and reconstruction expenses, if they can be documentary proven, also raise the value of property at time of disposal.

Enterprises pay the income tax in amount of 15% from the taxable income received by alienation of immovable.

There is no tax which should be paid at point of acquisition in Latvia, however, the Land Book duty from 1% up to 6% depending on parties, type of a contract etc. is imposed and has to be paid before the registration of property rights of the new owner. Parties may agree who of the pays the duty, normally, the buyer is the one who pays it.

In cases of the compulsory lease owners of a land plot on which an apartment house are obliged to pay the income tax from received lease.

Furthermore, the value added tax (VAT) has to be paid for utilities. The VAT is not be imposed on payments by persons for:

1) The lease of residential premises in accordance with agreements entered into (except for guest accommodation services in guest accommodation dwellings – hotels, motels, guest houses, houses utilised for rural tourism, camping places, tourist accommodation);

2) The maintenance and management services of a dwelling house, which are provided by the manager of the dwelling house in accordance with a dwelling house (apartment) management agreement.

- ***In particular: Do tenants also pay taxes on their rental tenancies? If so, which ones?***

The landlord has to pay the income tax and, if relevant, VAT. To mention, regarding the income tax, a natural person may to pay 1) 5% or 24% depending on circumstances or 2) 10%. In the first case, the landlord register self as a person performing business activities, the tax relates closely to an amount of income from rent, if it is rather small, i.e., amount to EUR 14226.00, then the fixed tax fee – 5% can be chosen. The standard taxation rate is 24%. The landlord may also not register as a performer of business activities, however, he has to inform the State Revenue Services on the conclusion of a (sub-)rental contract. One of the main differences is that the landlord may not deduct expenses fro the taxable amount in the latter case.

Tenants pay directly the immovable tax which is an obligatory part of the rental contract (Section 11 of the Law On Residential Tenancy). Tenants also pay indirect taxes such as the VAT (see above).

- ***Is there any subsidization via the tax system? If so, how is it organised? (for instance, tenants being able to deduct lease from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)***

There is almost no subsidization via the tax system, however, tax privileges concerning the personal income tax and acquisition of an immovable property exist. According to the Law on Personal Income tax income which has been obtained during the time period from January 1, 2011 to 31 December 2014 as a result of reduction or repayment of loan (credit) liabilities, if all the conditions below are fulfilled:

- The repayment of liabilities is (or at the time of occurrence of the liabilities was) ensured with a mortgage of immovable property,

- The beneficiary of income until January 1, 2009 has undertaken the liabilities with the purpose of ensuring himself or herself (or his or her family) with an immovable property intended for habitation and has used this loan for the purchase, construction, reconstruction or improvement of immovable property,

- On the day of reduction or repayment of liabilities not more than one immovable property is in the ownership of the beneficiary of income, the type of use or functional use of which is intended for habitation,

The beneficiary of income (in relation to the lender) is not and has not been connected with an undertaking, and

The lender and beneficiary of income are not connected by marriage or kinship to the third degree.

- ***In what way do tax subsidies influence the rental markets?***

Subsidization via the tax system influence acquisition of property, but do not influence the rental market.

- ***Is tax evasion a problem? If yes, does it affect the rental markets in any way?***

Tax evasion is a problem and struggling with tax evasion is one of priorities of the current government. Still this problem does not affect the rental markets, tax evasion is more characteristic for the construction market of Latvia.

Summary table 8

	Home-owner		**Landlord of tenure type 1**	**Tenant of tenure type 1**
	Name of taxation	Does it contain an element of subsidy, if any? If so, what?	Divide up columns, if there is a subsidy	
Taxation at point of acquisition	No tax at point of acquisition	-	-	-
Taxation during tenancy	The immovable tax	Yes, according to the provisions of Commission Regulation (EC) No 1998/2006 of 15 December 2006	+ (the landlord as the owner is obliged to pay the immovable tax)	+ (in cases of the compulsory lease, tenants are obliged to compensate the immovable tax in addition to the lease payments)
Taxation during tenancy	The VAT tax	No	-	+

Taxation at the end of tenancy	No tax at point	-	-	-

3. Regulatory types of rental tenures

- ***Which Different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare summary table 1)?***

In Latvia the ownership grants use of tenure; moreover, personal rights, such as rental contract on basis of which you may reside in the residential premises; furthermore, in rem rights which grants the right of use[92].

There are the following tenant security means regulated in the Civil Law and the Law on Residential Tenancy:

- Pledge or mortgage
- Guarantee or surety
- Contractual penalties
- Earnest money
- Security deposit.

Parties may agree one or several security means in a rental contract[93].

There is no information about the shares of different tenant security in dwelling stock.

- ***Please describe the regulatory types in the rental sector in your country that do not have a public task. This category may be called private or market rental housing.[94] Possibly "commercial may also be terms to describe this regulatory type.***

The private renting can be described as follows:

- *"Normal" residential rent*

This kind of rent may be established by two private persons, no explicit rent control as the determination of the highest possible rental payments in relations of two private persons does not exist in private renting[95]. The subject-matter is a residential house; an individual apartment; a part

[92] For more information, please see the Part 2
[93] For more information, please see the Part 2
[94] Market rental housing means housing for which the lease price determines the conclusion of contracts and not some social rules of allocation based on need.
[95] Judgement of the Constitutional Court of the Republic of Latvia of 8 March 2006, Case No. 2005-16-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

(i.e. a room or several rooms) of an individual or common apartment; a living room passed to get into other premises of the residential space; part of a room of an individual apartment The State and a local municipality (when it does not provide assistance in apartment solving matters, i.e., does not rent out social dwellings) may also conclude these agreements, however, in cases of the State freedom is restricted in the way that rent may consist of the maintenance expenses specified by law.

- *Rent due to employment or studies*

In this particular case the following two subtypes of rent shall be distinguished:

- Rental contracts concluded because of employment or studies, entered by private persons and regulated by the Civil Law;

- Rental contracts because of employment relations or studies, entered by a state's or local municipality's institution and private person(-s), regulated by the Law on Residential Tenancy.

Considering the legal rules, which will be the same as in the case of contracts concluded because of employment or studies, entered by private persons, rent of a room (or rooms) in a dormitory, hotel etc. also belong to this group.

- *Commercial rent*

If we understand commercial rent in the broad sense as gaining some profit using the subject-matter rented by the tenant (leaser), which will be usually a fruit-bearing property, firstly, we can speak about rent between two private persons who are non-merchants, i.e., do not use the object in their professional or commercial activity, their rent will be regulated by the Civil Law. Secondly, if at least one party is a merchant in the sense of the Commercial Law, then the respective rules of the Commercial Law will apply towards such party, though the Civil Law will be also subsidiary applicable (Article 1 of the Commercial Law).

- *Compulsory lease*

The compulsory lease is in essence similar to *in rem* rights, although it does not fit in any group of real rights, which are regulated by the Civil Law[96]. The compulsory lease relations are established, when a building or buildings are situated on the land plot, owned by another person. It means that owners of the land and building(-s) are entitled to agree on different conditions of lease of the land plot; if no agreement can be reached, the owners of the building(-s) have to rent the land with no right to opt out according to conditions stipulated by law. The compulsory lease agreement cannot be withdrawn. The lease payments for the land plot amount to 6% from the cadastral value of a respective land plot at the moment. In addition, the immovable tax should be compensated to the owner of the land. The compulsory lease payment is considered to be an obligatory payment, which the tenant must perform (Article 11 of the Law on Residential Tenancy).

- *Rent of co-owned property*

Sometimes co-owners can conclude an agreement on the separate use of the joint owned property. If the agreement on the separate use has been entered in the Land Book, the agreement is binding for third persons. A co-owner may use his actual part according to the agreement on the separate use without consent of other co-owners, which would be necessary, if no agreement existed. This agreement does not influence legal shares (German: *ideeller Anteil*), although a part

[96] Rozenfelds, J. *Pētījums par Civillikuma Lietu tiesību daļas (ceturtās, piektās, sestās un septītās nodaļas) modernizācijas nepieciešamību*. 6. <http://at.gov.lv/lv/resursi/petijumi/>, 2 September 2013.

of an immovable, actually used, can considerably differ from a share in the immovable, legally owned[97].

- ***Different types of private regulatory rental types***

  - ***Are there Different intertemporal schemes of lease regulations?***

There are no different intertemporal schemes of lease regulations.

  - ***Are there regulatory differences between professional/commercial and private landlords?***

There are almost no regulatory differences between professional/commercial and private landlords. The only difference is that consumer law is applicable when the landlord is an entrepreneur in the meaning of consumer law[98].

    - ***Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)***

Unfortunately no official data is available. Private and professional/commercial landlords can use all possible sources for the financing: own equity, mortgage based loan, personal loan, mix etc.

  - ***Apartments made available by employer at special conditions***

Latvian laws contain the rules on contract rental contracts concluded because of, entered by private persons and regulated by the Civil Law. Speaking in particular about apartments made available by employer, special conditions are less protective than the legal rules of the Law on Residential Tenancy, since the Civil Law is applicable. Besides, an employee may conclude directly a "normal" rental agreement with a landlord without involvement of the employer. The subject matter of the rental contract, entered because of employment, can be an apartment or a residential space in an official accommodation. If the matter concerns a residential space in an official accommodation, then it can be a dormitory bed or a room in the dormitory[99]. Any legal or natural person, including public bodies, may establish a residential accommodation for employees.

Unfortunately, there is no data about a number of these kinds of apartment or other living spaces in Latvia

The legal rules will be reviewed in the Part 2 related to this issue.

[97] Fore more information, please see the Part 2
[98] Fore more information, please see the Part 2
[99] 26.04.1993.Latvijas Republikas Ministru Padomes Lēmums Nr. 212 *„Par dienesta viesnīcu lietošanas noteikumiem"* <http://likumi.lv/doc.php?id=59987>, 2 September 2013.

- ***Mix of private and commercial renting (e.g. the flat above the shop)***

The following cases have to de distinguished while answering on the question:

- Parties have agreed on mixed use;
- Parties have not agreed on mixed use.

Practically parties could agree on a simultaneous residential and commercial uses of the same dwelling. However, it is disputable, insofar as the Law on Residential Tenancy allows it. Most likely, the Law on the Residential Tenancy does not recognise mixed, i.e., residence and commercial rent; using of living dwellings for purposes other than living can lead to termination of the rental contract[100]. However, if it is possible to separate dwellings in the way that a complex of residential spaces, for example, an apartment, is rented out under the residential rental contract, but another complex, even situated in the same building, is used on basis of the agreement of use of non-residential space, then this solution would comply to law[101].

- ***Please describe the regulatory types in the rental housing with a public task (typically non-profit or social housing allocated to need) such as***
  - ***Municipal tenancies***
  - ***Housing association tenancies***
  - ***Social tenancies***
  - ***Public renting through agencies***
  - ***Privatised or restituted housing with social restrictions***
  - ***Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness***
  - ***Etc.***

In Latvia social means that the local municipality rents out residential dwellings which it owns or lease from other persons for lower prices than in the market[102]. In addition, the local municipality may provide other kind of help (see below). Furthermore, the local municipality is entitled to proved a temporary residential space. Eventually, the local municipality may also provide assistance in exchanging a rented residential space for other rented residential space in order to lower rental costs.

- ***Specify for tenures with a public task:***
  - ***selection procedure and criteria of eligibility for tenants***

[100] Latvijas Republikas Augstākās tiesas Senāta Civillietu departaments. *Tiesu prakse, piemērojot likumu „Par dzīvojamo telpu īri"*, 2004, 5, <www.at.gov.lv>, 2 September 2013.
[101] Ibid.
[102] For more information, please see the Part 2.

There are specific criteria stated in different laws regarding criteria of eligibility for tenants[103]. The following persons should be provided with residential space first:

1) Persons if they are:

1.1) Low-income persons, who have reached retirement age or who are disabled;

1.2) Low-income persons, who live with and in whose care is at least one underage child, or a person under guardianship, or a low-income person who has reached retirement age, or a low-income person who is disabled; and

1.3) Other persons living in the territory of a local municipality, who belong to the category of persons specified by the local municipality council to whom a local municipality provides assistance if they are evicted from the rented residential space;

2) Politically repressed persons, who are evicted from the residential space for debts for rental payment and payment for basic services or due to residential house demolition, because of the capital repairs of the residential house;

3) Persons evicted from an apartment they own if recovery proceedings are applied against the property as a result of payments for utilities related to expenses for the residential space use, building maintenance, exploitation and renovation, and if they are:

3.1) low-income persons, who have reached retirement age or who are disabled;

3.2) Low-income persons who live with and in whose care is at least one underage child, or a person under guardianship, or a low-income person who has reached retirement age, or a low-income person who is disabled;

3.3) Politically repressed persons, if they do not use other residential space;

4) Orphans and children left without parental care and brought up in a child care and instructional institution, foster family or by a guardian – when their stay at the child care and instructional institution, in the foster-family or with the guardian has come to an end, or also when they have graduated from an educational institution; if it is not possible for them to settle in accordance with the procedures specified by the Law into the previously occupied residential space;

5) Repatriates who have emigrated from Latvia in the period up to May 4, 1990 and for whom it is not possible to settle in accordance with the procedures specified by law into the residential space they occupied before emigration from Latvia or repatriates who were born abroad or emigrated from Latvia after May 4, 1990 and at the moment of emigration were minors;

6) Low-income politically repressed persons;

7) Low-income persons who have been released from prison after serving their sentence, if they were living in the administrative territory of the relevant local government before sentencing and it is not possible to settle in accordance with the procedures specified by the Law into the residential space they occupied previously. This provision does not apply to those persons, who have given consent to privatise a State or local government apartment they lease to another person and have concluded an agreement with that person regarding termination of the right to use the residential space, or upon whose consent the apartment has been sold or otherwise alienated and as a result of the transaction the persons have forfeited the right to use the relevant apartment;

8) Other categories of low-income persons specified by the relevant local municipality council;

[103] For more information, see also the Part 2

9) Persons, if as a result of a natural disaster or an accident a residential space or a residential house rented or owned by a person in which he or she has declared his or her place of residence has perished or has been partly destroyed and cannot be restored;

10) persons, if a result of a natural disaster or an accident a residential space or a residential house rented or owned by a person in which he or she has declared his or her place of residence has been partly destroyed, but can be restored.

11) other persons according to the binding regulations of a local municipality council.

Each un-rented residential space owned by a local municipality is to be offered for rent to the persons who suffered from a natural disaster or an accident and mentioned in the Section 9-10 above, if there are such persons in the relevant administrative territory. If there are no such persons or they all have refused in writing to rent the relevant residential space, it should be offered for lease to the persons referred to the Sections 1-8 (see above) who have been registered in accordance with the respective law provisions. If such persons have not been registered or they all have refused in writing to lease the relevant residential space, it shall be offered for lease to the persons mentioned in the Section 11(see above) who have been registered to receive the relevant type of assistance.

In the context of the registration proceeding the status of a person, its eligibility, as well as respective documents are checked. The registration is necessary to submit an application on a certain type of assistance in solving apartment matters[104].

- ***typical contractual arrangements, and regulatory interventions into, rental contracts***

Usually the following information is included in the contract: 1) data about parties: name, surname, the personal identity number (also personal code) or date of birth and ID/Pass data, if no personal identity number exists (for natural persons); name, the registration code (for legal persons); 2) the signing date; 3) the signing place; 4) the signatures of parties; 5) the subject-matter of the contract indicating a cadastre number, an address and area of a immovable property, including furnishing, if relevant; 6) the rental payment amount, as well as its payment procedure and terms; 7) utilities provided to the tenant, the payment procedure and terms; 8) the person entitled to receive the rental payment and payments for utilities; 9) the duration of the rental contract; 10) the day of entering into force.

The most common contractual clauses of relevance to the tenant are as follows:

- clause on the deposit amount, its allowed use and repayment
- clause on the condition of the residential space, furnishing, home appliances, etc. which usually is fixed in the transfer and acceptance deed signed by the tenant and the landlord
- clause on routine repairs and its frequency which has to be performed by the tenant
- clause on the procedure of informing the tenant about a routine examination of the residential space by the landlord, as well as its frequency
- clause on the liability of the both parties for non-performance or improper performance of the contractual obligations
- clause on the procedure of amending of the contract
- clause on the prolongation of the contract
- clause on the pre-term termination of the contract

[104] For more information, please see the Part 2

- clauses on the prohibition to keep domestic animals or to smoke inside the dwelling.

- ***subsidization possibilities (if clarification is needed based on the text before)***

A local municipality is entitled to subsidize in the following way:

1) Allocation of allowance to cover payment for residential tenancy and payment for services associated with usage of the residential space (hereinafter – accommodation allowance)

A local municipality has the right according to the procedures and the amount specified in city council (parish council) binding regulations to pay an accommodation allowance to persons who in a denationalised house or a house returned to a lawful owner use residential space, which he or she has used up to the restoration of ownership rights;

2) Allocation of a one-time allowance for renovation of a residential space or residential house

A local municipality has the right to grant a once-only benefit for the repair of residential space or residential houses rented or owned by a person, as well as the amount of such benefit shall be determined in the binding regulations of the local municipality city council (parish council);

3) allocation of a one-time allowance for vacation of a residential space

A local municipality has the right according to the procedures and the amount specified in city council (parish council) binding regulations to grant a once-only allowance for vacating residential space to persons:

- Who vacate residential space, which is located in a denationalised house or in a house returned to a lawful owner and who were using them until the restoration of the ownership rights, or the referred to persons are evicted from the residential space;

- Who vacate an apartment in which a change of owner has occurred up to the coming into force of the Law On the Privatisation of State and Local Government Residential Housing, as a result of State ownership conversion or as a result of inter-farm undertaking privatisation and which have not been privatised according to the procedures specified in the Law On the Privatisation of Co-operative Apartments and the Law on the Privatisation of Agricultural Undertakings and Fishery Kolkhozes, and which were used by them at moment of the change of the apartment residential house owners;

- Who vacate residential space because of termination of a rental contract if a tenant owed rental payment and payment for basic services;

- Who vacate residential space because of termination of a rental contract due to capital repairs of a house (residential space);

- Who vacate residential space because of termination of a rental contract if the owner (his or her heir) of residential House denationalised or returned to lawful owner needs the residential space for living;

4) renovation of a residential space

A local municipality may provide assistance for low-income persons by repairing the residential space they lease if the local government is not the lessor of this space, or by repairing the residential space in the ownership of these persons. The local municipality does not have the right

to provide the assistance of this type to those persons who have already received a one-time allowance for renovation of a residential space or residential house;

5) assistance in purchase or construction of a residential space

The State provides assistance in the purchase or construction of residential space by issuing a relevant guarantee.

In case of purchase or construction of residential space, local municipalities may provide assistance by fully or partly covering interest payments.

A tenant or its family member may receive the mentioned assistance in purchase of construction of a residential space referred, if they are using a residential space in a denationalised house or in a house returned to a lawful owner and have been using it until the restoration of the property rights.

6) Assistance in the renovation and restoration of residential housing

The State in conformity with the amount of resources provided for in the annual State budget also provides assistance to an owner (owners) of a residential house or an apartment owner for the following purposes:

- For the restoration of residential houses recognised as a cultural monument of State significance;

- For the renovation of a residential house if the technical condition thereof has been recognised as dangerous to human life or health;

- For such renovation of a residential house in which the consequences of an act of terror, accident, natural disaster or other catastrophes must be liquidated;

- For the performance of energy-efficiency measures in the residential house.

In the time period from 2008 to 2013 the assistance for the performance of energy-efficiency measures in the residential house is provided to apartment owners if:

- The total area of a multi-apartment residential house is larger than 300 square metres, but the area of non-residential space therein does not exceed 25 per cent of the total area of the residential house;

- For the administration and management of the existing common ownership parts of a multi-apartment residential house has been established an apartment owner company or a mutual contract has been entered into regarding the administration and management of the common ownership parts of the house;

- One person owns not more than half of the existing apartment properties in the residential house.

A local municipality may provide assistance to an owner (owners) of a residential house or an apartment owner, granting funding for the following purposes:

- For the restoration of residential houses recognised as a cultural monument of State significance;

- For the renovation of a residential house if the technical condition thereof according to the procedures specified in regulatory enactments has been recognised as dangerous to human life or health;

- For such renovation of a residential house in which the consequences of an act of terror, accident, natural disaster or other catastrophes must be liquidated;

- For the performance of energy-efficiency measures in the residential house; and

- For the improvement of the piece of land attached to the residential house.

- ***from the perspective of prospective tenants: how do I proceed in order to get "housing with a public task"?***

If a person wants to get housing with a public task, it should have declared its place of domicile in the territory of a respective local municipality. Afterwards the person must submit an application together with the necessary documents which are determined by laws, statutes of the Cabinet of Ministry and the respective municipality to the municipalities. In the application a desired assistance in solving apartment maters should be indicated.

After examination of the submitted documents the authorised body of the municipality takes the decision on the registration of the person in the register. According to the order specified by law and other legal provisions the person can get housing with a public task.

Summary table 9

Rental housing **without a public task**	• Ownership, possession or rental relations (in case of sublettin) are relevant for the rental market. • Different law provisions concern tenure of residental and non-residental dwellings. • The main regulatory source of rent is the Law on Residential Tenancy and tthe Civil Law. • The only specific security which is regulated in the Law On Residential Tenancy is the security deposit secures the fulfilment of rental contract obligations by a tenants. • Other security means are the following: pledge or mortgage, guarantee, contractual penalties, earnest money. These securities are common for all types of obligations and may be freely determined in accordance with a mutual agreement. • Not only employees, but also students are entitled to get apartments at special conditions.
Rental housing for which a **public task** has been defined as assistance of the local municipality renting out residential spaces and providing other assistance.	• A local municipality and the state by Different means provide assistance to ihabitants. • Persons in need, persons suffered from a natural disaster, disabled persons, inhabitants of the denationalized or privitased houses etc. are entitled to get assistance in solving of apartement matters.

Municipal tenancy as renting with public task	• To the destinction of renting with public task belongs selection procedure and criteria of eligibility for tenants. • Local municipalities provide not only rental services of residental dwellings, but also Different subsidies (allowance) for Different purposes, for example, for puchase, restoration etc. of the resindental place.

- For which of these types will you answer the questions in Part 2; which regulatory types are important in your country?

The Part 2 provides answers regarding all regulatory types in Latvia.

Part 2: Tenancy Law

The origin of national tenancy law goes back to the end of the 19th century. One of the main sources of private law and therefore of tenancy law is the present Civil Law passed in 1937, as well as the Law on the Residential Tenancy adopted in 1993. Latvian tenancy law is liberal and orients itself on the free market economy, where the protection of the property right and party autonomy is brought to the forefront.

1. Origins and Development of Tenancy Law

- ***What was the origin of national tenancy law and where was and is it laid down (civil code, special statute, case law)?***

The origin of national tenancy law dates back to the end of the 19th century. This law originated from several different sources.

The Latvian legal system is based on principles of Romano-Germanic law or Continental law system. Consequently, the Latvian legislation is subject to the following hierarchy:

1) Constitution;

2) Laws passed by the Parliament;

3) Cabinet regulations;

4) Compulsory local municipality regulations.

Case law is an auxiliary source used as an interpretative instrument[105].

It should be mentioned that the doctrine of continuity has been adopted in Latvia. In short, this doctrine means that all legal relations, which existed during the time of the first independence of the Latvian state (1918-1940), ought to be continued after the re-establishment of independence. Those legal relations, which were established in the Soviet time, are continued, if the present laws state them and Soviet laws comply with the new democratic order in the state.

We will review different legal sources of national law taking into account the hierarchy of the Latvian legislation.

1. The Constitution is the most important source of tenancy law which is situated at the top of the hierarchy of regulatory enactments.

There is no right to housing stipulated in the ***Constitution*** of Latvia (*Satversme*). In fact, the Constitution of 1922, which was reinforced after regaining independence in the year 1991, contained no human rights at all.

[105] *Legal order – Latvia*. <http://ec.europa.eu/civiljustice/legal_order/legal_order_lat_en.htm>, 2 September 2013.

The Constitution of 1922 contained no human rights at all. The Constitutional Assembly of Latvia adopted the first part of the Constitution on February 15, 1922. The second part of the Constitution which contained human rights could not be adopted because many parliamentarians had refrained from voting[106]. Therefore, the second part of the Constitution had not been approved by the Parliament.

When the Soviet Union annexed Latvia, it enforced its Constitution. On August 24, 1940 the "People's Parliament," which was formed by Soviet authorities, adopted the Constitution of the Latvian Soviet Socialist Republic (SSR) setting forth a regulatory framework for the activities of the Cabinet of Ministers. In 1978, the new SSR Constitution was adopted. These legal acts were in force until the restoration of independence of the Republic of Latvia.

The new SSR Constitution of 1978, unlike the 1922 constitution, provided the right to housing. This right was ensured by the development and protection of the state and public housing and assistance in cooperative and individual housing. This right included fair distribution under the state supervision of residential dwellings according to the program of building of comfortable living residences, a low-rent payment price and payment for rent and utilities[107].

After the re-establishment of independence, the *Satversme* of 1922 had been restored. On December 10, 1991 the constitutional law on human rights (Latvian: *Cilvēka un pilsoņa tiesības un pienākumi)*[108] was passed; however, the right to housing was not included under this law. Later, by the amendment of October 15, 1998, the chapter on fundamental human rights was added to the *Satversme*.

Tenancy law is connected with the principle of a socially responsible state (welfare state) following from Article 1 of the Constitution, the right to inviolability of the home determined in Article 98 and the right to property as stated in Article 105.

The right to housing relates to the concept or principle of a socially responsible state. The principle of the socially responsible state follows from Article 1 of the *Satversme* which stipulates that Latvia is an independent and democratic Republic. The aim of a socially responsible state is to level the most vital social public difference and to ensure satisfactory living standard for every group of residents.

The Constitutional Court pointed out in its judgments that the Latvian constitutional legislator has determined that Latvia is a socially responsible state, in other words, this is a state, which is trying to potentially, extensively realize social justice in the legislature, administration and court judgments[109].

The Constitutional Court has recognized that social rights are important, but the Constitution only provides for the specific and distinctive rights such as the right to social guarantees for old age, work disability, unemployment and other cases determined by law (Article 109 of the Constitution).

According to the Constitutional Court and the present doctrine, realization of human rights of the second generation, to which the right to housing belongs, depends on the economic situation and available resources of every particular nation.

State decisions in the sector of realization of economic, social and cultural rights, usually the political dimensions, are of importance – the legislator passes decisions in this sector being guided not so much by legal but political reasons, which are determined by the economic situation within

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[106] Ziemele, I. *Cilvēktiesības pasaulē un Latvijā :grām. augstskolu studentiem, speciālistiem un interesentiem.* Rīga: Izglītības soļi, 2000, 194

[107] Еран, П.П. (ed.) *Советская Латвия.* Рига: Главная редакция энциклопедий, 1985, 27, 461

[108] *Konstitucionālais likums "Cilvēka un pilsoņa tiesības un pienākumi"* <http://www.likumi.lv/doc.php?id=72346>, 2 September 2013.

[109] Judgement of the Constitutional Court of the Republic of Latvia of 2 March 2006, Case No. 2006-07-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

the state and the necessity of the society, or a part of it, for the state aid or support of a certain kind. Alternatively, there are the notions of the legislator regarding the principles of rendering state social services.

The capability of the state to create an efficient and functioning social security system depends on the budgetary feasibility and the general economic situation. When the economic situation develops, the state holds the possibility to support separate residents to a greater extent. Consequently the state is also obliged to increasing financial and other types of investments of other kinds in the system of recognition of social, economic and cultural rights of individuals.

Nevertheless, the state cannot undertake the whole care about social, economic and cultural needs of an individual. In every person there is a hidden the need for independence or, at least a limited autocracy. The Constitutional Court indicated that almost everyone takes more delight in something obtained by him or her than in something granted. To a certain limit, everyone wants to be asked to protect self and kinsmen, take care of self and relatives, as well as look to the possibility of proving oneself to be able to cope with risky situations and to stand out before others. In essence, total care is equally contrary to the nature of a human being, as is being led by somebody. This point of view of the Constitutional Court has been supported by public institutions of Latvia. Thus it is said in the document on housing politics (2005) that the state and local municipalities believe that an individual tries to provide a residential space itself in accordance with his income, as well as tries to improve its standard of well-being[110]. The state and other public institutions provide assistance and help to the weakest members of the society.

Social rights are a specific constituent of human rights norms, which in international human right instruments and organizations of other nations are primarily formulated as general obligations of each nation. However, such a conclusion does not mean, that the right to a certain title, namely (the right to require the state of Latvia to grant the necessary social security) may not arise for a person. If some social rights are included in the Constitution, then the state cannot refuse to grant them to individuals; this to say that these rights do not have only declarative in nature[111]. A person therefore has the right to housing, when the level of welfare allows for the provision of help and assistance in housing matters.

As can be seen from the above discussion, the right to housing may not be derived from Article 1 of *Satversme*, although it is generally recognized that Latvia is a socially responsible state

Under Article 96 of the Constitution, everyone has *the right to inviolability of the home*[112]. The **home** here refers to any physically determined living space where the private and family life of a person occurs. Under this Article home is protected as a natural part of the private life and not as the aggregate of things and belongings owned by the person (the home as property is protected by Article 105 of the Constitution).

It is necessary to establish that the place in question may and is actually used for the exercise of the private and family life of the person, then the protection is granted.

The Constitution of the Republic of Latvia protects all types of living residences regardless who owns them and how often they are used[113].

The right to inviolability of the home forbids the state, for example, to observe the home constantly, demolish, and disrupt the use it for the family and private life[114].

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[110] Latvijas pašvaldību apvienība. Mājokļu politikas pamatnostādnes. 14, <www.lps.lv>, 2 September 2013.

[111] Judgement of the Constitutional Court of the Republic of Latvia of 11 December 2006, Case No. 2006-10-03. <www.satv.tiesa.gov.lv>, 2 September 2013.

[112] *The Constitution of the Republic of Latvia (Latvijas Republikas Satversme).* <http://www.satv.tiesa.gov.lv/?lang=2&mid=8>, 2 September 2013.

[113] Balodis, R. (ed.) *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Rīga: Latvijas Vēstnesis, 2011, 263

Hence tenants have the right to inviolability of their home that is rented and are entitled to ask to stop interference in the right to inviolability of the private home. The legislator is obliged to pass such regulations which would help to ensure the right to inviolability of the home of tenants.

Since the Constitution does not directly grant the right to housing, but it does grant the right to inviolability[115], as discussed above, it was suggested in 2006 that the Constitution be supplemented with the right to housing. The offered amendment was closely connected with the cancellation of rent payment controls in the denationalised houses. Because of this cancellation, landlords of returned (denationalised) property increased rent payments, and for many tenants, whose landlords changed within the process of denationalisation, new rent payments were too high. However, the suggested amendment to the Constitution has yet been adopted.[116]

The right to inviolability of the home may be limited only in cases prescribed by law, in order to protect the rights of other people, a democratic state system, the safety of society, welfare and morals (Article 116 of the Constitution). For example, if a person occupies a living dwelling without a rental agreement, eviction of him or her would not infringe the right to inviolability of the home[117].

Article 105 of the Constitution determines that everyone has *the right to property*; however, the property may not be used against the interests of society; property rights may be restricted only in accordance to the law; the forced alienation of property for the needs of society is permissible in exceptional cases on the basis of an individual law, for fair compensation[118]. According to the doctrine adopted in Latvia, the state is not obliged to grant a certain property minimum to a person, for example, a living wage or lodging[119].

The Constitutional Court provided a comprehensive analysis of the right to property[120]. The scope of the right to property is not limited to the ownership notion under the Civil Law, i.e. Property Law, but refers to all kinds of private or public rights of an economic nature which belongs to a person[121]. These rights shall be lawfully obtained, otherwise, they will not fall into the scope of Article 105 of the Constitution[122].

The right to property can be restricted. Article 116 of the Constitution also provides that the right to property may be limited only in cases prescribed by law, in order to protect the rights of other people, a democratic state system, the safety, welfare and morals of society.

2. Laws, passed by the Latvian Parliament, are situated below the Constitution, but above cabinet regulations. The hierarchy of legal provisions of different sources is important while interpreting laws. The legal provision of law of lower legal force may not contradict the norm of law of higher

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[114] Balodis, R. (ed.) *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Rīga: Latvijas Vēstnesis, 2011, 264

[115] Balodis, R. (ed.) *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Rīga: Latvijas Vēstnesis, 2011, 265

[116] *Grozījums Latvijas Republikas* Satversmē. Likumprojekts Nr. 1552. <http://www.saeima.lv/saeima8/lasa?dd=LP1552_0>, 2 September 2013.

[117] *Grozījums Latvijas Republikas* Satversmē. Likumprojekts Nr. 1552. <http://www.saeima.lv/saeima8/lasa?dd=LP1552_0>, 2 September 2013.

[118] *The Constitution of the Republic of Latvia (Latvijas Republikas Satversme)*. <http://www.satv.tiesa.gov.lv/?lang=2&mid=8>, 2 September 2013.

[119] Balodis, R. (ed.) *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Rīga: Latvijas Vēstnesis, 2011, 466.

[120] Judgement of the Constitutional Court of the Republic of Latvia of 30 April 1998, Case No. 09– 02(98). <www.satv.tiesa.gov.lv>, 2 September 2013. ; Judgement of the Constitutional Court of the Republic of Latvia of 25 March 2003, Case No. 2002-12-01. <www.satv.tiesa.gov.lv>, 2 September 2013.;Judgement of the Constitutional Court of the Republic of Latvia of 8 March 2006, Case No. 2005-16-01. <www.satv.tiesa.gov.lv>, 2 September 2013. ; Judgement of the Constitutional Court of the Republic of Latvia of 15 April 2009, Case No. 2008-36-01. <www.satv.tiesa.gov.lv>, 2 September 2013. ; Decision of of the Constitutional Court of the Republic of Latvia of 8 February 2011, Case No. 2010-22-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

[121] Balodis, R. (ed.) *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Rīga: Latvijas Vēstnesis, 2011, 466.

[122] Decision of of the Constitutional Court of the Republic of Latvia of 6 December 2011, Case No. 2010-31-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

legal force. The legal norms shall be applied in accordance with their place in the hierarchy of the legal force of regulatory enactments, mentioned above.

Private and public law is distinguished in the Latvian legal system. Three theories are usually applicable in order to determine, if a respective legal provision belongs to private or public law, which are as follows: the interest theory, subjection theory and subject theory.

According to the interest theory (German: *Interessentheorie*), private and public law can be distinguished considering protected interests by a legal provision. If provisions tend to protect the interests of a particular person or persons, they are a part of private law; if respective provisions protect the interests of the state or society, they belong to public law.

The subjection theory (German: *Subordinationstheorie***)** stipulates that public law is such a law which establishes the subordination relations between the state and an individual, but private law establishes cooperation or self-determination relations between equal actors[123].

The subject theory (German: *modifizierte Subjektstheorie*), examines the basis of granted rights by a legal norm. It is assumed that legal provisions of public law grant the state powers and competencies to the state and state bodies, but private law grants different rights to anyone[124]. This theory shall be applicable in cases when other theories do not give a clear answer about the nature of a legal enactment[125].

Below we will briefly review the main law belonging to private law with do not have public task. Then we will continue with the sources of tenancy law with public task, which contain the both: legal rules of public law and private law. Eventually, we will review the sources of administrative and criminal liability for violation of tenancy law provisions which are exclusively a part of public law.

It is also to mention that historically, private law was mostly influenced by the German law, then public law – by the Russian and later by Soviet law. However, German laws on administrative procedure were taken as a model while working on the national Administrative Procedure Law (Latvian: *Administratīvā procesa likums*) which is a part of public law.

2.1. The Civil Law (Latvian: *Civillikums*)[126] currently in force was proclaimed on January 28, 1937 and came into force on January 1, 1938. After the re-establishment of independence of Latvia in 1991, it was decided to restore the Civil Law of 1937. Working on a new project of the Civil Code of the independent Latvian state and analysing the Civil Law of 1937, it was concluded that the latter law of 1937 is perfectly suitable for a market economy[127].

Notably, the Latvian Civil Law has similarities to the civil law codification of Switzerland and Germany. The Civil Law of 1937 replaced the Civil Law of 1864 (German: *Provinzialrecht der Ostsee-Gouvernments, Teil 3. Privatrecht*[128]*;* Russian: *Свод гражданских узаконений губерний остзейских. Часть 3. Законы граждане*[129]). The Civil Law of 1864 was originally drawn up in the German language by *Friedrich von Bunge* and after that was translated into Russian[130]. The

[123] Briede, J. Administratīvais akts. Rīga, LV, 2003, 92-93, Danovskis E. *Publisko un privāto tiesību dalījuma nozīme un piemērošanas problēmas Latvijā.* Latvijas Universitāte. Juridiskā fakultāte, 2012, 63

[124] Briede, J. *Administratīvais akts*. Rīga, LV, 2003, 94-95, Danovskis E. *Publisko un privāto tiesību dalījuma nozīme un piemērošanas problēmas Latvijā.* Latvijas Universitāte. Juridiskā fakultāte, 2012, 63

[125] Danovskis E. *Publisko un privāto tiesību dalījuma nozīme un piemērošanas problēmas Latvijā.* Latvijas Universitāte. Juridiskā fakultāte, 2012, 64

[126] 28.01.1937. *Civillikums.* <http://likumi.lv/doc.php?id=225418>, 2 September 2013.

[127] Ziemele, I. *Cilvēktiesības pasaulē un Latvijā :grām. augstskolu studentiem, speciālistiem un interesentiem.* Rīga: Izglītības soļi, 2000, 230

[128] *Provinzialrecht der Ostsee-Gouvernments, Teil 3. Privatrecht.* Nach der Ausgabe von 1864 und der Fortsetzung von 1890. Herausgegeben von H. von Broecker. Jurjew (Dorpat):Commisssions-Verlag von J.G. Krüger, 1902

[129] *Свод гражданских узаконений губерний остзейских. Часть 3. Законы граждане.* Санкт-Петербург: Отд-ния Собств. е. и. в. канцелярии, 1864

[130] Пахман, С. В. *История кодификации гражданского права: в 2-х томах*. том 2. Санкт-Петербург : тип. 2 Отд-ния Собств. е. и. в. канцелярии, 1876, 343

both redactions, i.e., versions in German and Russian were official. The Latvian unofficial version existed as well.

Becoming an independent nation, the Civil Law of 1864 was kept and called the Code of Local Civil laws (Latvian: *Vietējo civillikumu kopojums*), then the Civil Laws (Latvian: *Civīllikumi*).

The Civil Law of 1864 was for approx. 70 years in force within the territory of the modern Latvian state. The Civil Law of 1864 and its commentaries exerted influence not only on the Civil Law of 1937, which replaced the Civil Law of 1864, but continue to influence the modern scholars and jurisprudence of the Latvian courts[131]. Although the issue whether the Civil Law of 1937 formally continues the Civil Law of 1864 (the doctrine of continuity) has been disputed and rejected by scholars of the twentieth century[132], at the same time they recognized that considering the content and essence of the Civil Law of 1937 there is an obvious link between the laws in question[133].

The Civil law of 1937 is a reviewed and modernised version of the law of 1864. Many provisions were transferred from the law of 1864 to the law of 1937 without changing them. Many modern scholars recognize the continuity of the both laws mentioned[134]. Therefore legal materials about the Civil Law of 1864 can be used in relation to the present Civil Law.

Provisions of the Civil Law were not applied when the Soviet legal system was forcibly imposed in Latvia, until its re-enactment in 1990-1991[135].

The reinforcement of the Civil Law of 1937 took place in the following stages:

On September 1, 1992 the Introductory part, Law of Succession and Property Law entered into force, but on March 1, 1993 - the Law of Obligation and finally on September 1, 1993 - the Family Law[136].

The Civil Law has an introductory part and four books. The Introductory part (Latvian: *Ievads*) contains general provisions and provisions of international private law. There are the following books or parts of the Civil Law: Family Law (Latvian: *Ģimenes tiesības;* German: *Familienrecht*), Law of Succession (Latvian: *Mantojuma tiesības;* German: *Erbrecht*), Property Law (Latvian: *Lietu tiesības;* German: *Sachenrecht*) and Law of Obligations (Latvian: *Saistību tiesības;* German: *Schuldrecht*).

The Introductory part has 25 articles; most provisions belong to international private law.

If we compare the Latvian Civil Law with the German *Bürgerliches Gesetzbuch*, the Latvian law does not have the General Part comprising the common legal for all four parts. Instead, Article 6 of the Introductory part of the Latvian Civil Law stipulates that the general provisions of the Law on Obligations are applicable *mutatis mutandis* to family, inheritance and property legal relations.

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[131] Balodis. K. *Ievads civiltiesībās.* Rīga: Zvaigzne ABC, 2007, 20; Civilists "Revīzija vai reforma? Piezīme pie Latvijas Civiltiesību kodeksa projekta". *Jurists* No. 1(1928): 3-6

[132] Prezidenta Ulmaņa Civillikums. Rakstu krājums. Rīga: Pagalms, 1938, 91

[133] Prezidenta Ulmaņa Civillikums. Rakstu krājums. Rīga: Pagalms, 1938, 75

[134] Balodis. K. *Ievads civiltiesībās.* Rīga: Zvaigzne ABC, 2007, 20; Osipova S. Nacionālo tiesību nenacionālie avoti. XX gadsimta starpkaru posms Latvijā. <http://www.juristavards.lv>, 2 September 2013.; Schwartz P. *Das lettländische Zivilgesetzbuch vom 28. Januar 1937 und seine Entstehungsgeschichte*. Aachen: Shaker 2008, 152

[135] Faber W., Lurger B.(eds.) *National Reports on the Transfer of Movables in Europe. Volume 6: The Netherlands, Switzerland, Czech Republic, Slovakia, Malta, Latvia*. Sellier. European law publishers GmbH, 2011, 551

[136] 25.05.1993. *Likums „Par atjaunotā Latvijas Republikas 1937. gada Civillikuma ģimenes tiesību daļas spēkā stāšanās laiku un kārtību"*. <http://likumi.lv/doc.php?id=57034>, 2 September 2013. ; 22.12.1992. *Likums „Par atjaunotā Latvijas Republikas 1937. gada Civillikuma saistību tiesību daļas spēkā stāšanās laiku un piemērošanas kārtību."* <http://likumi.lv/doc.php?id=62911>, 2 September 2013.

Tenancy law is regulated in the Fourth Book of the Civil Law.

The present Article 2112 of the Civil Law states that a rental contract is a contract pursuant to which one party grants or promises the other party the use of property for a rental payment. A rental contract (German: *Mietvertrag)* grants use of a not fruit-bearing property, whereas use of a fruit-bearing property is called lease and occurs on the basis of a lease agreement (German: *Pachtvertrag)*.

During the Soviet time, the Civil Code of the SSR of Latvia (Latvian: *Latvijas PSR Civilkodekss*) was in force. The latest Civil Code of the SSR of Latvia was confirmed by the Latvian State Council on December 27, 1963. This Code entered into force on June 1, 1964.

Article 310 of the Civil Code of the SSR of Latvia stated that residential premises may be used in accordance with a rental contract concluded between the landlord - a public housing fund organisation, enterprise, institution or organisation – and the tenant who was a natural person. In houses which belonged to personal property, a rental contract could be concluded between a tenant and an owner of such property[137].

After regaining the independence, the Latvian State Council (Latvian: *Latvijas Republikas Augstākā Padome*) passed the decision on the temporary application of the laws of the SSR of Latvia of August 28, 1991.

The Latvian State Council was a temporary legislator in the time period from 1990 to 1993. The indicated decision established that the Civil Code, Housing Code, Civil Procedure Code of the SSR, etc. shall be in force until the independent Latvian state replaces them with new laws and regulations[138].

As said, the Civil Code of the SSR of Latvia was replaced by the Civil Law of 1937. The Civil Law has been amended and supplemented in the course of time. Thus, the Family Law Book was widely improved. There are also two conceptions on Modernisation of the Law of Succession[139] and Property Law[140] passed by the Minister Cabinet; in this connection working groups were established, which are preparing necessary law amendments to the Civil Law. The Law of Obligations was amended six times up to 2013 and changes were not widespread.

The Law on Residential Tenancy contains specific provisions for rent of residential premises. The Civil Law is applicable, insofar as as it is not restricted by the Law on Residential Tenancy (*Likums "Par dzīvojamo telpu īri"*)[141].

The development of the Law on Residential Tenancy was the following:

The first special law (*lex specialis*) - the Law on Rent of Dwellings (Latvian: *Likums "Par telpu īri"*)[142] was adopted in 1924. This law set the maximum amount of rent. In the course of time, the provisions of the law of 1924 had been changed, and rent payments became subject to freedom of contract, i.e., free choice of a landlord and a tenant.

According to the amendments of 1936 to the Law on Rent of Dwellings, the law of 1924 was only applicable to apartments, which had no more than three rooms and were situated in Riga. All other rental agreements were regulated by the Civil Law.

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[137] Latvijas PSR Teslietu Ministrija. *Latvijas Padomju Sociālistiskās republikas Civilkodekss*. Oficiāls teksts ar pielikumiem, kuros izvietoti pa pantiem sistematizēti materiāli. Rīga, Avots, 1988, 148

[138] Latvijas Republikas Ministru Padomes 28.08.1991. *Lēmums „Par Latvijas PSR likumdošanas aktu piemērošanu Latvijas Republikas teritorijā"* <http://likumi.lv/doc.php?id=68772>, 2 September 2013.

[139] 19.11.2009. Ministru Kabineta *rīkojums* Nr.797 <http://likumi.lv/doc.php?id=200900>, 2 September 2013.

[140] 13.09.2010. Ministru Kabineta *rīkojums* Nr.541 <http://likumi.lv/doc.php?id=217866>, 2 September 2013.

[141] 16.02.1993.*Likums "Par dzīvojamo telpu īri".* <http://likumi.lv/doc.php?id=56863>, 2 September 2013.

[142] Aronietis, A. *Likums par telpu īri un tiesu prakse īres lietās (izvilkumi no Senāta spriedumiem)*. Rīga: Autora izdevums, 1930

In the year 1938 a decree was issued and it prohibited increasing rent payments in rental contracts, which were not subject to the Law on Rent of Dwellings[143].

In the Soviet time the state focused on housing policy, since the Constitution comprised the right to housing. Housing law was understood as legal rules about management, operation and repair of the housing fund, registration of individuals whose housing conditions have to be improved, distribution and provision of residential premises, as well as rental relations, participation in housing construction cooperatives and property rights on a single family living house[144].

One of the latest Soviet laws which was in force in Latvia was the Housing Code (*Dzīvokļu kodekss*) of June 2, 1983 was adopted; it entered into force on January 1, 1984. This Code corresponded with the basics of housing legislation of the USSR and Union Republics of 1981.

The Housing Code contained a number of provisions, which regulated rent relations. There was a model rent agreement approved by the Council of Ministers of each Soviet Republic as well. The model agreement contained terms on rights, obligations and liabilities of the tenant and its family members who lived together with the tenant, the rent payment and payments for public utilities, exchange of living dwellings, sub-rent, amendments and termination of the rent contract etc. There were also other provisions, for example, on enlargement and protection of the residential dwelling fund, assistance in construction and building of new comfortable living houses, distribution of living premises, settlement of disputes[145].

After re-establishment of the independence, the Housing Code was applicable for some time. In the year 1993 the Law on Residential Tenancy was passed. This law is *lex specialis* in relation to the Civil Law, as it was mentioned. Article 1 of the Law on Residential Tenancy determines the scope and aims of it. The law contains provisions on renting out the residential space, specifies the rights and obligations of the landlord and the tenant, as well as regulates other questions connected with a rental contract.

Nonresidential rental contracts are entered into in accordance with the procedures specified in the Civil Law.

2.2. After the Law on Residential Tenancy took effect, the Housing Code remained in force in the part related to administrative law and social rent issues[146]. Later the Housing Code was replaced by the Law on Assistance in Solving Apartment Matters (Latvian: *Likums "Par palīdzību dzīvokļa jautājumu risināšanā"[147])* and Law on Social Apartments and Social Houses (Latvian: *Likums "Par sociālajiem dzīvokļiem un sociālajām dzīvojamām mājām"[148]*).

A social rent contract is a part of private law, although the conclusion of the social rent contract is based on an administrative act, which is already public law.

The Law on the State and Local Municipalities' Assistance in Solving Apartment Matters (Latvian: *Likums "Par valsts un pašvaldību palīdzību dzīvokļa jautājumu risināšanā"[149])* of July 1, 1993 forewent the Law on Assistance in Solving Apartment Matters. At the moment assistance in solving apartment matters is the sole competence of local municipalities, before the assistance was also provided by the State.

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[143] Kreicbergs J. „Jaunākie grozījumi likumā par telpu īri" *Tieslietu Ministrijas Vēstnesis*. No.1 (1940), 96-102

[144] *Юридический Энциклопедический словарь*. Главный редактор А.Я. Сухарев. Москва: Советская Энциклопедия, 1984, 96-98

[145] Еран, П.П. (ed.) *Советская Латвия.* Рига: Главная редакция энциклопедий, 1985, 27, 461

[146] Torgāns, K. *Īre un noma*. Rīga, b.i.,1993, 18

[147] 06.12.2001. *Likums "Par palīdzību dzīvokļa jautājumu risināšanā"* <http://likumi.lv/doc.php?id=56812>, 2 September 2013.

[148] 12.06.1997. *Likums "Par sociālajiem dzīvokļiem un sociālajām dzīvojamām mājām".* <http://likumi.lv/doc.php?id=44160>, 2 September 2013.

[149] 01.07.1993. *Likums "Par valsts un pašvaldību palīdzību dzīvokļa jautājumu risināšanā".* <http://likumi.lv/doc.php?id=60225>, 2 September 2013.

The Law on Assistance in Solving Apartment Matters of December 6, 2001 establishes who is eligible to receive assistance in solving residential apartment matters and determines the procedures by which a local municipality rents out apartments.

A decision taken by a local municipality about the conclusion of a social rental contract is supposed an administrative act.

The Administrative Procedure Law defines an administrative act as follows:

An administrative act is a legal instrument directed externally and issued by an institution in an area of public law with regard to an individual or individuals establishing, altering, determining or terminating specific legal relations or determining an actual situation (Article 1 of the Administrative Procedure Law).

The Law on Social Apartments and Social Houses of June 12, 1997 contains specific provisions for renting of social residential apartments. The Law on Residential Tenancy and the Civil Law are subsidiary applicable in social rent cases, insofar as Law on Social Apartments and Social Houses does not regulate such relations.

2.3. Additionally, the Latvian Administrative Violations Code (Latvian: *Latvijas Administratīvo pārkāpumu kodekss*[150]) and the Criminal Law (Latvian: *Krimināllikums*[151]) contain a number of provisions concerning tenancy law. The Latvian Administrative Violations Code and the Criminal Law belong to public law.

The Latvian Administrative Violations Code remained from the Soviet times. In 2008 the Cabinet decided on modernisation of the Code[152]. During the reform administrative violations were transferred from administrative to the ordinary court jurisdiction, principles of the Code were changed and other significant amendments were made.

In the area of tenancy law, the Administrative Violations Code stipulates that an administrative fine may be imposed in case of:

- Violation of Registration and Accounting Regulations in Resolving Apartment Matters (Article 150);

- Failure to Notify of the Vacation of Residential Premises (Article 150.1);

- Non- Maintenance of a Residential House (Article 150.2);

- Non-Provision of the Basic Services to Tenants (Article 150.3).

The first two violations refer to social rent issues, the third - Non- Maintenance of a residential house – to the duty of the owner to maintain and manage the residential house so that it does not endanger other persons. The fourth violation deals with the frequent problem when a landlord cuts off the basic services, mostly because of legally unjustified reasons.

The Criminal Law states that a person, who illegally enters an apartment against the will of a person residing there, is criminally punishable (Article 143 of the Criminal Law). This crime corresponds with the right to inviolability of private home established by the valid Latvian Constitution.

Under the Criminal Law an apartment is a dwelling suitable for permanent or temporally residence of a human being, where the person keeps its property. Non-residential dwellings can be a part of an apartment. Summer cottages, rooms of hotels, tents, etc., as well as other parts of an

[150] 07.12.1984. *Latvijas Administratīvo pārkāpumu kodekss.* <http://likumi.lv/doc.php?id=89648>, 2 September 2013.
[151] 17.06.1998. *Krimināllikums.* <http://likumi.lv/doc.php?id=88966>, 2 September 2013.
[152] 28.07.2006. Ministru kabineta *rīkojums* Nr.568. <http://likumi.lv/doc.php?id=140908>, 2 September 2013.

apartment such as a loggia, balcony, attic, cellar, kitchen and other rooms fall into the scope of Article 143 of the Criminal Law [153].

Illegal entering means that a person enters an apartment without permission or secretly, or with fraud, breaks in or gets in against the will of the person residing there [154].

The punishment for illegal entering of an apartment is temporary deprivation of liberty or community service, or a fine (Article 143 Paragraph 1 of the Criminal Law).

If a person illegally enters an apartment with violence, threats, fraud or falsely pretending to be the state official, the punishment is deprivation of liberty for a term not exceeding two years or temporary deprivation of liberty, or community service, or a fine (Article 143 Paragraph 2 of the Criminal Law).

In addition, Article 279 of the Criminal Law may be applicable in some cases. The crime concerns arbitrariness (German: *Willkür*) which happens, if a person realizes its existing rights infringing the procedure within which the rights have to be realized or protected, as well as if a person does not owns these rights, though believes that it has such rights [155].

According to Paragraph 1 of the Article 279, a person who commits arbitrary acts, circumventing procedures prescribed by law (in broad sense), if the lawfulness of such acts are disputed by the State or a local municipality, public institution or a private person, if such acts caused substantial harm (five minimal salary wages (in 2014 the minimal salary wage amounts to EUR 320) plus essential injury of other legal interests) shall be punished with temporary deprivation of liberty or community service, or a fine. According to Paragraph 2 of the Article, a person who commits the same acts in a group of persons pursuant to prior arrangement, the person shall be punished the deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine. Finally Paragraph 3 of the Article states that a person is criminally punishable, if it commits arbitrary acts connected with violence or threat of violence or essential loss (fifty minimal salary wages (in 2014 the minimal salary wage amounts to EUR 320).

Article 143 of the Criminal Law excludes the application of Article 279 of the Criminal Law [156].

3. The Cabinet of Ministers may issue legislative enactments of general binding nature, when a law passed by the Latvian Parliament explicitly provides such right or delegation or, when the particular matter has not been regulated by law.

These regulations may not be contrary to the Constitution or laws.

After re-establishment of the independence the Cabinet of Ministers was named “the Council of Ministers”. In 1993, after the elections of the Parliament, the *Satversme* of 1922 came into full effect; the Council of Ministers was renamed as “Cabinet of Ministers” and regained the initial framework for operation within a traditional parliamentary system [157].

The Council of Ministers issued rulings and other legislative enactments with generally binding nature (Article 5 of the Law on the Council of Ministers of the Latvian Republic (Latvian: *Likums “Par Latvijas Republikas Ministru Padomi”* [158]*).*

[153] Krastiņš U., Liholaja V., Niedre A. *Krimināltiesības :Sevišķā daļa*. Rīga : Tiesu namu aģentūra, 2009, 232
[154] Krastiņš U., Liholaja V., Niedre A. *Krimināltiesības :Sevišķā daļa*. Rīga : Tiesu namu aģentūra, 2009, 232
[155] Krastiņš U., Liholaja V., Niedre A. *Krimināltiesības :Sevišķā daļa*. Rīga : Tiesu namu aģentūra, 2009, 693
[156] Krastiņš U., Liholaja V., Niedre A. *Krimināltiesības :Sevišķā daļa*. Rīga : Tiesu namu aģentūra, 2009, 693-694

[157] *History of the Cabinet of Ministers*. <http://www.mk.gov.lv/en/mk/vesture/>, 2 September 2013.

[158] 18.03.1992. *Likums “Par Latvijas Republikas Ministru Padomi”.* <http://likumi.lv/doc.php?id=65474>, 2 September 2013.

In connection with the Law on Residential Tenancy of 1993, the Latvian State Council, which was a transitional legislator, authorized the Council of Ministers to pass the following model agreements and rules: 1) the model rental agreement; 2) the model rental agreement because of employment relations or for a course of studies; 3) rules on novation (renewal) of existing rental agreements; 4) rules on use of hotels because of employment relations or for a course of studies etc.

The Latvian Council of Ministers worked out two model agreements: the model rent agreement and the model rent agreement because of employment relations or for a course of studies[159]. The model agreements are still in force, however parties were and are not obliged to use them. The main idea of the model agreements was to provide assistance for parties while amending rent contracts, concluded in the Soviet times.

The Latvian Council of Ministers passed the Decision No. 212 of April 26, 1993 rules on use of hotels because of employment relations or for a course of studies that are applicable nowadays[160]. The rules have a general binding nature.

The rules on novation (renewal) of existing rental agreements were not passed. In cases where a landlord was a local municipality or the state, novation was compulsory according to law. If a rental agreement was concluded by private persons, renewal of a rental contract was desirable, but not compulsory.

Article 1867 of the Civil Law stipulates that any obligation right may be revoked and transformed into a new one by means of a special contract between the parties, which is called novation[161].

At the present time, the Law on Residential Tenancy explicitly refers to the legislative right of the Cabinet of Ministers, for instance, in case, when a tenant is entitled to pay for the services received directly to a respective service provider and the Cabinet must specify the respective procedure of payments (Article 11.3).

4. Finally, a local municipality is also entitled to issue generally binding regulations.

According to the State Administration Structure Law (Latvian: *Valsts pārvaldes iestāžu likums*[162]) and the Law on Local Municipalities (Latvian: *Likums "Par pašvaldībām"*[163]), a local municipality is a derived public person that has been conferred its own autonomous competence by law, which also includes establishing and approval of its own budget.

In cases prescribed by law and in order to ensure the performance of the functions of local municipalities, they can issue externally binding regulations. For example, local municipalities have the following exclusive functions:

1) Social assistance (social care) to residents;

2) Organisation of the provision of utilities (water supply and sewerage; heating; management of waste; collection, conducting and purification of waste water);

3) Assistance to residents in resolving issues regarding housing (Article 15 of the Law on Local Municipalities).

In this connection, the city council of Riga, for example, issued the Binding Regulations No. 80 of June 15, 2010 "About Registration and Procedure of Providing Assistance in Solving Apartment

[159] 26.04.1993.Latvijas Republikas Ministru Padomes *Lēmums Nr. 210 „Par dzīvojamo telpu īrī"* <http://likumi.lv/doc.php?id=60247>, 2 September 2013.
[160] 26.04.1993.Latvijas Republikas Ministru Padomes Lēmums *Nr. 212 „Par dienesta viesnīcu lietošanas noteikumiem"* <http://likumi.lv/doc.php?id=59987>, 2 September 2013.
[161] Torgāns, K. *Īre un noma*. Rīga, b.i.,1993 19
[162] 06.06.2002. *Valsts pārvaldes iestāžu likums*. <http://likumi.lv/doc.php?id=63545>, 2 September 2013.
[163] 19.05.1994. *Likums "Par pašvaldībām".* <http://likumi.lv/doc.php?id=57255>,2 September 2013.

Matters" (Latvian: *15.06.2010. Rīgas domes saistošie noteikumi Nr.80 "Par reģistrācijas un palīdzības sniegšanas kārtību dzīvokļa jautājumu risināšanā"*[164]) which specify persons who are eligible to receive assistance, the procedure of assistance in apartment matters, the registration procedure in the respective register, exclusion from the register, as well as institutions of the Riga city municipality that are responsible for this assistance. Similar generally binding regulations issued the city council of Daugavpils[165], Jurmala[166], Liepaja[167] etc.

- ***Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of home vs. just a place to live in Scandinavia)***

After regaining the independence, the political driving forces were right-libertarian and nationalistic conservative parties. As a result tenancy law is liberal and orients itself on the free market economy, where the protection of the property right is brought to the forefront. The concept of housing and tenancy law is as follows:

Every person shall have the possibility to rent a residential space according to its financial capabilities, i.e., level of income. To achieve this goal, residential dwellings with a different range of public utilities have to be offered in the free housing market. The main part of living dwellings shall be owned by private persons. At the same time public institutions must support destitute or disabled people, providing them with social residential dwellings[168]. The idea of tenancy law is also to promote democratic values and assure free concurrence in the marketplace. The concept of tenancy law is based on party autonomy, which, nevertheless, is not absolute.

Some statements about tenancy law and guiding ideas of tenancy law can be found in the judgments of the Constitutional Court, though the Court does not directly refer to the constitutional housing right.

It follows from the jurisprudence of the Constitutional Court that the ownership and property rights are important. The property rights in the constitutional meaning include not only property rights in the meaning of the Civil Law, but all kinds of material rights, for example, the Law on the obligations or law of succession[169]. Several times the Constitutional Court examined the restrictions of rent in the denationalised houses[170] and of lease payments[171] in cases of so called split property (the compulsory lease) in the light of the idea of the protection of property rights, i.e., examined if legal rules conform with Article 105 of the Constitution.

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[164] 15.06.2010. Rīgas domes saistošie noteikumi Nr.80 *"Par reģistrācijas un palīdzības sniegšanas kārtību dzīvokļa jautājumu risināšanā".* <http://likumi.lv/doc.php?id=213583>,2 September 2013.

[165] 25.10.2007. Daugavpils pilsētas domes saistošie noteikumi Nr. 31 "*Par Daugavpils pilsētas pašvaldības palīdzību dzīvokļa jautājumu risināšanā*". <http://likumi.lv/doc.php?id=166756>,2 September 2013.

[166] 23.02.2005. Jūrmalas pilsētas domes saistošie noteikumi Nr. 6 "Personu*, kurām nepieciešama palīdzība dzīvokļa jautājumu risināšanā, reģistrācijas un palīdzības sniegšanas kārtība*". <http://likumi.lv/doc.php?id=104217>,2 September 2013.

[167] 05.07.2007. Liepājas pilsētas domes saistošie noteikumi Nr. 13 "*Personu, kurām nepieciešama palīdzība dzīvokļa jautājumu risināšanā, reģistrācijas un palīdzības sniegšanas kārtība*"< http://likumi.lv/doc.php?id=56863>,2 September 2013.

[168] 2000.gada 16.marta Latvijas Republikas 7.Saeimas ziemas sesijas divpadsmitā sēde http://www.saeima.lv/steno/2000/st1603.html

[169] Balodis, R. (ed.) *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Rīga: Latvijas Vēstnesis, 2011, 465-466

[170] Judgement of the Constitutional Court of the Republic of Latvia of 9 June 1999, Case No. 04-03(99) . <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 7 June 2012, Case No. 2011-19-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

[171] Judgement of the Constitutional Court of the Republic of Latvia of 8 March 2006, Case No. 2005-16-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

The Court ruled that the reduction of the property value induced by legal enactments could be recognized as an infringement of the property rights, if certain conditions are met[172]. According to the judgements of the Court that owners shall be able to gain a reasonable profit from renting out their property[173].

On the other hand, the right to property is not absolute. In the case No. 04-03 (99) the Constitutional Court indicated that in the sector of housing rights, the element of social care for people is important. The right to housing is an internationally declared social right (UNO Article 25 of the Universal Declaration of Human Rights, Article 11 of the International Pact on Economic, Social and Culture Rights). For this reason tenancy law comprises mostly imperative legal norms which may envisage definite limitations on property rights[174].

The objectives of tenancy law are social and its aims are to protect a weaker party to a contract - the tenant. Every person needs a residential dwelling, therefore it is the state's obligation to protect tenants[175].

As indicated, the social rights are guaranteed considering the budgetary feasibility and the general economic situation. First of all a person must try to provide itself with a residential dwelling[176]. One cannot demand housing, water, food and clothing from the State, although the State may provide specific categories of persons, e.g., low income persons, with the things mentioned[177].

To sum up, the guiding ideas of tenancy law are connected with liberalism, market economy, re-establishment and protection of property rights, as well as assistance and aid to persons who are the weakest and unable to provide themselves with a residential dwelling because of objective and justified reasons.

- ***What were the principal reforms and their guiding ideas up to the present date?***

The principal reforms were made in connection with re-establishment of the independence of the Latvian state in 1991. The Latvian legislator passed new laws and amended existing ones so that they complied with the democratic values and a new economic order.

In the nineties the Civil Law of 1937 was restored; new laws had been passed which set up a new legal frame for the market economy oriented tenancy law in Latvia. The legislator tried to create a libertarian rental market regulation where private actors would settle rental payments and other conditions of their rental relation in accordance with a mutual agreement.

Another guiding idea was to re-establish private property, subsequently laws on denationalisation and privatisation had been adopted. However, Article 12 of the Law "On the Denationalization of Buildings in the Republic of Latvia" (Latvian: *Likums "Par namīpašumu denacionalizāciju Latvijas Republikā"*) and Article 12 of the Law "On the Return of Buildings to Their Legal Owners" (*Likums "Par namīpašumu atdošanu likumīgajiem īpašniekiem"*) determined that all leases and rental agreements, which were previously made, are binding for the owner of the returned property.

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[172] Judgement of the Constitutional Court of the Republic of Latvia of 9 June 1999, Case No. 04-03(99) . <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 7 June 2012, Case No. 2011-19-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

[173] Judgement of the Constitutional Court of the Republic of Latvia of 8 March 2006, Case No. 2005-16-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

[174] Judgement of the Constitutional Court of the Republic of Latvia of 9 June 1999, Case No. 04-03(99) . <www.satv.tiesa.gov.lv>, 2 September 2013.

[175] Balodis. K. *Ievads civiltiesībās.* Rīga: Zvaigzne ABC, 42, 48

[176] Balodis, R. (ed.) *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Rīga: Latvijas Vēstnesis, 2011, 465-466; Latvijas pašvaldību apvienība. Mājokļu politikas pamatnostādnes. 14, <www.lps.lv>, 2 September 2013.

[177] Judgement of the Constitutional Court of the Republic of Latvia of 9 June 1999, Case No. 04-03(99) . <www.satv.tiesa.gov.lv>, 2 September 2013.

These rules were adopted in order to protect tenants who occupied residential dwellings from the Soviet time and did not have another place to live. To mention, solely one family living houses could be in the ownership of an individual in the Soviet time [178] what means that apartments were rented by private persons. For this reason, the provisions restricting the right of a new owner whose property rights have been restored to cancel or terminate existing rental contracts are of great importance[179]. In addition, in order to protect those tenants who could not privatise the dwellings because of the denationalisation or restitution, rental payment restrictions were also passed. The restrictions were not applicable, if legal or natural persons of private law entered a rental contract knowing of the denationalisation (restitution) after this process has been finished; in the latter cases an amount of rent was a subject-matter of a mutual agreement of the parties.

The next development stage of tenancy law was in 2001, when numerous amendments to the Law on Residential Law and the Law on Assistance in Solving Apartment Matters were passed. Since the application of the Law on Residential Tenancy disclosed many problems in the past, the amendments had social nature and aimed to provide a better protection to tenants. Besides, it has been discovered that the assistance in solving apartment matters, guaranteed by the state and provided by a local municipality, was ineffectual. The reason was that local municipalities did not have a sufficient social housing. It was partly a result of a hasty privatisation when municipalities have not preserved housing for social rent. Simultaneously evictions of tenants because of non-payment of rent became more frequent. In that period of time courts tried to improve the situation and protect those tenants whose landlord was asking for eviction because of debts. For instance, courts evaluated, if reasons of non-payment were justified and objective, if material circumstances of a tenant's family were severe, if the tenant tried to pay off and was able to pay debts in the future, as well could move to a smaller and less comfortable living dwelling etc.[180]

Considering the circumstances, mentioned above, the new Law on Assistance in Solving Apartment Matters defined more exactly who was eligible to receive assistance and the procedure of receiving of the assistance. The law also allowed local municipalities to rent living dwellings of other private legal or natural persons, of course with the consent of owners, in order to offer them for social rent, as well as new types of assistance in social matters have been introduced [181].

The year 2004 was significant for social rent issues, because the Administrative Procedure Law entered into force and administrative courts were created. Before all matters, including, but not limited to decisions of municipalities about social rent issues, were examined by the courts of the general jurisdiction in within civil proceedings. The new Administrative Procedure Law introduced a united administrative procedure of decision making by local municipalities and regulated other related questions. The aim of the law was to guarantee that institutions of the State and local municipalities legally correctly, precisely and effectively apply legal provisions within the administrative procedure.

The next reform of 2007 was connected with the cancelation of rent restrictions in the denationalised residential houses. The Constitutional Court declared rent restrictions in the denationalised houses as unconformable with Article 1 and 105 of the Constitution (*Satversme)* of the Republic of Latvia and invalid as of January 1, 2007[182]. This development was important for national tenancy law and the legislator passed a new regulation. At the moment there are no any rental payment restrictions in Latvia.

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[178] *Юридический Энциклопедический словарь*. Главный редактор А.Я. Сухарев. Москва: Советская Энциклопедия, 1984, 98

[179] Krauze, R., Krauze I. *Dzīvoklis: īre, privatizācija, īpašums :Dokumenti. Komentāri.* Rīga: Mans Īpašums, 1996, 6-7; Torgāns, K. *Īre un noma*. Rīga, b.i.,1993, 18

[180] Krauze, R., Krauze I. *Dzīvoklis: īre, privatizācija, īpašums :Dokumenti. Komentāri.* Rīga: Mans Īpašums, 1996, 92-93

[181] 14.01.1999. Latvijas Republikas 7.Saeimas ziemas sesijas pirmā sēde. <http://www.saeima.lv/steno/1999/st1401.html>, 2 September 2013.

[182] Judgement of the Constitutional Court of the Republic of Latvia of 9 June 1999, Case No. 04-03(99). <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 7 June 2012, Case No. 2011-19-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

Other reform relates to the introduction of the Law on Maintenance of Residential Houses (Latvian: *Dzīvojamo māju pārvaldīšanas likums*[183]). The law was adopted by the Parliament on June 4, 2009 and entered into force on January 1, 2010. The law is applicable to the administration of all residential houses.

The Law on Maintenance of Residential Houses determines the minimal requirements towards maintenance of the residential house, rights, duties and liability of the persons, involved in the residential house's maintenance, as well as the competence of the state institutions while organising and supervising maintenance. This law determines what the maintenance of a residential house means and which activities have to be performed. Till the Law on Maintenance of Residential Houses entered into force, maintenance of residential houses has been performed by a local municipality institutions. After the law entered into force, owners of apartments were entitled to take over maintenance.

In 2010, the amendments about social rent issues were passed by the Latvian legislator. Before the amendments, the Law on Residential Tenancy stated that, if a person was eligible to receive help in apartment solving matter and the court ruled to evict such person, eviction should have been postponed until a respective municipality finds an alternative residential space for the tenant. Nevertheless, a landlord was entitled to ask for recover of losses, occurred because of the postponement of enforcement of a judgement.

On July 26, 2010 the amendments to the Law on Residential Tenancy were adopted and the aim of the amendments was to lessen the financial load of local municipalities. The amendments dealt with the rule existed before that a local municipality had to cover losses of a landlord when a tenant who is eligible to receive assistance in apartment solving matters continued occupying the residential space after the court judgement on eviction came into force. The obligation of local municipalities to recover losses has been removed from the law. The new wording of the Law on Residential Tenancy states that from now on a tenant and not a respective local municipality covers expenses occurred in connection with postponement of enforcement of the court judgement, if the tenant does not move out[184].

- ***Human Rights:***
    - ***To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in***
        - ***the national constitution***
        - ***international instruments, in particular the ECHR***

Tenancy law has mainly been influenced by the jurisprudence of the Constitutional Court, referring to the protection of the right to property. Although the Constitutional Court recognized that the right to housing is important[185], this right is not regulated in the Constitution (*Satversme*), as a result of this the State has no duty to guarantee it[186].

[183] 04.06.2009. *Dzīvojamo māju pārvaldīšanas likums.* < http://likumi.lv/doc.php?id=193573>, 2 September 2013.
[184] 26.07.2010. „*Saeima pieņem grozījumus likumā „Par dzīvojamo telpu īrī*". <http://www.saeima.lv/lv/aktualitates/saeimas-zinas/17101>, 2 September 2013.
[185] Judgement of the Constitutional Court of the Republic of Latvia of 9 June 1999, Case No. 04-03(99). <www.satv.tiesa.gov.lv>, 2 September 2013.
[186] *See also above*

International instruments, including the ECHR, are used while interpreting the fundamental rights enshrined in *Satversme*[187].

Article 89 of the Constitution of Latvia states that the Latvian State recognises and protects fundamental human rights in accordance with the Constitution, laws and international agreements binding for Latvia.

The Constitutional Court pointed out in its judgement of May 15, 2005 in the case No. 2004-18-0106 that "*the aim of the legislator has been to achieve the harmony of norms, incorporated in Satversme with international human rights norms Besides, Chapter 8 of Satversme "Fundamental Human Rights" was passed after Latvia had undertaken the relevant international liabilities … Thus, when interpreting Satversme and international liabilities of Latvia, one should look for the interpretation, which ensures harmony, but not confronting.*"[188] Consequently, the Latvian state has to make use of international norms for interpretation of the protection of fundamental rights of *Satversme*[189]

However, this Article does not impose the duty to guarantee implementation of such international norms, which are not binding for Latvia, if in particular they are not included in *Satversme*[190].

The Court has also explained that on its essence *Satversme* cannot envisage a lesser scope of ensuring or protecting fundamental rights than is envisaged in any of the international legal acts. "*A different conclusion would be at variance with the idea on the law-governed state, incorporated in Article 1 of the Constitution; because one of the main forms of expression of the law-governed state is recognition of human rights and fundamental freedoms as the highest value of the state. When interpreting Satversme and the international liabilities of Latvia one shall find such a solution, which ensures harmony, not opposing.*"[191]

Till now the Constitutional Court recognised that Article 91[192], 92[193] and 103[194] of the Constitution guarantee a more extensive protection than Articles 6, 11 and 14 of the European Convention for the ECHR [195].

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[187] Judgement of the Constitutional Court of the Republic of Latvia of 17 January 2002, Case No. 2001-08-01. <www.satv.tiesa.gov.lv>, 2 September 2013; Judgement of the Constitutional Court of the Republic of Latvia of 17 October 2002, Case No. 2002-04-03. <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 6 November 2003, Case No. 2003-10-01. <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 5 November 2004, Case No. 2004-04-01. <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 13 May 2005, Case No. 2004-18-0106. <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 17 January 2008, Case No. 2007-11-03. <www.satv.tiesa.gov.lv>, 2 September 2013.

[188] Judgement of the Constitutional Court of the Republic of Latvia of 13 May 2005, Case No. 2004-18-0106. <www.satv.tiesa.gov.lv>, 2 September 2013.

[189] Judgement of the Constitutional Court of the Republic of Latvia of 23 November 2006, Case No. 2006-03-0106. <www.satv.tiesa.gov.lv>, 2 September 2013.

[190] Judgement of the Constitutional Court of the Republic of Latvia of 22 October 2002, Case No. 2002-04-03 . <www.satv.tiesa.gov.lv>, 2 September 2013.

[191] Judgement of the Constitutional Court of the Republic of Latvia of 14 September 2005, Case No. 2005-02-0106. <www.satv.tiesa.gov.lv>, 2 September 2013.

[192] Article 91 of *Satversme*: "*All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.*" <www.satv.tiesa.gov.lv>, 2 September 2013.

[193] Article 92 of *Satversme*: "*Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel.*" <www.satv.tiesa.gov.lv>, 2 September 2013.

[194] Article 103 of *Satversme: "The State shall protect the freedom of previously announced peaceful meetings, street processions, and pickets."* <www.satv.tiesa.gov.lv>, 2 September 2013.

[195] Judgement of the Constitutional Court of the Republic of Latvia of 5 March 2002, Case No. 2001-10-01. <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 14 September 2005, Case No. 2005-02-0106. <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 23 November 2006, Case No. 2006-03-0106. <www.satv.tiesa.gov.lv>, 2 September 2013.

To summarize, tenancy law was not influenced very much by the national and international fundamental human rights, excluding protection of the right to property.

- ***Is there a constitutional (or similar) right to housing (droit au logement)?***

As mentioned, the Latvian Constitution does not comprise the right to housing (*droit au logement*).

2. Tenancy regulation and its context

a) General introduction

- **Give a very short overview over central rules such as basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased).**

Rent of residential premises means transfer of the right to use the premises to another person for a charge.

The rental contract can be concluded as a consensual (Latvian: *konsensuāls līgums*) or real contract (Latvian: *reāllīgums*). Parties are free to choose, if their rental agreement will be concluded in the first or second form[196]. This distinction is significant, while deciding, if the rental contract is valid or not.

The valid Civil Law of 1937 adopts the Roman law theory about consensual and real agreements[197]. Thus, if a rental contract comes into force on its signing day, it is a consensual agreement; if the rental contract comes into force on the day of real handing over of the premises rented out, it is a real agreement. The approach depends on the will of the parties. Practically, the transfer is accompanied by a signing of an additional document – deed of transfer and acceptance (also an inventory deed) quite often, however signing of the deed is not the key moment for qualification because parties may agree in the consensual rental contract on drafting of an inventory deed.

The written form of the rental contract is an essential part of the transaction[198] and without it the rental contract is void. On the other hand, it follows from the jurisprudence of the Supreme Court that factual rental relations are recognised[199].

Most likely, the Law on the Residential Tenancy does not recognise mixed, i.e., residence and commercial rent contracts; using of living dwellings for purposes other than living can lead to

[196] Torgāns. Mācību grāmata 2., 98-99.lpp.
[197] Zimmermann R. *The Law of Obligations: Roman Foundations of the Civilian Tradition*. Oxford: Oxford University Press, 1996, 163-166; Тютрюмов И. *Рецепция русского права в Эстонии и Латвии. Закон и Суд: Вестник русского юридического общества.1928-1938 . 1. sēj.: 1929-1930*: Nr. 1-16/sast. A. Šmite, A.Poriete; atb. red. L. Krūmiņa. Rīga: Latvijas Juristu biedrība, Senatora Augusta Lēbera fonds, 2000, 26-28 Faksimilizdevums; Нольде А.Н. *Очерки по истории кодификации местных гражданских законов при графе Сперанском. Том 2.* Санкт-Петербург: Сенатская типография, 1906-1914, 584; Пахман С.В. *История кодификации гражданского права в двух томах. Том 2.* Санкт-Петербург: Типография II-го Отделения Собственной Е. И. В. Канцелярии, 320-413 etc.
[198] A transaction is the performance of an action in order to establish, alter or terminate legal relations in a lawful way (Article 1403 of the Civil Law). A contract is a mutual agreement of two or more persons in order to establish, alter or terminate legal relations (Article 1511 of the Civil Law).
[199] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 27; 16.04.2008. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-151/2008 . <www.atv.tiesa.gov.lv>, 2 September 2013.

termination of the rental contract[200]. However, the nature of the norm, whether it is a dispositive (German: *dispositive Rechtsnorm*) or mandatory (German: *zwingende (unabdingbare) Rechtsnorm)* legal rule, is disputable, another question is if the legal rule in question is a prohibition (German: *Verbotsnorm*). The Supreme Court has not provided interpretation under particular circumstances yet if parties agree on mixed use.

Any person, including public legal persons such as the State or a local municipality, with the legal capacity to enter contracts and to dispose property, can become a landlord in a rental contract.

The tenant or the sub-tenant may be any natural person who permanently resides in the Republic of Latvia or has received a residence permit (Article 4 of the Law on the Residential Tenancy).

The residential dwelling is an essential part of rent contract (Article 2 of the Law on Residential Tenancy, Article 1470 of the Civil Law). The notion "residential dwelling" in the broad sense means a complex of living and non-living rooms which secure use of residential rooms. In the narrow sense the notion "living dwelling" is a living room or dwelling[201]. A residential house, an individual apartment, a part of an apartment or of a living room can be rented out (Article 3 and Article 5 Paragraph 6 of the Law on Residential Tenancy).

A residential dwelling shall be fit for rent, i.e., shall comply with the mandatory construction and hygiene requirements, be suitable for long-term human accommodation, as well as for placing household items.

The Article 11.3 of the Law on Residential Tenancy states that the services (utilities) provided to the tenant must be determined in the rental contract.

The rental contract can be time-limited or open-ended. Often it is pointed out that open-ended contracts were characteristic for the Soviet time, but nowadays landlords prefer to conclude time-limited contracts[202].

The tenant may unilaterally terminate the rental contract with one month notice at any time, but the landlord may terminate the rental contract only in the cases, indicated in the Law on Residential Tenancy. This issue is connected with the necessity to protect the tenant from unjustified contract terminations.

Social rental contracts are concluded by a local municipality on the basis of an administrative act. The Law on Social Apartments of June 12, 1997 contains specific provisions about the subject-matter, terms, rent amount and termination of such contracts. Nevertheless, the Law on Residential Tenancy and the Civil Law are subsidiary applicable in all social rent cases insofar as Law on Social Apartments does not regulate such relations. In consequence the Law on Residential Tenancy and the Civil Law are the most important sources of tenancy law.

- **To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)**

Latvia is a unitary state. The legislative power belongs to the Parliament (Article 64 of the Constitution); other constitutional actors have the right of legislative initiative in cases, set by

[200] Latvijas Republikas Augstākās tiesas Senāta Civillietu departaments. *Tiesu prakse, piemērojot likumu „Par dzīvojamo telpu īri"*, 2004, 5, <www.at.gov.lv>, 2 September 2013.
[201] R. Krauze. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 21
[202] *Likumprojekta „Dzīvojamo telpu īres likums" sākotnējās ietekmes novērtējuma ziņojums (anotācija)*. <http://www.mk.gov.lv/doc/2005/EMAnot_201113.2127.doc>, 18 March 2014.

Satversme and laws. On the other hand, the Cabinet of Ministers and local municipalities may issue regulatory enactments of the generally binding nature. The legislative competence of the Cabinet of Ministers is usually determined by law. The legislative competence of a local municipality can be also determined by law, sometimes by the Cabinet's of Ministers enactments. In addition, the competence to pass regulatory enactments is normally granted in the questions of the municipality's exclusive competence.

In the area of tenancy law the municipality has the following exclusive competence:

1) Social assistance (social care), provided to its residents, including, but not limited to assistance to residents in resolving housing matters (Article 15 of the Law on Local Municipalities);

2) Organisation of the provision of utilities (water supply and sewerage; establishing of the heating systems of residential houses; management of municipal waste; collection, conducting and purification of waste water)[203].

All public institutions (administrative institution of the State and municipalities) and courts of Latvia must observe the following hierarchy of the legal force of external regulatory enactments:

1) Constitution;

2) Laws passed by the Parliament;

3) Cabinet regulations;

4) Compulsory local municipality regulations.

It is important to distinguish between external and internal regulatory enactments. External regulatory enactments are comprised of the Constitution (*Satversme*), laws, Cabinet regulations and binding regulations of local municipalities, as well as international agreements. An internal regulatory enactment is a legal instrument which has been issued by a public legal entity with the aim to determine its own internal working procedures or those of its subordinate authorities or to clarify the procedures regarding the application of an external regulatory enactment in the area of its activity (an instruction, recommendation, by-laws, etc.) (Article 1 of the Administrative Procedure Law). Internal regulatory enactments are binding for the public legal entity issued them, as well as on bodies subordinate to it. Internal regulatory enactments are not binding for private persons (Article 16 Paragraph 1 of the Administrative Procedure Law). Internal regulatory enactments may not contradict external regulatory enactments, besides private persons may not demand that these enactments are applied towards them[204].

Furthermore, in administrative law relevant in social tenancy cases the principle of lawful basis (German: *Gesetzesvorbehalt***)** is applicable (Article 11 Paragraph 1 of the Administrative Procedure Law). According to this principle an administrative institution may issue an administrative act or perform an actual action (German: *Tathandlung, Realakt*), unfavourable to a private person, on the basis of the Constitution, laws or the provisions of international law. Cabinet regulations or binding regulations of local municipalities may be a basis for such administrative act or actual action only if the Constitution, law or the provisions of international law either directly or indirectly contain an authorisation for the Cabinet, in issuing regulations, or for local governments, in issuing binding regulations, to provide for such administrative acts or actual actions therein. If the Constitution, laws or provisions of international law have authorised the Cabinet, then the Cabinet may, in its turn, authorise local municipalities by its regulations.

The Constitutional Court, established on December 9, 1996, controls observance of the hierarchy of the legal force of external regulatory enactments. It reviews cases regarding:

[203] *See also above*
[204] 02.03.2012. Latvijas Republikas Augstākās tiesas Senāta Administratīvo departamenta spriedums lietā nr. A42607508 (SKA – 65/2012)

1) Compliance of laws, passed by the Parliament, with the Constitution;

2) Compliance of other regulatory enactments or parts thereof with the legal norms (acts) of higher force;

3) Compliance of the national legal norms of Latvia with the international agreements entered into by Latvia, which are not incompatible with the Constitution etc[205].

In brief, the legislative power belongs to the Parliament, which passes laws, including tenancy law, but specific and particular questions of tenancy can be regulated by enactments of the Cabinett or a local municipality.

- ***Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?***

The position of the tenant has two meanings: it is a personal (obligatory) right (German: *Schuldrecht*), arising from the (rental) contract combined with a real property right (also property right or *in rem* right) (German: *Sachenrecht*) - hold (Latvian: *turējums;* German: *Detention (ähnlich, aber nicht identisch zu unmittelbarem Besitz))* [206]*.*

In Latvia property and obligatory law has material, monetary character[207]. Rights *in rem* or property rights (German: *Sachenrechte*) address legal relations with tangible and intangible objects. Obligatory rights (German: *Schuldrechte*) are concerned with actions or the conduct of persons. Rights *in rem* are of an absolute character, i.e., by their very nature they have an effect towards any other persons. Any other person is obliged to refrain from actions or conduct that may impair or affect the scope of rights *in rem* connected to an object of the respective right holder. Personal rights on the other hand are of a relative character and, therefore, have effect only in relation to certain other persons[208].

The distinction of real and personal rights seems to be quite relative in the theory, although this statement does not refer to such legal instruments that traditionally are a part of property or obligatory rights. The structure of the Latvian Civil Law of 1937 is a mix of the Institutional and Pandect System[209]. In addition, Article 6 of the Civil Law determines that the general provisions regarding obligations are applicable *mutatis mutandis* to property legal relations. For this reason, it can be disputed whether the Latvian Civil Law differentiate obligations from property rights consistently. Nonetheless, it is characteristic for Latvian private law, in particular for the Land Book law, to distinguish real and personal rights. If the matter does not concern rules on possession, ownership, pledge, etc., which usually belong to property law, it could be difficult to establish the nature of a legal provision. Furthermore, property rights can refer to tangible and intangible objects; intangible property consists of various personal rights, property rights and obligatory rights, insofar as such rights have a material, monetary value (Article 841 of the Civil Law). In this connection diverse opinions were expressed by scholars, if rights, related to intangible property, are *in rem* rights. While some of them answer positive[210], others reject this possibility[211]. Although the Latvian scholars use very similar criteria to those which are adopted by the German legal doctrine in order

[205] About Constitutional Court. <http://www.satv.tiesa.gov.lv/?lang=2&mid=3>, 2 September 2013.
[206] Rozenfelds J. *Lietu tiesības*. 4. labotais, papildinātais izdevums. Autora redakcijā. Rīgā: Apgāds Zvaigzne ABC, 2011
[207] Blaese H., Mende S. *Lettlands Zivilgesetzbuch vom 28.januar 1937 in Einzeldarstellungen. Band.II, 2. Das Sachenrecht*. Riga: Ernst Plates, 1940, 5
[208] Klauberg T., Kolomijceva J. in Faber W., Lurger B.(eds.) *National Reports on the Transfer of Movables in Europe. Volume 6: The Netherlands, Switzerland, Czech Republic, Slovakia, Malta, Latvia*. Sellier. European law publishers GmbH, 2011, 551-552
[209] Čakste K. *Civiltiesības. Lekcijas. Raksti*. [b.i], 4; Ducmans K. *Par Latvijas civīllikumu valodu, terminoloģiju un sistemātiku*. Tieslietu Ministrijas Vēstnesis, 1936. 1.janvāris, nr. 1, 103; Senāta apvienotās sapulces priekšsēdētāja senātora Aleksandra Gubeņa uzruna. Prezidenta Ulmaņa Civillikums. Rakstu krājums. Rīga: Pagalms, 1938, 58-59; Sinaiskis V. *Civillikuma principi un ģimenes tiesības*. Tieslietu Ministrijas Vēstnesis, 1938. 1.janvāris, nr. 1, 32
[210] Rozenfelds J. *Lietu tiesības. 4. labotais, papildinātais izdevums*. Autora redakcijā. Rīgā: Apgāds Zvaigzne ABC, 2011, 13
[211] Balodis, K. *Ievads civiltiesībās.* Rīga: Zvaigzne ABC, 2007, 111

to distinguish property and personal rights, the Latvian Civil Law differs from the German Civil Code (*Bürgerliches Gesetzbuch*), as it has been already shown.

Historically, the Latvian Civil Law used the notion "thing" (German: *Sache*) in the broad and the narrow sense. Intangible and tangible objects belonged to the notion of the thing in the broad sense, but only tangible things were things in the narrow sense, that is, could be the object of the ownership[212] (German: *Eigentum*). In this connection, the notion of property law was used in the broad and narrow sense, as well. Property rights referring to tangible things were property right in the broad sense, since these things could be subject to the all property rights set by the Civil Law, at the same time intangible things could be subject to single *in rem* rights, excluding, but not limited to the ownership. As a result, property rights on intangible things were also property rights in the narrow sense.

Nowadays, the wording of the Civil Law has not been changed very much, if we compare the present law to the Civil Law of F. Bunge. However, as indicated, some modern scholars argue that intangible things, for instance, company shares (German: *Kapitalanteil*), ideal shares of immovables (in the cases of the co-ownership) (German: *ideeller Anteil*), pledge rights (German: *Pfandrechte*), contractual claims (German: *schuldrechtliche Ansprüche*) etc., may be in the ownership[213].

Thus, in the context of rental relations the essence of the dispute reviewed above is, whether personal rights arising from the rental agreement may be in the ownership or not, as well as, if they may be transferred to a third person under the rules of property law, in particular, whether the tenant may dispose his personal rights without consent of the landlord. As pointed out, rental relations are regulated by the Civil Law and the Law on Residential Tenancy; the latter is *lex specialis* towards the Civil Law, but the Civil Law contains general rules when the Law on Residential Tenancy does not regulate something.

The rental contract is a part of the Law (Book) on Obligations of the Civil Law – personal rights. Consequently, rules of obligatory law shall have priority, if collisions or conflicts with property law rules occur. The question of the interaction of property and obligatory rights is not studied from the point of view when and under which circumstances property or obligatory rights has priority[214]. However, the Latvian courts are quite consistent and prefer obligatory rights to real rights in cases of disputes.

Although obligatory rights arise from the rental contract, simultaneously Article 2126 of the Civil Law states that, after the rental contract has been registered in the Land Book, the tenant acquires *property rights*, which are valid towards third persons, including a new acquirer of immovable for whom the contract of the previous owner is binding. The reference to the nature of property rights is not clear and it was being disputed in past, whether the provision, mentioned reflects the general principle or applies to the particular case of the rental agreement. In other words, the question, being discussed, was, whether an obligatory right, entered in the Land Book (Latvian: *Zemesgrāmata*; German: *Grundbuch*), becomes an *in rem* right. To point out, this Article of the Civil Law is not applied in cases of residential tenancy nowadays. The reason is Article 8 of the Law on Residential Tenancy that grants the similar rights to the tenant of living dwellings, i.e., the rental contract about a residential space is valid towards third persons without any registration on the basis of law. We will speak about Article 8 of the Law on Residential Tenancy later.

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[212] Jubass O. *Jaunais Civīllikums*. Latgales Vēstnesis, 1937. 21.jūlijs, nr. 81, 2; Konradi F., Walter A. *Civīllikumi ar paskaidrojumiem. Otrā grāmata. Lietu tiesības*. Rīga: Grāmatrūpnieks, 1935, 73; Erdmann C. *System des Privatrechts der Ostseeprovinzen Liv-, Est- und Curland. 1. Band. Allgemeiner Teil. Familienrecht*. Riga, 1889, 131- 135; Буковский В. *И. Свод гражданских узаконений губерний прибалтийских с продолжением 1912–1914 гг. и разъяснениями в 2 томах. Том I*. Рига: Г. Гемпель и Ко, 1914, с.254-255

[213] Rozenfelds J. *Lietu tiesības. 4. labotais, papildinātais izdevums*. Autora redakcijā. Rīgā: Apgāds Zvaigzne ABC, 2011, 13; Kārkliņš J., Odiņš R. *Akciju liettiesiskais statuss*. in: *Tiesību interpretācija un tiesību jaunrade – kā rast pareizo līdzsvaru: Latvijas Universitātes 71. zinātniskās konferences rakstu krājums*, Rīga: LU Akadēmiskais apgāds, 2013, 56-61

[214] Grūtups A., Kalniņš E. *Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums*. 2.izdevums. Rīga: Tiesu namu aģentūra, 2002, 209-220; Rozenfelds J. *Lietu tiesības. 3. izdevums*. Rīga: Zvaigzne ABC, 2004, 136-153

Different opinions were expressed regarding Article 4045 of the Civil law of 1864 (the present Article 2126) in the old legal literature as well. C. Erdmann wrote that Article 4045 introduced rental rights with an effect of real rights. According to him, after registration rental rights have absolute effect towards any other person, besides do not vanish in case of alienation[215]. W. Bukovsky (*B. Буковский*) held a different opinion. He pointed out, that despite the wording of Article 4045, these personal rights registered in the Land Book are not true *in rem* rights, although they have the absolute character and effect towards a new acquirer of the immovable. W. Bukovsky pointed out that the rental contract registered in the Land Book cannot produce property rights because the mark in the Land Book is binding not for all third persons, but a new acquirer[216].

In modern literature two opinions on this subject can be find: the rental contract entered in the Land Book turns in *in rem* rights[217]; the rental contract entered in the Land Book is not *in rem* rights[218]. The jurisprudence of the Supreme Court shows that a limited number of obligatory contracts can be entered in the Land Book, nevertheless, if they are entered, they become real rights[219]. It follows from several court cases that, if an obligatory right has been entered in the Land Book, it turns into a personal servitude (German: *Personalservitut*)[220], i.e., a real right. This opinion is ungrounded, the opposite opinion deems to be right, if a legal source of the right in question is an obligation, then it is an obligatory right. The obligation cannot be turned into a property right by a simple registration in the Land Book[221]. As to the rental contract registered in the Land Book, it is an obligatory right which is combined with a real right because of transfer of possession (hold). To clarify, the Latvian Land Book is a constitutive register of property rights with some exceptions when an obligatory right may be recorded (Article 4 and 5 of the Land Book Law). Hence registration of the contract does not influence its validity or nullity. Article 1476 of the Civil Law states that registration of a contract shall not remove any internal defects, if they exist, and also shall not infringe on the rights acquired by a third person.

Comparing Article 2126 of the Civil Law to Article 8 of the Law on Residential Tenancy, Article 8 determines that the rental contract about living dwellings is binding for a new acquirer in all alienation cases, except the public auction (Article 601 of the Civil Procedure Law), therefore practically is not necessary to register such contract.

Article 8 of the Law on Residential Tenancy is mainly analysed in connection with the lack of publicity of such contracts[222], since a new owner is not always aware of the rental contracts concluded by the previous owner. If the living dwelling rented has been alienated, a new owner becomes a successor of the former owner (landlord) to the rental contract, the succession takes place because of Article 8 of the Law on Residential Tenancy. More likely, the nature of Article 8 of the Law on Residential Tenancy is similar to Article 2126 of the Civil Law, as a result, the residential rental contract remains a source of obligatory (personal) rights. Normally, this question is not connected with any difficulties for tenants in practise, the dispute about the nature of the contract is more theoretical in cases of residential tenancy.

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[215] Erdmann C. *System des Privatrechts der Ostseeprovinzen Liv-, Est- und Curland. 4. Band. Obligationsrecht*. Riga, 1894, S. 362-363

[216] Rozenfelds J. *Lietu tiesības*. 3. izdevums. Rīga: Zvaigzne ABC, 2004, 15; Буковский В. *И. Свод гражданских узаконений губерний прибалтийских с продолжением 1912–1914 гг. и разъяснениями в 2 томах*. Том 2, Рига: Г. Гемпель и Ко, 1914, с.1746

[217] Višņakova G., Balodis K. *Latvijas Republikas Civillikuma komentāri. Lietas. Valdījums. Tiesības uz svešu lietu*. Rīga: Mans īpašums, 1998, 13

[218] Rozenfelds J. *Lietu tiesības*. 3. izdevums. Rīga: Zvaigzne ABC, 2004, 15

[219] 20.12.2012.Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta. lēmums lietā nr. SKC-2456/2012. <www.at.gov.lv>, 2 September 2013.

[220] 03.11.2004. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta lēmums lietā nr. SKC-667/2004. <www.at.gov.lv>, 2 September 2013.; 08.09.2004. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta lēmums lietā nr. SKC-575/2004. <www.at.gov.lv>, 2 September 2013.

[221] Rozenfelds, J. „*Publiskās ticamības princips, kopīpašuma tiesības uz nekustamu īpašumu un sacīkstes princips*" *Latvijas Republikas Augstākās tiesas Biļetens* Nr.3 / 2011 Decembris, 9- 15. <www.at.gov.lv>, 2 September 2013.*;* Virko, E. „Zemesgrāmatu pieejamība un ticamība" *Jurista Vārds* Nr. 13 (517). <www.juristavards.lv>, 2 September 2013.

[222] *See, for example*, Lapsa, J. „Dzīvojamas telpas īres līguma attiecības īpašnieka maiņas gadījumā". *Jurista Vārds* Nr. 1 (454), <www.juristavards.lv>, 2 September 2013.

As said, the rental contract establishes hold (not possession!) of property. The rental contract establishes the legal ground for transfer of hold, thus the tenant becomes a lawful (German: *rechtsmäßig*) holder (Article 909 of the Civil Law). In addition, the tenant may be a holder in good or bad faith. Holders in good faith are those who are convinced that no one else has a greater right to hold the property than they; accordingly holders in bad faith are those who know that they do not have the right to hold the property (Article 910 of the Civil Law).

According to legal literature, the notion "hold" and "possession" is based on the subjective possession theory of Savigny[223]. Persons under whose actual control property is, if they acknowledge another person to be an owner thereof, are holders; those of them who believe that they are owners are possessors (Article 876 of the Civil Law). The owner of a residential dwelling remains a *legal* possessor (Article 875, 909 of the Civil Law), but at the same time the tenant becomes a holder of his property.

In cases of subletting, the sub-tenant becomes a holder (an actual possessor), the landlord remains a legal possessor, but the tenant has solely personal rights against the sub-tenant and the landlord. This conclusion follows from Article 878 Paragraph 1 of the Civil Law which states that several persons may not actually possess (hold) one thing at the same time. Nevertheless, Article 878 Paragraph 3 of the Civil Law stipulates that one person may have actual control over the property, but another - possess the right on it. Considering this fact, the tenant's property right when he sublets the dwelling, is possession of the personal rental right (Article 877 of the Civil Law).

Actually, the practical meaning of the distinction between possession and hold is very questionable. The distinction had sense when the "father" of the Civil Law - F. Bunge drafted the law, because the scope and rights of a holder were narrower in comparison with a possessor. In the course of time the Civil Law of F. Bunge has been supplemented with the rule that the holder of property (the tenant) has the same protection as the possessor does. It is indicated in historical legal literature that after this amendment hold has been almost abolished[224]. The amendment has been preserved in the present Civil Law; accordingly, Article 876 of the Civil Law of 1937 says that a holder or an *actual* possessor has the right to require the protection and renewal of possession which has been interrupted by a third person. The wording of Article 876 of the Civil Law is confusing because one can conclude that a holder obtains possession without being a possessor. Moreover, the article in question equals the holder to the possessor regarding the protection. As a consequence, the only difference relates to the subjective moment, whether a person considers another person to be an owner. Finally, there are no specific rules for obtaining of hold, therefore the rules on acquisition and loss of possession are applicable. Considering these contradictions, it was proposed to abolish the notion of a holder, replacing it with the notion "possessor" in accordance with the German Civil Law approach[225].

The practical significance of the fact that the landlord remains a legal possessor or the tenant keeps the possession of the rental right, although the tenant has sublet the property, is not important because practitioners prefer personal rights over *in rem* rights[226].

The tenant, being a holder or an actual possessor, obtains hold (possession) of the immovable rented out, when the tenant enters the premises, as well as when there are no natural obstacles to enter the immovable property (Article 882 of the Civil Law), for example, the tenant has received keys from an apartment.

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[223] Kalniņš E. Pētījums *par Civillikuma lietu tiesību daļas pirmās, otrās un trešās daļas modernizācijas nepieciešamību.* <www.at.gov.lv> ,2 September 2013.
[224] Konradi F., Walter A. *Civīllikumi ar paskaidrojumiem. Otrā grāmata. Lietu tiesības*. Rīga: Grāmatrūpnieks, 1935, 42
[225] Kalniņš E. Pētījums *par Civillikuma lietu tiesību daļas pirmās, otrās un trešās daļas modernizācijas nepieciešamību.* <www.at.gov.lv> ,2 September 2013
[226] Rozenfelds J. *Lietu tiesības*. 4. labotais, papildinātais izdevums. Autora redakcijā. Rīgā: Apgāds Zvaigzne ABC, 2011, 127

In brief, the rental contract about living dwellings has not only *inter partes* effect, but is binding for the next acquirer on the basis of Article 8 of the Law on Residential Tenancy. In addition, the rental contract about living dwellings, as well as the rental contract about non-residential premises is also binding for a new acquirer when the contract is entered in the Land Book under Article 2126 of the Civil Law. Simultaneously, the owner as a landlord transfers actual possession or hold to the tenant. Possession and hold are *in rem* rights, therefore they are in force against third persons (*erga omnes*), except the landlord (or the tenant in cases of subletting). If there is a conflict between rules on obligations and property, the rules on obligations have priority.

- ***To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?***

The Law on Residential Tenancy has priority, if the rules of the Civil Law do not concur with its regulation. Since the Law on Residential Tenancy is the new law, its priority follows from the rule *lex posterior derogate legi priori*[227] as well.

The rules of the Law on Residential Tenancy are generally mandatory[228]. The Supreme Court pointed out in the judgement of March 22, 2006 in the case No. 197 and the judgement of May 5, 2005 in the case No. 303 that, if the Law on Residential Tenancy regulates a particular issue, then the Civil Law provisions on the same issues are not applicable[229]. The questions of the Law on Residential Tenancy are the subject- matter, parties, terms, right to lodge other persons, rental payment and its increase, sub-rent, termination and eviction of the tenant and other persons. All other issues which are not covered by the Law on Residential Tenancy have to be determined in accordance with the Civil Law. In contrast, the rules of the Civil Law about rental legal relations are mainly of a dispositive nature[230] and the principle of party autonomy is its cornerstone. It follows from Article 2128 of the Civil Law, which belongs to the general provisions of rental contracts, that both parties have to treat the obligations arising from the contract with such care as may be fairly expected from them. Thus, if the Law on Residential Tenancy aims to protect the tenant in the particular cases by mandatory provisions, the Civil Law presumes that the additional protection is not necessary because both parties are equal. These discrepancies of the approach of the laws led to the conclusion made by some scholars and practitioners that the Civil Law is not applicable in all the cases which are somehow regulated by the Law on Residential Tenancy[231].

Considering two different approaches of the laws, mentioned above, sometimes it is really difficult to find out, when exactly the rules of the Law on Residential Tenancy replace and exclude the application of the Civil Law and when the Civil Law supplements the rules of the Law on Residential Tenancy.

Unfortunately, no further information about the practical application of the Civil Law and the Law on Residential Tenancy is available. Although all court decisions and judgements are registered and electronically saved in the Court Information System (Latvian: *Tiesu informācijas sistēma*[232]), the access to the Court Information System is limited. Accordingly, court decisions and judgements are not available to the public, including researchers and scholars. It changed partly after September 1,

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[227] Neimanis J., *Ievads tiesības*. Rīga: zv. adv. J. Neimanis, 2004, 150.lpp. Balodis K. Ievads civiltiesībās. Rīga: Zvaigzne ABC, 2007, 167

[228] Torgāns, K. (ed.) *Latvijas Republikas Civillikuma komentāri. Saistību tiesības (1401.–2400. p.)*. 2. izdevums. Rīga: Mans īpašums, 2000, 496

[229] LR AT spriedumi

[230] Erdmann C. *System des Privatrechts der Ostseeprovinzen Liv-, Est- und Curland. 4. Band. Obligationsrecht*. Riga, 1894, 345

[231] *Likumprojekta „Dzīvojamo telpu īres likums" sākotnējās ietekmes novērtējuma ziņojums (anotācija)*. <http://www.mk.gov.lv/doc/2005/EMAnot_201113.2127.doc>, 18 March 2014.

[232] *Tiesu informācijas sistēma*. <http://court.jm.gov.lv/>, 2 September 2013.

2013. According to the newest amendments to the Law on Judicial Power (Latvian: *Likums „Par tiesu varu"*), decisions and judgments of the ordinary courts, that have entered into force, will be published without personal data in the Internet[233]. Till that time, researchers and other persons could analyse not numerous court decisions and judgements of the page of the Supreme Court of Latvia (www.at.gov.lv).

Regarding social rent issues Article 15 of the Law on Social Apartments and Article 11 of the Law on Assistance in Solving Apartment Matters states that private laws - Law On Residential Tenancy and the Civil Law – are applicable in addition to the Law on Social Apartments and Law On Assistance In Solving Apartment Matters. The general and special rules work properly here.

The two-stages theory (German: *Zweistufentheorie*) helps to differentiate administrative law from private law. At the beginning administrative institutions decide by issuing an administrative act, whether, for example, to provide an assistance in solving apartment matters to a particular person. As a result of the administrative act the institution enters a private contract in order to achieve the administrative act's aim.

- ***What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?***

The tenant and the landlord may use different means in order to resolve disputes connected with their rental contract.

The ordinary courts decide on civil law disputes, arising from rental relations (Article 1 of the Civil Procedure Law), it happens within civil proceedings.

The ordinary courts also decide upon administrative violations, for example, when the landlord has cut off the basic services (Article 150.3 of the Administrative Violation Code), although this action is a contractual infringement at the same time. The court may review a case regarding administrative penalties, if an applicant has observed the preliminary procedure where it is set by law, for instance, appealed the decision to the higher institution.

Furthermore, the ordinary courts are involved when criminal proceedings against the landlord because of Article 143 or 279 of the Criminal Law violation have been initiated. Unfortunately, criminal proceedings are not always effective since there are cases when the state police does not initiate criminal proceedings, pointing out that it is a civil dispute, i.e., has to be resolved by the ordinary court within the course of civil proceedings. Criminal proceedings have been initiated by the police in the situations when other persons are unlawfully lodged and, as a result, the tenant is essentially disturbed and cannot use the premises rented out[234].

If the problem at issue is related to social rent, then it is the jurisdiction of the administrative courts. The administrative court may resolve civil law issues in the course of administrative proceedings insofar as it is necessary[235].

The administrative courts may also resolve disputes connected with decisions of the Consumer Right Protection Centre (Consumer Centre) (Latvian: *Patērētāju tiesību aizsardzības centrs*). The Consumer Centre is a state institution, which may act on its own initiative or because of a submission of a consumer or other institution, informing about consumer rights violation (Article 25 Paragraph 8.1 of the Consumer Law).

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[233] 13.06.2013. Grozījumi likumā "Par tiesu varu" <http://likumi.lv/doc.php?id=258013>,2 September 2013.
[234] *Tiesībsarga 2012.gada ziņojums*.
<http://www.tiesibsargs.lv/files/content/Tiesibsarga%20gada%20zinojums_2012.%20gads.pdf >, 2 September 2013.
[235] Danovskis E. *Publisko un privāto tiesību dalījuma nozīme un piemērošanas problēmas Latvijā*. Latvijas Universitāte. Juridiskā fakultāte, 2012, 175-178

If the consumer addresses the Consumer Centre, the competences of the Consumer Centre towards contracts are the following:

- To assess submissions and complaints about possible violations of the consumer law;

- To control that contracts comply with the consumer law, to request that an entrepreneur amends a draft contract or existing contract, if it has unfair or unclear contractual terms (Article 25 Paragraph 4 of the Consumer Law).

If the Consumer Centre finds out that the consumer rights have been violated and the violation may harm collective interests of consumers and a particular consumer, the Consumer Centre is entitled to:

- Propose that the entrepreneur adjusts a (draft) contract within a specific time period;

- Take a decision in the form of an administrative act, demanding to cease the violation and perform specific activities in order to rectify the situation within a specific time period (Article 25 Paragraph 8 of the Consumer Law).

The Supreme Court recognized that, although the Consumer Centre is an administrative institution and not a part to the contract between the consumer and entrepreneur, the Consumer Centre may still interfere in contractual relations of private persons to stop violation of consumer rights. The Supreme Court pointed out, when the Centre proposes to rectify the violation, the state supervision is performed in the cooperation form, but, when the Centre issues an administrative act, state supervision takes place in the form of subordination. Irrespective of the supervision form, a particular entrepreneur has no right of choice[236].

Similar to administrative violations, the court may be involved, if one of participants of administrative proceedings before the Consumer Centre appealed the decision of the latter to the Ministry of Economics (higher institution) and then submitted an application to the administrative court. Thus the Consumer Centre and the court may control controls contractual terms of the consumer rental contracts within administrative proceedings (Article 6 Paragraph 10 of the Consumer Law). In addition, the ordinary courts may contract the contractual terms in consumer contracts in civil proceedings, if one of parties brought a court action regarding the (rental) contract.

If we compare two court proceedings in case of the consumer, practically administrative proceedings are more efficient. If the administrative courts decide on a dispute, they must act on their own initiative. Besides, already in 2006 the Department for administrative cases of the Supreme Court recognized that consumer law protects better the consumer who is a weaker party in comparison with the entrepreneur[237]. The jurisprudence of the ordinary courts is diverse in this question. The court may act *ex officio* in civil proceedings, insofar as it is necessary to find out truth and speed up proceedings[238]. The issue, if the consumer must apply for review of a disputable clause in civil proceedings has been controversial and there are judgements where the Supreme courts states that control of consumer contracts happens only upon a respective application of the consumer[239]. However, in the newest summary of the jurisprudence on the contractual penalties of

[236] 27.03.2008. Patērētāju tiesību aizsardzības centra lēmums Nr. 10-lg, <www.ptac.gov.lv>, 2 September 2013.; 11.05.2010. Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departamenta lēmums lietā Nr. SKA - 412/2010, <www.atv.tiesa.gov.lv>, 2 September 2013.

[237] Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departamenta 2006.gada 7. marta spriedums lietā SKA - 59/2006, <www.at.gov.lv>, 2 September 2013.

[238] Torgāns, K. (eds.) *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa).* Rīga: Tiesu namu aģentūra, 2011, 51-52

[239] 14.12.2011. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-427/2011, <www.at.gov.lv>, 2 September 2013.; 22.02.2012. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-76/2012, <www.at.gov.lv>, 2 September 2013.; 12.03.2013. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-108/2013, <www.at.gov.lv>, 2 September 2013.

2013, the Supreme Court recommended clearly that the ordinary courts of the lower instances must control contractual terms in consumer contracts in accordance with the EU law[240].

To mention, the courts of general jurisdiction (ordinary courts) are not bound by an opinion or a decision of the Consumer Centre[241] and accordingly are not bound by a judgement of the administrative courts about one and same subject matter. Therefore, two parallel court proceedings: administrative and civil proceedings, for example, about a contractual term in a rental contract, are possible. As a consequence, two contrary judgements can be theoretically passed, though there have not been such situations yet.

The jurisdiction of the ordinary or administrative courts is as follows:

The ordinary courts (German: *ordentliche Gerichte*) adjudicate all civil disputes, administrative violation and criminal matters (Article 5, 6, 7 Paragraph 2 of the Law on Judicial Power).

The administrative courts (German*: Verwaltungsgericht, auch Fachgerichte*) control the legality and validity considerations of an administrative act issued by an institution or of the actual action of an institution. These courts also decide, if a public legal contract exists or has been fulfilled, as well as establish the public legal duties and rights of a private person (Article 7 Paragraph 2 of the Law on Judicial Power, the Administrative Procedure Law).

If there is a dispute between the ordinary and administrative courts about the competence, for example, a local municipality is a party of the rental contract and its role, as well as the nature of the dispute (private/public law) is not very clear, the following approach is applicable:

If the ordinary courts had already refused to accept the claim statement because of the lack of jurisdiction (competence) and this decision had entered into force, but the administrative courts, while examining the claim, have acknowledged that the dispute in question has been subject to the jurisdiction of the ordinary courts, the administrative courts must deal with the dispute in order to secure the right to fair trial. This rule is also applicable, when the administrative courts have mistakenly established the jurisdiction of the ordinary courts, then the ordinary courts have to decide on the dispute[242].

Since 1995 there have been three levels of courts in Latvia. The terms "court level" and the "court instance," although closely related, are not identical terms.

The first-level courts are the district (city) courts (German: *Amtsgericht*); the second level - are the regional courts (German: *Berzirksgericht*), and the third level is the Supreme Court (German: *Oberstes Gericht*). This three-tiered system ensures that the decisions of the courts of first instance can be reviewed on appeal (de novo) (German: *Berufung*), and reviewed by a cassation appeal (German: *Kassation)* [243]. At the moment there are also two chambers of the Supreme courts which act as an appellate instance (German: *Berufungsgericht*) for civil and criminal cases. These bodies decide appeal complaints, if court proceedings have been started in the regional courts as in the court of the first instance (German: *Gericht erster Instanz)*. From January 1, 2015 the Chamber of Criminal Cases of the Supreme Court will be abolished, but starting from January 1, 2016 all civil disputes will start in the district (city) courts and the Chamber of Civil Cases of the Supreme Court will be abolished[244].

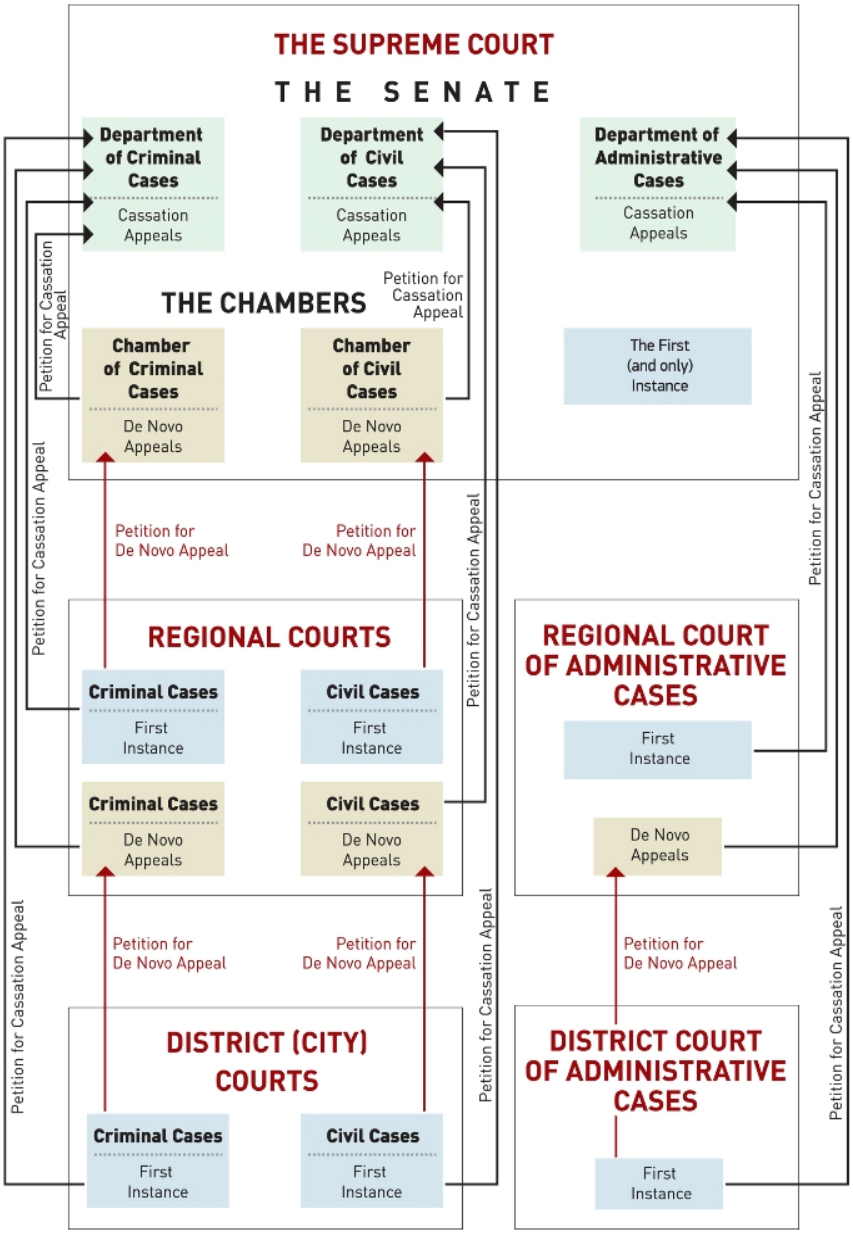
[240] Latvijas Republikas Augstākā tiesa. *Tiesu prakse līgumsodu piemērošanā*. 2013, <www.at.tiesa.gov.lv>, 2 September 2013.
[241] 12.03.2013. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-108/2013, <www.at.gov.lv>, 2 September 2013.
[242] See for example, LR Augstākās tiesas 25.02.2011. Senāta departamenta priekšsēdētāju sēdes lēmums; LR Augstākās tiesas 10.03.2009. Senāta departamenta priekšsēdētāju sēdes lēmums lietā SKA-170/2009
[243] The Supreme Court and the Latvian Court System. http://www.at.gov.lv/en/about/operation/system/
[244] 13.06.2013. Grozījumi likumā "Par tiesu varu" http://likumi.lv/doc.php?id=258013

The administrative courts have the same structure, excluding the Chamber as an appellate instance. The first instance - the district (city) courts is also the first court level in court administrative proceedings. After the district (city) courts comes the Administrative regional court, the last instance is the Supreme Court.

As mentioned, the judgement can be appealed. An appeal means a review of a case on the merits within the framework of claims expressed in an appeal.

The third instance is the Supreme Court examines whether a judgment or a decision of a lower instance court conforms to the law in administrative, civil and criminal disputes. The Supreme Court as the cassation instance does not hear a case on its merits; the competence of the cassation instance does not include clarifying the facts of the case and examining and evaluating evidence. The cassation instance examines conformity of an appealed judgment with substantive and procedural law and decides on the basis of the relevant case materials.

Please find below the layout about the Latvian Court System and the Supreme Court:



Please note, that the layout does not contain the newest amendments described above.

To sum up, there is no special jurisdiction in tenancy cases. One can bring a court action in the administrative or ordinary court, depending on the problem at issue. It is possible to submit an appeal against a decision or judgement of the first instance and then a cassation appeal against a decision or judgement of the second instance.

Besides, the Land Books and (starting from November 1, 2013) notaries may decide on civil cases in the course of simplified procedures.

The Land Book's departments of district (city) courts are also courts. The Land Books are a bit similar to the German Commercial Register (German: *Handelsregister*). The Latvian Land Book is a public register that registers property rights on immovable and other connected rights in the district of the ordinary district (city) court, as well as the Land book is a part of the ordinary district (city) court of a respective territorial unit (Article 2, 29 of the Law on Judicial Power).

The Land Book's departments - officials of the Land book who are judges in the meaning of the Law on Judicial Power are entitled to examine applications within the compulsory enforcement of indisputable claims and the warning enforcement proceedings (Article 24 of the Civil Procedure Law; Article 30 of the Law on Judicial Power).

The compulsory enforcement of indisputable claims is permitted pursuant to rental agreements, which are notarially certified or entered in the Land Book, in addition these agreements must contain a duty to pay the rental payments.

The judge of the Land Book examines the rental agreement and its content. Afterwards the judge takes a decision, whether the obligation and to what extent shall be executed (Article 405 of the Civil Procedure Law). The court decision is an execution order (German: *Vollstreckungstitel*) at the same time.

The warning enforcement proceedings (German: *Mahnverfahren*) are allowed for rental payment obligations, if the term for the fulfilment of such obligation is due (Article 406.1 of the Civil Procedure Law). The Land Book acts as an intermediary and sends the warning to a debtor. If the debtor – tenant recognises the debt, then the Land Book takes a decision, which is also an execution order (German: *Vollstreckungstitel*).

The positive decision, taken by the Land Book, may not be appealed. However, the debtor is entitled to start civil proceedings against the creditor, in whose favour an execution order has been issued in the both cases: the compulsory enforcement of indisputable claims and warning enforcement proceedings - and ask for a postponement of execution.

Starting from November 1, 2013 creditors are able to apply for (compulsory) enforcement proceedings without involvement of courts in cases of money debt – rental payment - collection.

The new section has been included in the Law on Notarial Practice which states that the enforcement procedure of notarial deeds will be similar to the enforcement of court judgments. Thus all legal means and methods of the Civil Procedure Law will be available while enforcing notarial deeds.

The new Law on Notarial Practice states that a contract must include a clause that the debtor explicitly consents to compulsory enforcement proceedings in case of non-performance, otherwise the new provisions will not apply.

Contracts concluded in the form of a notarial deed before the recent provisions enter into force can still be submitted for execution within the existing court procedure for compulsory enforcement of indisputable claims. However, after the amendments take effect, the court procedure for

indisputable claims will not be available if the notary refuses to declare enforceability of the notarial deed.

- ***Are there regulatory law requirements influencing tenancy contracts***

    - ***E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)***

There is no contract or personal registration duty in Latvia. Nevertheless, the landlord must inform the State Revenue Service about a rental contract for taxation purposes, which cannot be considered as a duty to register rental contracts.

- ***Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.***

There are no specific requirements for habitable dwellings, excluding the reference to the construction and hygiene requirements. These regulations are very technical and extensive, for this reason they will not be reviewed here. In addition, the common standard of a living dwelling in cases of private and social rent is the following: a residential space is capable of being rented, if it is a lit, heated room, which is suitable for long-term human accommodation and for placing household items (Article 16 of the Law on Assistance in Apartment Matters and 28.2 of the Law on Residential Tenancy).

If disputes arise, whether habitable dwellings are capable of being rented or not, the administrative or ordinary court resolves the dispute at its own discretion based on evidence, including expert's statements about the state of the dwelling[245].

Public utilities, provided to the tenant, differ in cases of private and social rent. Heating, cold water, electricity (or other indoor lighting), sewerage and removal of municipal waste shall be present in all cases when renting without public task; other services (also auxiliary services) are optional. If the matter concerns social rent, then local municipality may offer living dwelling without cold water and/or sewerage[246].

- ***Regulation on energy saving***

The Law on Maintenance of Residential Houses introduced the minimal requirements towards maintenance of the residential house. The law distinguishes between the compulsory administration and voluntary activities. The measures connected with energy saving belong to the compulsory administration activities. It means that owners of apartments cannot refuse to take measures and pay for the measures concerning energy saving (Article 6 Paragraph 2 of the Law on Administration of Residential Houses). According to Article 11 of the Law on Residential Tenancy, if the energy saving measures have been taken, the tenant is obliged to pay for them. A payable amount is calculated proportional to the area of a relevant residential space.

[245] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 155

[246] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 89

The Law on Maintenance of Residential Houses contains a delegation to the Cabinet of Ministers to issue the minimal standards regarding energy saving measures. The Cabinet performed the task and passed the Regulation No. 907 of September 28, 2010 (Latvian: *"Noteikumi par dzīvojamās mājas apsekošanu, tehnisko apkopi, kārtējo remontu un energoefektivitātes minimālajām prasībām*[247]*"*). The Regulation stipulates that the manager of a residential house must take energy saving measures, if an annual average consumption of heating of a residential house equals or is more than 230 kWh/m2. In such case the manager has to equip outdoors with an outdoor closer, insulate heating and hot water pipes, as well as outdoors and windows (Section 20 – 23 of the Regulation No. 907).

Owners of apartments are entitled to take voluntary actions because the activities mentioned are the necessary minimum.

b) Preparation and negotiation of tenancy contracts

	Main characteristic(s) of tenancy without public task	**Main characteristic(s) of tenancy with public task**
Choice of tenant	Freedom of contract	Eligibility determined by law
Ancillary duties	No	No

****

- ***Freedom of contract***

  - ***Are there cases in which there is an obligation for a landlord to enter into a rental contract?***

There is no duty to enter a rental contract without public task. In some cases the freedom of contract leads to situations, when families with small children or pets (mainly cats or dogs) have problems to rent living premises, because potential landlords do not want that such families live in their property[248], however, there is no obligation to enter a rental contract in cases of discrimination. A local municipality has to enter a rental contract with public task, if a private person is needy (of moderate means) or is socially unprotected.

Matching the parties

  - ***How does the landlord normally proceed to find a tenant?***

The landlord advertises that he has a living space for rent, using different means (newspapers, the Internet, bulletin board, through acquaintances etc.).

[247] 28.10.2010. Ministru kabineta noteikumi Nr. 907 *„Noteikumi par dzīvojamās mājas apsekošanu, tehnisko apkopi, kārtējo remontu un energoefektivitātes minimālajām prasībām "* < *Noteikumi par dzīvojamās mājas apsekošanu, tehnisko apkopi, kārtējo remontu un energoefektivitātes minimālajām prasībām* >, 2 September 2013.

[248] Saimnieki pazemo dzīvokļa meklētājus. <http://www.tvnet.lv/zinas/tava_balss/455954-saimnieki_pazemo_dzivokla_mekletajus>, 2 September 2013.

It is also possible that the tenant takes the initiative and advertises that he is looking for a room, an apartment, a house etc., which could be rented.

Some of landlords and tenants use services of estate agents.

Persons, who are eligible to receive assistance in apartment solving matter, that is, willing to rent social apartments, shall submit an application together with documents, proving their eligibility to a respective municipality, where they have residence.

- ***What checks on the personal and financial status are lawful and usual? In particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?***

This issue is problematic, because it is disputable from the personal data protection point of view, if and to what extent the landlord may gather, restore etc. information about a potential tenant which is publicly available. The landlord may collect personal data of a natural person – his potential tenant, if this natural person (the data subject) has given the consent to it (Article 7 of the Personal Data Protection Law (Latvian: *Fizisko personu datu aizsardzības likums*[249]).

If the person consented, the landlord can check the public register about tax debtors of the State Revenue Service, the public insolvency register of natural persons, the Commercial Register in order to determine etc.

The landlord can also ask to present the information from the Credit Register. The Credit Register Law (Latvian: *Kredītu reģistra likums*[250]) states that the Credit Register is kept by the Bank of Latvia. Credit institutions, for example, banks, have access to the Register and can check different information about the credit history of a person. However, other creditors, who do not provide credit services, including landlords, is not allowed to receive information from the Credit Register directly. At the same time the debtor, who is included in the Credit Register, is entitled to receive all information about self from the Register (Article 14 of the Credit Register Law). These data can be submitted to a potential landlord, but the landlord has no claim to receive them, if the potential tenant refuses to provide it.

A potential tenant may agree to provide the credit history, salary statement and other necessary documents to the landlord.

There are also private credit reference agencies, whose activities fall within the scope of the Personal Data Protection Law, but there are no further special rules about private credit reference agencies. It is a common practice that creditors or providers of different services include a clause into a contract that other party gives consent to collect, process and use personal data for commercial purposes, transfer to third parties and include them into public registers. This clause is a legal basis for the activities of different private agencies. As a result, the landlord can turn to one of these agencies and ask for a reference whether the tenant has paid accurately for other goods and services. The information can refer to rental relations, but it is not obligatory.

Usually the landlord will not collect information about the tenant, but will ask for a deposit or an advance rental payment.

- ***How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of "bad tenants"? If yes, by whom are they***

[249] 23.03.2000. Fizisko personu datu aizsardzības likums. <http://likumi.lv/doc.php?id=4042>, 2 September 2013.
[250] 24.05.2012. Kredītu reģistra likums. <http://likumi.lv/doc.php?id=249046>, 2 September 2013.

compiled? Are they subject to legal limitations e.g. on data protections grounds?

As mentioned above, there are blacklists of "bad debtors", compiled by private companies. Such information can be included in a register or blacklist, if the debtor has given the prior consent. If there is no consent, the use of information is unlawful.

- ***What checks may and does the tenant carry out on the landlord (e.g. to avoid being trapped by a swindler landlord)***

All public registers, suggested while speaking about checks on the personal and financial status of the tenant, can be used by the tenant as well. The principle that a potential landlord has to agree on these checks applies here as well. These registers are: the State Revenue Service of tax debtors, the public insolvency register of natural or legal persons, the Commercial Register.

It is advisable to examine, if the landlord has the right to dispose property. Knowing an address of the living dwelling, which the tenant would like to rent, the tenant may receive an extract about this particular property from the Land Book, including the information about disposal restrictions (seizures, prohibition marks because of civil proceedings etc.) and hypothecs. If the tenant does not examines these data, the contract concluded with him may be invalid, if the landlord appears to be a swindler, that is, is not an owner or his right to dispose has been restricted.

The tenant may ask for more information which the landlord may voluntary provide, but has not to.

- ***Services of estate agents (please note that this section has been shifted here)***

  - ***What services are usually provided by estate agents?***

According to the Commercial Law (Latvian: *Komerclikums*[251]), (estate) agents act as intermediaries and prepare the conclusion of a transaction. Estate agents provide different services, for example, provide the assistance in sale and rent transactions, presentation of an object (immovable) to a potential party to a contract, preparation and evaluation of documents required for a transaction, coordination with a notary and administrative institutions, if necessary, and perform other activities related to the conclusion of a transaction.

  - ***To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?***

The Commercial Law (Latvian: *Komerclikums*) contains the general provisions about agents, but there are no particular rules about estate agents.

An agent is a merchant who engages in intermediation for concluding transactions for the benefit of another person, not being permanently associated with such person through contractual relations (Article 64 of the Commercial Law). Consequently, an agent can be a partnership, individual trader (also a self-employed person), person registered in a foreign country who performs permanent economic activities in Latvia, private limited or a stock company or self employed natural person.

There are no legal requirements about education, knowledge, experience, reputation etc. of estate agents in Latvia. Basically, anyone can become an estate agent, even if this person is not a merchant in the meaning of the Commercial Law, that is, a person who is registered in the

[251] 13.04.2000. Komerclikums. < http://likumi.lv/doc.php?id=5490>, 2 September 2013.

Commercial Register. If the estate agent is a merchant, it is liable to each of the parties to the transaction for losses which have been incurred due to his or her fault (Article 69 of the Commercial Law). If the estate is not a merchant, but is a self-employed person, then he is also liable in accordance with the Civil Law provisions on tort.

The estate agent shall not be confused with recognised evaluators. The certification of recognised evaluators of immovable property exists in Latvia, they determine the market value of immovables. An agent can address a recognised evaluator if it is necessary.

The agent is not authorised to receive payments or any other specified performance of a transaction concluded with his or her intermediation (Article 68 of the Commercial Law). In practise it is difficult to determine if this rule is observed, in addition, a contract with the agent may include the clause that the agent is entitled to receive payments as an a authorized person (German: *Bevollmächtigte)*.

- ***What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?***

Normally a commission amounts to 50% - 100% of one rental payment, The person - landlord or tenant - assigned a task to the estate agent usually pays the commission. The right to receive the commission arises at the moment of concluding a transaction (Article 70 Paragraph 1 of the Commercial Law). However, other agreements are possible. Thus it is possible that the party, who has used services of the estate agent, includes the commission of the agent into an amount of a transaction so that other party covers it.

If parties have not agreed, which of them has a duty to pay the commission of the agent, they shall pay the commission in equal parts (Article 70 Paragraph 2 of the Commercial Law), of course, if the agent is a merchant, otherwise, the party who assigned the agent shall pay remuneration.

In addition to the commission, the agent may claim refund of costs incurred, if such rights have been explicitly agreed (Article 71 of the Commercial Law).

- ***Ancillary duties of both parties in the phase of contract preparation and negotiation ("culpa in contrahendo" kind of situations)***

Neither the Civil law, nor other laws exhaustively regulate duties of both parties in the phase of contract preparation and negotiation[252].

The one of the two rules is Article 1540 of the Civil Law. It states that, if a contract has not been concluded, but one of parties had bid remuneration for the performance of some action by means of an advertisement, however, this party has revoked the advertisement later, then it has to compensate all losses to another person, who made preparations to perform the activities, specified in the advertisement, without knowing of its revocation.

Another rule relates to the preliminary agreement (German: *Vorvertrag*). Article 1541 of the Civil Law determines that the preliminary agreement about entering into a contract in the future takes effect as soon as the essential elements of the contract have been established by it. In other words, the landlord and the tenant may conclude such agreement in the phase of contract preparation and negotiation, specifying at least the subject-matter (immovable) and rental payment amount in it. Parties may also include other contractual terms in the preliminary agreement, for

[252] Kārkliņš, J. *Latvijas līgumtiesību modernizācijas galvenie virzieni*.105-108, <https://luis.lu.lv/pls/pub/wct.doktd?l=1>, 2 September 2013.

example, liability because of unjustified refuse to enter the rental contract in future. To point out, the preliminary agreement is binding in the way that another party may demand the conclusion of the "normal" contract, but has no right to ask for particular contractual terms[253]. However, in practise parties may even enclose the draft of the rental contract to their preliminary agreement that they intend to sign in the future, to be able to ask for particular contractual terms of the rental contract.

There are no other legal rules which would determine ancillary duties of both parties in the phase of contract preparation and negotiation. Some scholars suggest that Article 1 of the Civil Law comprising the principle of good faith (German: *Treu und Glauben*) may become a legal basis for claiming losses[254].

c) Conclusion of tenancy contracts

Requirements for valid conclusion		
	Private renting	**Social Renting**
Formal requirements	Data about parties: name, surname, personal identity number (also personal or ID code) or date of birth and ID/Pass data, if no personal identity number exists (of natural persons); name, registration code (of legal persons) Signing date Signing place Signatures of parties	
Parties	Legal capacity to enter the contract and dispose property; lack of prohibitions based on law, contract, testament Procedure of taking the decision about renting about in cases, if the State, a local municipality or a company owned by the State is a landlord	
Form	Written form	
Immovable	Description, for example, address, area etc.	
	Private property	Social house or social apartment
Rental payments	Amount, terms and payment procedure; recipient of payments	

- ***Tenancy contracts***

  - ***distinguished from functionally similar arrangements (e.g. licence; real right of habitation; Leihe, comodato)***

The Civil Law regulates rental and lease contracts in the same section (Articles 2112 – 2177 of the Civil Law). In the both cases a creditor: a lesser or landlord - grants the right of use.

The rules of the Civil Law apply to lease contracts, concerning tangible or intangible property. They also apply to rental contracts about tangible and intangible movable property, as well as tangible non-residential immovable property and residential tenancy due to employment or studies. If at least one party is a merchant in the sense of the Commercial Law, then the respective rules of the

[253] Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 56
[254] Kārkliņš, J. *Latvijas līgumtiesību modernizācijas galvenie virzieni.*105-108, <https://luis.lu.lv/pls/pub/wct.doktd?l=1>, 2 September 2013.

Commercial Law will apply towards such party. However, these provisions are not relevant for our research.

In connection with the subject-matter of the lease and rental contract let us take a look at different kinds of property in the Civil law (Articles 841 – 845):

Property can be tangible or intangible. Intangible property consists of various personal rights, property rights and personal rights, insofar as such rights are of material (monetary) nature.

Tangible property is either movable or immovable, depending on whether it may be moved without external damage from one location to another.

Tangible property can be fungible (German: *vertretbar*) or non-fungible (German: *nicht vertretbar*). Fungible property is property which is determined numerically, by measurement or by weight. Non-fungible has individual features which help to distinguish it from another property.

Tangible property is either consumable (German: *verbrauchbar*) or inconsumable German: *nicht verbrauchbar*), depending on whether it is destroyed by normal use or not.

A lease contract grants the use of a fruit-bearing property in order to gain fruit thereof, but any other contract granting use, is a rental contract. Consequently the purpose of use of the subject-matter is important to ascertain, if it is a lease or rent.

The right of use, established by rental and lease contracts, shall not be confused with the right of use on the basis of the personal servitudes – real right of use. The Civil Law uses different wording for real right of use -"*lietojuma tiesība*" and for personal (obligatory) right of use "*lietošanas tiesība*"; "*lietojuma tiesība*" includes the "*lietošanas tiesība*" and not vice verse[255]. There are also other differences, regarding establishing of the personal servitudes, which are shown in the table below.

Please find below a review of rental contracts and functionally similar arrangements:

	Rent	**Lease**	**Gratis use (*Leihe*)**	**Loan**	**Custody (*Verwahrung*)**	**Property right of use (*Nießbrauch*)**	**Property right of habitation (*Wohnrecht*)**
Real or personal right	Personal	Personal	Personal	Personal	Personal	Real	Real

[255] Virko, E. „Zemesgrāmatu pieejamība un ticamība" *Jurista Vārds* Nr. 13 (517). <www.juristavards.lv>, 2 September 2013.

Definition	Contract pursuant to which one party grants or promises the other party the use of some property for a certain rental payment for non-commercial purposes	Contract pursuant to which one party grants or promises the other party the use of some fruit-bearing property for a certain lease payment for commercial purposes	Contract pursuant to which a person transfers to another person property without compensation and for a specific use	Contract pursuant to which ownership of a certain quantity of fungible property is transferred, with the duty to return property in the same quantity and of the same kind and quality as the property received	Contract pursuant to which a person undertakes to keep movable property transferred to it	Real right granted to a person to receive benefits from, to use and to acquire fruits from the property of another person for different purposes	Real right to use a living dwelling (residential house) of another person, for non-commercial, living purposes.
Real agreement v. consensual agreement?	both	both	Real agreement	Real agreement	Real agreement	Real agreement	Real agreement
Which property rights have been transferred?	Hold; owner remains a possessor of property	Hold; owner remains a possessor of property	Hold; owner remains a possessor of property	Ownership	Hold; owner remains a possessor of property	Property right of use	Right of use
Form of agreement	Any, excluding rent of living premises, where the written form is required	Any	Any	Any	Any	Because of the registration in the Land Book the written form is required	Because of the registration in the Land Book the written form is required
Subject-matter	Tangible, movable or immovable, inconsumable property	Tangible and intangible property	Tangible, movable or immovable property	Tangible, movable, consumable property	Tangible property	Tangible and intangible property	Tangible, immovable property
Gratis use or use for compensation	Use for consideration	Use for consideration	Gratis use	Gratis use or use for consideration	Gratis use or use for consideration	Gratis use or use for consideration (one-time payment)	Gratis use or use for consideration (one-time payment)
Liability	Owner is liable encumbrances of property Tenant or lessee uses property as proper and a		User is liable for maintenance, damage and misuse	- (Borrower becomes an owner of	Custodian is liable for damage of property	User is liable for encumbrances and maintenance of property,	User is liable for encumbrances and maintenance

	good manager	of property	property)		has to use property as proper and a good manager	of property
Return of property	Property received	Property, fruits and profit	Property or compensate value in case of consumable property, plus interest, if agreed	Property, fruits and profit	Property received or compensate value in case of consumable property	Property received
Termination	After contract expiration; after achievement of the contract's aim; upon a mutual agreement of parties etc.	After term expiration	After term expiration or within 6 months after termination notice	After term expiration or upon request	by renunciation of them; by merger of the rights and the duties in one person; by destruction of the servient or of the dominant property; by a resolutory condition coming into effect or expiration of a time period; by pre-emption; through prescription	

Let us also examine two more agreement about use of immovable which are typical for Latvia, therefore they may influence rental relations.

One of the agreements is called an agreement on the separate use of the immovable which is a subject of the joint ownership. The Supreme Court ruled in several cases that co-owners may agree on the separate use of the joint owned property. If the agreement on the separate use has been entered in the Land Book, the agreement is binding for third persons. A co-owner may use his actual part according to the agreement on the separate use without consent of other co-owners, which would be necessary, if no agreement existed. Besides, these co-owners are entitled to lease or rent this real share, determined by the agreement about the separate use, without consent of other co-owners. This agreement does not influence legal shares (German: *ideeller Anteil*), although a part of an immovable, actually used, can considerably differ from a share in the immovable, legally owned. In other words, if, for example, a person owns 1/7 of an immovable, as well as the immovable is not divided in real shares, the owner is entitled to agree with other co-owners that the first owner will use 1/2 of this property as an actual part; this agreement will be binding for co-owners and third persons in relation to the (separate) use after the registration in the Land Book. It should be stressed once more that such agreements refer solely to the right of use, but do not change ownership rights of co-owners[256].

Finally, the compulsory lease shall be mentioned as well. The compulsory lease is in essence similar to *in rem* rights, although it does not fit in any group of real rights, which are regulated by the Civil Law[257]. The compulsory lease relations are established, when a building or buildings are situated on the land plot, owned by another person. It means that owners of the land and building(-s) are entitled to agree on different conditions of lease of the land plot; if no agreement can be

[256] Rozenfelds J. „Publiskās ticamības princips, kopīpašuma tiesības uz nekustamu īpašumu un sacīkstes princips" *Latvijas Republikas Augstākās tiesas Biļetens Nr.3 / 2011 Decembris*, 9-15. <www.at.gov.lv/files/dokumenti/at_biletens3_web.pdf>, 2 September 2013.; Grūtups A. Kalniņš E. *Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums.* Otrais papildinātais izdevums. Rīga, 2002, 255; Virko, E. „Zemesgrāmatu pieejamība un ticamība" *Jurista Vārds* Nr. 13 (517). <www.juristavards.lv>, 2 September 2013.

[257] Rozenfelds, J. *Pētījums par Civillikuma Lietu tiesību daļas (ceturtās, piektās, sestās un septītās nodaļas) modernizācijas nepieciešamību*. 6. <http://at.gov.lv/lv/resursi/petijumi/>, 2 September 2013.

reached, the owners of the building(-s) have to rent the land with no right to opt out according to conditions stipulated by law. The compulsory lease agreement cannot be withdrawn. The lease payments for the land plot amount to 6% from the cadastral value of a respective land plot at the moment. In addition, the immovable tax should be compensated to the owner of the land. The compulsory lease payment is considered to be an obligatory payment, which the tenant must perform (Article 11 of the Law on Residential Tenancy).

- ***specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well. Please describe the legal specificities in these cases.***

The Law on Residential Tenancy is applicable in relation to rent of a living dwelling for non-commercial (non-profit gaining) use. In the paper we will mainly discuss these particular rental contracts. To mention, contracts about apartments and rooms, located in the house in which the landlord lives himself, are ruled by the general rules of the Law on Residential Tenancy and Civil Law about subletting (Article 5 Paragraph 4 of the Law on Residential Tenancy) which we review while answering the question about subletting (see below). In this section, however, we will speak about the following rental contracts:

- Rental contracts concluded because of employment or studies, entered by private persons and regulated by the Civil Law;

- Rental contracts because of employment relations or studies, entered by a state's or local municipality's institution and private person(-s), regulated by the Law on Residential Tenancy.

So, when two or several private persons enter a rental contract because of employment or studies, the Law on Residential Tenancy is not applicable, It is not necessary that an employer or educational institution owns the dwelling rented because a third person may be a landlord. On the other hand, if the educational institution or employer is not the same person as a landlord, until the third person - employer enters the contract, the rental contract is valid only between the contracting parties (Article 1522 of the Civil Law). Nevertheless, usually in this latter case the rental contract is concluded under the resolutive condition, i.e., its validity is linked to valid educational or employment relations; consequently the termination of employment or educational relations leads to the termination of the rental contract.

It has to be mentioned that an employee, student and the like may conclude directly a "normal" rental agreement with a landlord without involvement of the employer or educational institution. In this case the Law on Residential Tenancy will be applied; it would be also possible to introduce a resolutive condition in such contract which could be related to the end to employment or studies (Article 1551, 1565 of the Civil Law).

In the situations discussed in this section, the tenant may lodge his spouse, under aged child(-ren) and family members incapable of work, if it has been agreed in the rental contract (Article 25 Paragraph 2 of the Law on Residential Tenancy).

Any legal or natural person may establish a residential accommodation for employees or students.

The subject matter of the rental contract, entered because of employment or studies, can be an apartment or a residential space in an official accommodation. If the matter concerns a residential

space in an official accommodation, then it can be a dormitory bed or a room in the dormitory[258]. To compare, the subject – matter of a "normal" rental contract can be a part of a living room or a room, which is passed to get into other rooms, only if the landlord resides with a tenant (Article 23 of the Law on Residential Tenancy).

Furnishing is an essential of an official accommodation[259]. Nevertheless, an apartment that is rented because of employment and studies or based on a "normal" rental contract does not need to have furnishing. Parties are free to agree on this matter.

The subject-matter of the contract because of employment or studies must comply with the construction and hygiene requirements, as well as a local municipality supervises using of an official accommodation, established by private persons.

As indicated, the time period of the contract, concluded because of employment or studies, is closely related to and coincides with the duration of studies or employment (Article 23 of the Law on Residential Tenancy).

The termination of a rental contract and eviction of a tenant is ruled by the Civil Law in case of the contract because of employment or studies. According to Article 2171 of the Civil Law, the landlord may unilaterally terminate the contract without before the date agreed, if:

- The rental payment has not been paid within the term, stipulated in the contract;
- The landlord has an unforeseen need to use the property himself;
- The tenant damages the property, using it improperly or contrary to the contract;
- The property needs immediate and extensive repairs;
- The tenant has sub-rented the property without the consent of the landlord.

Under 2172 of the Civil Law, the tenant may require the unilateral pre-term termination of the rental contract without the consent of the landlord, if:

- The landlord delays the handover of the property for so long that the tenant is no more interested in the use of this particular property;
- The landlord does not make the necessary repairs to the property;
- The property has such defects or because of capital repairs the tenant cannot use the property in full or of a significant part of the property, and these defects or obstacles cannot be eliminated;
- The property has harmful health effects.

If the State or a municipality enters a rental contract because of the same reasons: employment or studies, the rules of the Law on Residential Tenancy will apply, but there are a couple of exceptions from this rule:

The first exception is connected with the prohibition of sub-rent, i.e., it is not allowed to sub-rent an apartment or an official accommodation (Article 26 Paragraph 1 of the Law on Residential Tenancy).

[258] 26.04.1993.Latvijas Republikas Ministru Padomes Lēmums Nr. 212 *„Par dienesta viesnīcu lietošanas noteikumiem"* <http://likumi.lv/doc.php?id=59987>, 2 September 2013.
[259] 26.04.1993.Latvijas Republikas Ministru Padomes Lēmums Nr. 212 *„Par dienesta viesnīcu lietošanas noteikumiem"* <http://likumi.lv/doc.php?id=59987>, 2 September 2013.

Another exception relates to the impossibility to exchange a residential dwelling, even though another tenant has consented thereto (Article 26 Paragraph 1 of the Law on Residential Tenancy).

The rental agreement over the State or municipal official apartment expires simultaneously with the termination of employment or studies (Article 26 Paragraph 3 of the Law on Residential Tenancy). If the tenant refuses to vacate the apartment after the expiration of the rental agreement he may be evicted only on basis of the positive court judgement about eviction (Article 26 Paragraph 5 of the Law on Residential Tenancy). If the employment relations or studies continue, the tenant has the priority right to prolong of his rental agreement after the expiration thereof (Article 26 Paragraph 4 of the Law on Residential Tenancy).

All other issues are ruled by the Law on Residential Tenancy and we will review them in the report.

- ***Requirements for a valid conclusion of the contract***

  - ***formal requirements***

Article 5 Paragraph 1 of the Law on Residential Tenancy states that the landlord and the tenant have to enter the rental contract in writing. While drafting a contract, if it is particularly prepared by private persons as a private document, the rules of the Law on Legal Force of Documents (Latvian: *Dokumentu juridiskā spēka likums*) must be kept. A document must comprise:

1) Data about parties: name, surname, personal identity number or date of birth and ID/Pass data, if no personal identity number exists (of natural persons); name, registration code (of legal persons);

2) Signing date;

3) Signing place;

4) Signatures of parties.

A contracting party should be capable to enter a rental contract and act with the subject-matter of the contract.

The legal capacity is limited, when a natural person has not come of age, i.e. is not 18 years old, or its legal capacity was restricted by a court judgement. These persons are represented by their parents or guardians in legal transactions. If a contract was concluded with the person whose right to dispose property or conclude contracts of the specific kind has been limited, the contract is not valid (Article 1405, 1408, 1411 of the Civil Law).

Legal persons are usually legally capable and representatives may enter the contracts on the behalf of a legal person (Article 1410 of the Civil Law). Nevertheless, the right of a representative must be carefully examined, because a representative without representation rights cannot conclude a valid rental contract, unless the legal person has confirmed the transaction later (Article 1518 of the Civil Law), for example, by performing obligations, arising from the contract in question[260]. When the representative concludes a transaction on behalf of the legal person, his right of representation can be verified in the Commercial Register, which is public.

If a person is fully capable, still its right of disposal of the property, including renting out, can be limited. Since natural and legal persons can be subject to insolvency proceedings in Latvia, after opening of these proceedings an insolvent debtor may not act with his property (Article 63, 134 of

[260] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC-58/2008; 01.11.2006. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā Nr. SKC-600/2006; 07.12.2005. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā Nr. SKC-542

the Insolvency Law (Latvian: *Maksātnespējas likums*[261]). The fact, if a person is insolvent, can be electronically checked in the Insolvency Register[262].

Finally, the right to rent out a living dwelling (right of disposal) is evident from the Land Book, where marks of arrest, prohibition, auction etc. can be registered, which prohibit transfer of use of an immovable.

Under Article 1484 of the Civil Law, if the written form of a contract is necessary, then the contract does not enter into force, until the relevant deed has been drawn up.

To observe the rule about the written form, parties can prepare and draw up the contract themselves or they can turn to a notary public or (Latvian: *zvērināts notārs*) or an Orphan's court (Latvian: *bāriņtiesa*). The Orphan's court, despite its name, is not a court, but a guardianship and trusteeship institution established by a local municipality (Article 2 of the Law on Orphan's Courts).

The Latvian law distinguishes between written documents drawn up by public authorities (German: *öffentliche Urkunde*) and private persons (German: *Privaturkunde*). If parties draw up a contract themselves, their contract will be concluded in the form of the private document. Consequently, public documents are fully prepared by a public notary or Orphan's court. Documents drawn up by the public notary or Orphan's court are supposed more authentic in comparison with private ones, therefore public documents may not be contested by witness bearing or another private document[263].

The notary or Orphan's court may certify signatures in a rental contract or draw up the whole deed. In the first case a public document will be only signatures of the document, the remaining will be considered the private document; in the second case the whole document will be deemed to be the public document. Addressing the notary does not exclude the possibility to assign a lawyer who will draft a rental contract, however, it is optional.

If the notary certifies signatures in the contract, then the public notary certifies that a particular person personally appeared before him; the contract shall be signed in the presence of the notary. Thus the public notary does not examine a contract, presented to him, and his certification concerns authenticity of signatures. Therefore the notary is not responsible for defects of the contract (Article 108-108.1 of the Law on Notarial Practise (Latvian: *Notariāta likums*[264]).

Documents, which are entirely prepared by the public notary, are notarial deeds (Latvian: *notariālais akts*). The public notary verifies the identity, capacity to act and the right of representation of the parties of the notarial deed. The public notary finds out an intent of the parties of the notarial deed and the terms of the transaction, counsels the parties and tells about possible legal outcomes of the transaction so that ignorance of laws and lack of experience is not used against their best interests. The notarial deed shall be signed by parties in the presence of the public notary. In addition, if a party or all parties wish, witnesses (-es) can be invited and the deed shall be read out and signed in the presence of these witnesses (Article 1474 of the Civil Law, Articles 81-91 of the Law on Notarial Practise).

As mentioned, the landlord may ask to draw up a rental contract in the form of the notarial deed to be able to apply for the compulsory enforcement of indisputable claims or for (compulsory) enforcement proceeding without involvement of courts (starting from November 1, 2013).

The Orphan's court may also certify signatures or prepare a contract. According to Article 61 of the Law on Orphan's Courts, Orphan's Courts have different tasks, including, but not limited to:

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[261] 26.07.2010. *Maksātnespējas likums*. <http://likumi.lv/doc.php?id=214590>, 2 September 2013.
[262] *Maksātnespējas subjektu datu bāze*. <http://www.mna.gov.lv/lv/maks_subjekti/baze/>, 2 September 2013.
[263] 18.04.2012. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums Senāta spriedums lietā Nr. SKC-176/2012
[264] 01.06.1993. *Notariāta likums*. < http://likumi.lv/doc.php?id=59982 >, 2 September 2013.

- The certification of a transaction, if it is entered by the residents of the territory of operation of the relevant Orphan's court and the amount of a transaction does not exceed EUR 8537;

- The certification of powers of attorney (except universal powers of attorney) of the residents of the territory of operation of the relevant Orphan's court and acceptation of revocations of the powers of attorney;

- The certification of the authenticity of a signature of a resident of the territory of operation of the relevant Orphan's court;

- The certification of the authenticity of a true copy, a copy or an extract of a document;

- The certification of a signature on a request for the corroboration in the Land Book (Section 60 of the Land Book Law (Latvian: *Zemesgrāmatu likums*), if at least one of the contracting parties lives in the territory of operation of the relevant Orphan's court;

- The preparation of drafts of documents.

Article 61 Paragraph 2 states that the certification of an Orphan's court is equal to the notarial certification within the meaning of the legal force. Therefore Orphan's Courts may replace notaries. Since Orphan's Courts and notaries have similar tasks, the amendments to the Law on Orphan's Courts were passed. The amendments entered into force on November 1, 2013 and they state that Orphans' courts may fulfil the tasks, indicated in Article 61 of the Law on Orphan's Courts, if there is no public notary in the territory of operation of the relevant Orphan's court (Article 2 of the Law on Orphan's Courts) [265].

Nevertheless, the Latvian legislator has not solved all problems connected with qualification of officials of an Orphan's court and formal procedure of fulfilling of the tasks, mentioned in Article 61. If public notaries are lawyers with high education, then there are no similar rules about officials of an Orphan's court. If notaries are obliged to verify personal data in the Population Register and Invalid Document Register, Orphan's Courts does not have such obligation. Furthermore, some Orphan's Courts do not have the access to these official databases. Besides, Orphan's Courts are not obliged to provide explanation and counselling to individuals, while certifying a transaction or fulfilling other tasks, connected with documents preparation. To compare, the public notaries must council the parties and inform about possible legal consequences of a transaction, if notaries prepare the notarial deed. Finally, officials of an Orphan's court have no insurance to cover losses caused by a wrong or unlawful action or failure to act. The public notary may not act without a valid insurance police (Article 108 of the Notariate Law)[266].

To draw the conclusion, public documents - rental contracts - prepared by the public notary are more accurate than document, drawn up by the Orphan's court, but according to laws documents of the public notary and Orphan's court are treated as equal public documents.

The latest research of 2013 shows that 50% of all respondents have a written rental contract, drawn up by a landlord, 4% - a written contract, prepared by a public notary, 27% do not have a written contract, finally 19% - could not answer this question. Moreover, in 15% of the cases, where no written contract exists, a landlord refuses to sign a written rental agreement, if a tenant asks for it[267].

It follows from the jurisprudence of the Supreme Court that, if parties have fulfilled their obligations for a longer period of time: the landlord has granted use of the living dwelling, as well as collected rental payments and other payments, which the tenant has paid, then such rental contract is in

[265] 12.06.2013. *Grozījumi Bāriņtiesu likumā*. <https://www.vestnesis.lv/?menu=doc&id=257427>, 2 September 2013.
[266] Rušiniece D. Bāriņtiesas kā apliecinājumu veicējas. *Jurista vārds* Nr.22 (773) 2013. gada 4. Jūnijs <http://www.juristavards.lv/ >,2 September 2013.
[267] Latvijas notāru un SKDS pētījums. <www.latvijasnotari.lv>,2 September 2013.

force, even though it does not comply with the form requirements (factual rental relations)[268]. The Supreme Court has also pointed out that the court of lower instances have to determine in these cases, whether the landlord has handed over the right to use a residential space to the tenant for consideration[269].

However, the solution, adopted by the Latvian courts, has been criticized. An opinion has been expressed that this approach contradicts Article 1484 of the Civil Law, as a result the Latvian courts ignore this Article in order to protect tenants. For this reason the best solution, according to the opinion mentioned, would be to amend the Civil Law or/and the Law on Residential Tenancy[270]. This criticism is unjustified in part. Article 1488 of the Civil Law provides an exception from the rule of Article 5 Paragraph 6 of the Law on Residential Tenancy. Article 1488 Paragraph 1 of the Civil Law stipulates that performance may not be reclaimed, if despite the lack of the written deed both parties have performed the transaction in question; at the same time the article does not say anything about the validity of the contract, i.e., does not provide that a contract becomes valid.

The exception is not applicable in cases of social rental contracts, as well as in cases, when an institution of the State or a municipality or a company, owned by the State, enters a rental contract.

When an institution of the State or a municipality or a company, owned by the State, enters a rental contract, they can act as private actors, i.e., rent out residential dwellings to gain profit. The Law on Residential Tenancy contains special provisions that before conclusion of a rental contract an authorised organ or body of the State or a municipality or a company, owned by the State, must take a decision about renting of the residential space to a particular private person. If no such decision was taken, factual rental relations are not recognised, although the living dwelling can be transferred for use to a tenant, who paid rental and other payments to the landlord[271].

- ***is there a fee for the conclusion and how does it have to be paid? (e.g. "fee stamp" on the contract etc)***

No fee for the conclusion exists in Latvia, but, if parties chose to address a notary or an Orphan's court, they should pay a state fee and remuneration of the notary or the Orphan's court. Parties are entitled to agree, who and in what amount pays the state fee and remuneration.

- ***registration requirements; legal consequences in the absence of registration***

  Note: If relevant, please distinguish the various existing registers, e.g. land register, tax register, register of domicile.

[268] 28.01.2009. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-38; 12.11.2008. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-418/2008; 25.04.2007.; Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-311/2007

[269] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 200827; 16.04.2008. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-151/2008

[270] Torgāns K. *Zinātnisks pētījums. Civillikuma Saistību tiesību daļas modernizācijas nepieciešamība un aktuālo privāttiesiskā regulējuma tendenču (UNIDROIT, ELTP) iespējamā ietekme uz Civillikuma Saistību tiesību daļas modernizāciju*. Rīga, 2007. g. aprīlis – decembris. <www.at.gov.lv> ,2 September 2013.

[271] 8.03.2006. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā spriedums lietā SKC-144; 11.04.2007. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā spriedums lietā SKC-236; 6.02.2008. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā spriedums lietā SKC-54/2008.

Registration of a rental contract is not necessary (see also above), although from time to time proposals to introduce the duty to register the rental contract in the Land Book or other register appear.

However, the landlord – natural person must inform the State Revenue Service about conclusion of the rental contract for taxation purposes.

In 2012 the State Revenue Service had information about 2068 natural persons at its disposal, who probably rented residential dwellings without registration or notification of the tax authorities in this connection. Therefore the State Revenue Service requested explanations from 1898 natural persons, why they have not registered their economic activities, requested to register their economic activity in 1393 cases and imposed administrative fines on 30 natural persons for tax provision violation[272].

A valid rental contract is a legal basis for registering of domicile (Article 2 of the Domicile Declaration Law (Latvian: *Dzīvesvietas deklarēšanas likums*[273])). Natural persons, permanently residing in Latvia, have the duty to declare their domicile. If the place of domicile (residence) changes, the person must declare changes within one month from the day it permanently lives at the new place of residence (Article 4, 6 of the Domicile Declaration Law). In practise tenants do not always declare their place of residence, especially if they do not have a written rental contract. Nevertheless, an administrative fine in accordance with Article 186 of the Latvian Administrative Violations Code may be imposed up to EUR 350,00 for non-declaration of domicile.

It follows from the case law that declaration of the place of residence, if no written contract is concluded, is only one of evidences that an oral rental contract exists[274]. Moreover, the newest research shows that in 18.3% of all cases a landlord does not allow a tenant to declare the place of residence in the subject-matter of a rental contract[275]. At the same time some local municipalities do not check, if there is a contract at all, for instance, the municipality Riga offers to register the domicile online (www.eriga.lv).

- ***Restrictions on choice of tenant - antidiscrimination issues***

The general discrimination prohibition law does not exist in cases of renting without public task. However, Article 91 of the Constitution contains the general prohibition of discrimination, according to which human rights shall be realised without discrimination. The Constitution sets the standard of application of laws, including the Law on Residential Tenancy that should be applied without any discrimination[276].

If we interpret the Law on Residential Tenancy in the context of the Constitution (the systematic interpretation) and consider the purposes of this law (the teleological interpretation), the discrimination is also prohibited in rental relations, although there is no explicit law rule. The possible legal consequences of discriminate would be however compensation of loss and moral injury (Article 1635 of the Civil Law), in other words, the tenant suffered from discrimination may not demand that the landlord concludes a rental contract with him.

Where a rental contract is concluded between a natural person and a entrepreneur, the antidiscrimination rules of the Consumer Rights Protection Law (Latvian: *Patērētāju tiesību*

[272] Latvijas notāru un SKDS pētījums. <www.latvijasnotari.lv>, 2 September 2013.
[273] 20.06.2002. Dzīvesvietas deklarēšanas likums. <http://likumi.lv/doc.php?id=64328>, 2 September 2013.
[274] 14.02.2007. Latvijas Republikas Austākas tiesas Senāta Civillietu departamenta spriedums lietā Nr. SKC-64
[275] Latvijas notāru un SKDS pētījums. <www.latvijasnotari.lv>,2 September 2013.
[276] Levits, E. *Par līdztiesību likuma un tiesas priekšā, un diskriminācijas aizliegumu. Par Satversmes 91.pantu*. <http://www.politika.lv/temas/cilvektiesibas/5061;/>, 2 September 2013.; Balodis, R. (ed.) *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Rīga: Latvijas Vēstnesis, 2011, 89

aizsardzības likums)[277] would be applicable. Article 3.1 of the Consumer Rights Protection Law does not grant the right to ask to conclude a contract with the consumer, if discrimination took place.

In cases of social rent, if there are identical factual and legal circumstances, institutions and courts must adopt identical decisions (in matters where there are different factual or legal circumstances – different decisions) irrespective of the gender, age, race, skin colour, language, religious beliefs, political or other views, social origin, nationality, education, social and financial status, occupation or other circumstances of participants in the administrative proceedings (Article 6 of the Administrative Procedure Law).

- ***EU directives (see enclosed list) and national law on antidiscrimination***

In 2008, the amendments to the Consumer Rights Protection Law (*Consumer Law*) were adopted, which were necessary to transfer two directives of the EU into national law:

1) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

2) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

Subsequently, Article 3.1 of the Consumer Law was passed. Article forbids discrimination based on sex, race, ethnic belonging or disability of a consumer, when offering goods or a service, selling goods or providing a service.

Hence the Latvian legislator did not go beyond the both Directives, questions arise, whether discrimination because of the other ground not mentioned is legally allowed. The answer is negative, but the amendments were submitted in order to introduce the prohibition of discrimination because of age, religious beliefs, sexual orientation in consumer contracts[278].

The Consumer law defines the consumer contract as a contract concluded between the manufacturer, service provider or trader and a natural person concluding the contract for non-commercial or professional purposes.

Under Article 1 of the Consumer Law

- *The manufacturer* is a person who within the scope of his economic or professional activity produces or renovates goods for sale, or indicates himself as a manufacturer of goods;

- *The service provider* is a person, who within the scope of his economic or professional activity provides a service to the consumer;

- *The trader* is a person (also an importer), who within the scope of his economic or professional activity offers or sells goods to the consumer, as well as a person who acts in the name of the trader or at his instruction.

Thus, the Consumer Law is only applicable, if a rental contract has been entered by a natural person (consumer) and an entrepreneur (service provider, trader, manufacturer). If two natural persons concluded a rental agreement (aside from the situation, where one party to a contract is

[277] 18.03.1999. Patērētāju tiesību aizsardzības likums. <http://www.likumi.lv/doc.php?id=23309>, 2 September 2013.
[278] Grozījumi Patērētāju tiesību aizsardzības likumā. <http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/A86B192C45950201C2257A2A002FD870?OpenDocument>, 2 September 2013.

an individual merchant), this contract does not fall into the scope of the Consumer Law and the prohibition of discrimination.

If the prohibition of discrimination is violated, a consumer may fulfilment of a contract, as well as compensation for harm caused, including moral compensation, (Article 3.1 Paragraph 11 of the Consumer Law).

If a tenant was discriminated by the landlord, who is not an entrepreneur, the tenant may only claim losses.

The civil liability does not exclude the administrative and criminal liability for violation of the prohibition of discrimination, mentioned in the Consumer Law and other cases. The Administrative Violation Code states that in these cases a fine from EUR 140 up to EUR 700, when harm is not essential, can be imposed. It is a criminal offence, if violating of the prohibition caused substantial harm (five minimal salary wages (in 2014 the minimal salary wage amounts to EUR 320) plus essential injury of other legal interests)) or was performed using a computer; or it was connected with violence, fraud or threat; a group of persons (at least two natural persons), a state or municipality's authority or a director of a legal person violated the discrimination prohibition. The person shall be punished the deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine [279].

- ***Limitations on freedom of contract through regulation***

  - ***mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract***

The rental contract must include the following minimal provisions:

- Data about parties;
- Address, description of residential dwellings (immovable) rented and the of area of the rented dwelling;
- Rental amount and its payment procedure;
- Services (utilities) provided to the tenant;
- Signatures of the parties.

Speaking about the information about parties, it is important to include precise and accurate information to avoid situations, when a party to a contract cannot be exactly identified.

There are many natural persons in Latvia, who have the same name and surname, for example, Janis Berzins, therefore contracts usually contain a personal code (also ID-code) which helps to identify the natural person. The personal code has two parts: a date of birthday and code, given by the State. The personal code of a hypothetical person, called Janis Berzins, who was born February 23, 1979, could look like this: 230279-11718. If a person do not have the ID-code, its date of birth and maybe pass data could be indicated in the agreement.

Legal entities and other subjects of the civil circulation use the registration code instead of the personal code. It is possible that only one sign distinguishes names of two different companies, for instance, "Koks" and "Koki", or "Koks-1". In some cases, companies with relatively similar names could belong to the same person, who can be a sole member of the board at the same time, nevertheless, one should exactly know which of several companies has signed the rental contract.

[279] Krastiņš U., Liholaja V., Niedre A. *Krimināltiesības :Sevišķā daļa*. Rīga : Tiesu namu aģentūra, 2009, 232

To avoid situations when it is difficult or impossible to prove, which company entered the rental contract, it is advisable to indicate the registration code.

If a party to a contract cannot be identified with a high degree of accuracy, the court could not recognise the existence rental contract, if it is disputed. To put it differently, if it is impossible to prove, which from several companies or which natural person entered the rental contract, the rental contract will be void.

Following Article 9 Paragraph 4 and 7 of the Law on Residential Tenancy, the tenant must inform the landlord about lodging of the tenant's family members in the sense the Law on Residential Tenancy, whose name, surname and personal code must be included in the written rental contract. If the tenant has not done it, the contract is valid, but the landlord may claim all losses.

The information about residential dwellings is an essential of a rental contract. If the subject-matter of the transaction is completely unspecified, the transaction is void (Article 1417 of the Civil Law). The subject-matter of the contract is not completely unspecified, if the contract in question contains objective criteria which allow to concretise the subject-matter[280]. Therefore, it is recommendable to include a cadastre number, an address and area of the subject-matter. However, this list is not mandatory and parties may determine the subject-matter in other way, for instance, by enclosing a plan of the immovable, which contains all necessary information.

Furthermore, the rental payment amount and its payment procedure have to be stated in the written contract (Article 11 of the Law on Residential Tenancy). The research shows that in 41% of all cases tenants pay in cash and in 47% - by a bank transfer[281].

Terms, within which the tenant is obliged to settle up payments, have to be determined in the contract. If there are no provisions, then this question is regulated by law.

If an amount of payments cannot be determined, a contract is void, because no agreement on the essential part – rental payment has been reached, the agreement is void[282] (Article 1470, 1533, 2124 of the Civil Law).

Besides, all utilities and services, provided to the tenant must be listed and described. Utilities and services ensure use of premises for living purposes. In other words, the landlord has to hand over his property in such state and with such utilities and services that were agreed and that the tenant had the right to expect (Article 2134 of the Civil Law)[283].

The refusal to include this information or the lack of the information about basic utilities (the legal meaning of the basic services will be explained below) is unlawful[284], even though there is no written agreement about the basic utilities, the landlord cannot be released from the obligation to provide them[285].

The tenant has to agree with the landlord how the tenant will pay for services of third persons. It should be done if the landlord is not a service provider at the same time. The tenant may pay directly to service providers or transfer a respective sum to the landlord who will settle accounts

[280] Torgāns, K. (ed.) *Latvijas Republikas Civillikuma komentāri. Saistību tiesības (1401.–2400. p.)*. 2. izdevums. Rīga: Mans īpašums, 2000, 32

[281] Latvijas notāru un SKDS veiktais pētījums, Pieejams: www.latvijasnotari.lv

[282] 26.04.2006. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta lēmums lietā nr. SKC-260; 14.06.2006. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta lēmums lietā nr. SKC-390;14.02.2007. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-80

[283] Torgāns, K. (ed.) *Latvijas Republikas Civillikuma komentāri. Saistību tiesības (1401.–2400. p.)*. 2. izdevums. Rīga: Mans īpašums, 2000, 481; Буковский В. И. *Свод гражданских узаконений губерний прибалтийских с продолжением 1912–1914 гг. и разъяснениями в 2 томах*. Том 2, Рига: Г. Гемпель и Ко, 1914, 1752

[284] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 92

[285] 23.11.2007. Administratīvās rajona tiesas spriedums lietā Nr. A42487406, <www.tiesas.lv>, 2 September 2013.

with service providers (Article 11.3 of the Law on Residential Tenancy; Cabinet Regulation No. 999 of December 12, 2006[286]).

Moreover, Article 12 Paragraph 5 of the Law on Residential Tenancy stipulates that a person, who will receive rental payments, payments for utilities and services, as well as other payments, its residential or legal address must be provided in the contract. If these payments are made by a bank transfer, a bank account of the landlord has to be indicated in the rental contract.

To point out, the signature on the rental contract establishes the legal presumption, which can be confuted, that signing of a deed is consent to the deed and the contents of it were known to a signatory (Article 1431 of the Civil Law), except rental contracts entered by the consumer[287].

- ***control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms***

We will start with the general provisions of the Civil Law, afterwards review rental consumer contracts.

To start, Article 50 of the Law on Residential Tenancy stipulates, the court decides on all disputes arising from a rental contract. The Latvian private does not contain specific rules on incorporation and other issues to related standard business terms (German: *allgemeine Geschäftsbedingungen*), except issues regulated by the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts which were transposed into the Consumer Law. It means that the general legal remedies are at the tenant's disposal who concludes the rental contract with another natural person who is not a merchant or entrepreneur. Thus the court controls if a contractual term complies with

- *Article 1 of the Civil Law - the good faith principle* (German: *Treu und Glauben*)

Article 2 of the Swiss Civil Law (German: *Zivilgesetzbuch*) served as a model rule[288]. The modern interpretation of the Latvian Article 1 is similar to the interpretation in the German doctrine[289]. The aim of Article 1 of the Civil Law is to promote loyalty, confidence and honesty in legal transactions[290].

Article 1 of the Civil Law also comprises the principle of proportionality in the Civil Law[291], though the general principles of law such as the principle of equality, equity, legality, proportionality etc., are unwritten sources of law[292] are in force, even though they are not laid down in a written law. Usually Article 1 of the Civil Law is applicable with another written norm (-s), quite often with Articles 1415, 1592 which we will review below. The reason is that Article 1 does not contain any sanction for violations of the principle. For, example, the court guided by Article 1 of the Civil Law if a rental increase's amount is disputed may decide upon a proportionate and fair amount of the new rental payment.

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[286] 12.12. 2006. Ministru kabineta noteikumi Nr. 999 „*Kārtība, kādā dzīvojamās telpas īrnieks vai izīrētājs norēķinās ar pakalpojumu sniedzēju par pakalpojumiem, kas saistīti ar dzīvojamās telpas lietošanu*". <http://likumi.lv/doc.php?id=149906>, 2 September 2013.

[287] 25.07.2009. Administratīvās apgabaltiesas spriedums Nr. A42470106; Latvijas Republikas Augstākās tiesas Senāta Civillietu departaments. *Tiesu prakse lietās par izpildu rakstu izsniegšanu šķīrējtiesas nolēmuma piespiedu izpildei*, 2008, 21-22, <www.at.gov.lv>, 2 September 2013.

[288] Krons, M. Civillikuma pirmais pants (Laba ticība kā tiesiskās rīcības kritērijs). *Jurista Vārds* Nr. 51 (646), <www.juristavards.lv>, 2 September 2013.

[289] Balodis, K. *Ievads civiltiesībās.* Rīga: Zvaigzne ABC, 2007, 140-149

[290] Rudāns, S. Saistību tiesību komentāri. VI.Viltus (*Commentaries on Law on Obligations. Fraud*). *Jurista Vārds Nr. 3 (456),* <www.juristavards.lv>, 23 January 2014.

[291] Balodis, K. *Ievads civiltiesībās.* Rīga: Zvaigzne ABC, 2007, 143; Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 15

[292] Iļjanova, D. *Vispārējo tiesību principu nozīme un piemērošana*. Rīga: Ratio iuris, 2005; Neimanis J. *Tiesību tālākveidošana*. Rīga: Latvijas Vēstnesis, 2006, 52-95

- *Article 1415 and 1592 of the Civil Law – violation of law and/or good morals (*German*: Verstoß gegen Gesetz und/oder die guten Sitten)*

These two articles state that a contractual term is void, when it is contrary to religion, law or moral principles, as well as a clause is intended to evade law.

Article 1415 of the Civil Law refers to legal transactions in general, but 1592 to contracts. The immorality of a contract subject-matter is an independent legal ground which can lead to the nullity of a contract. The concept of the immorality is not permanent and is connected with the violation of existing social mores of average members of the society[293].

A motive or intent for entering into a contract is of little importance and does not invalidate transaction or contract (Article 1449 of the Civil Law) except the cases when a formally acceptable and permissible subject-matter of a contract (*causa*) is directed to law evasion, achievement of unlawful or immoral aims, the latter aim is also called *causa finalis*[294].

An immoral or illegal intent has to be an immediate motive for the conclusion of a contract and distinctly follow from the content of the contract in question and other related circumstances. A simple possibility that unlawful or immoral consequences can ensue is not sufficient to declare a contract null. Both parties must be aware of it and wish to achieve this aim. If one party acted in bad faith, another party who was not aware of it, may demand the compensation of losses or withdraw from a contract, insofar as the contract may remain in force (compare: Article 1065, 1439, 1461, 1462, 1642 of the Civil Law).

The legal concepts of *cause finalis* and intent to conclude a contract, their mutual relations are not fully investigated in the legal doctrine, but the case law is contradictory[295].

The issue if a contract contradicting morality is void from the outset (*ex tunc)* or from now on (*ex nunc*) is also not clarified by the contemporary legal doctrine.

The role of the courts is not also disputable. One of the opinions is that if neither of the parties raises a dispute about the validity of a contract, a court even though it sees that a contract contradicts law or morals, may not interfere. On the other hand, it is doubtful, insofar as a court might render a claim, arising from an unlawful or immoral contract[296].

- *Articles 1441-1445 of the Civil Law - mistake (*German*: Irrtum)*

A party to a contract can contest legality of a provision, if the person has mistaken about a contractual term in question. If a mistake is factual (not legal), excusable and essential, then a contractual term is invalid from the beginning[297].

- *Articles 1459-1468 of the Civil Law – fraud and mistake (*German*: Täuschung und Drohung)*

In case of fraud (Articles 1459 – 1462) or threats (Articles 1463 – 1468) a contractual term remains in force, unless a party suffered contests it.

To compare with the articles, reviewed above, Articles 1459-1468 of the Civil Law do not automatically influence validity of a contract. At the same time it is practically difficult to distinguish cases of mistake and fraud, although in the first case a contract (condition) is invalid from the

[293] Balodis, K. *Ievads civiltiesībās*. Rīga : Zvaigzne ABC, 2007, 220; Slicāne E. Labi tikumi un to nozīme darījumu tiesiskajās attiecībās. *Jurista Vārds* Nr.14 (369), www.juristavards.lv, 7 October 2013.
[294] Latvijas Republikas Augstākā Tiesa. *Par Civillikuma 1415.panta piemērošanu*. 2008, 36, www.at.gov.lv 7 October 2013.
[295] Latvijas Republikas Augstākā tiesa. *Par Civillikuma 1415.panta piemērošanu*. 2008, www.at.gov.lv 7 October 2013.
[296] Latvijas Republikas Augstākā tiesa. *Par Civillikuma 1415.panta piemērošanu*. 2008, www.at.gov.lv 7 October 2013.
[297] Balodis, K. *Ievads civiltiesībās.* Rīga: Zvaigzne ABC, 2007, 252

beginning (*ex tunc*), but in the second – valid, until a party challenges it and the court recognises it for invalid (*ex nunc*)[298].

- *Article 1724.1 of the Civil Law* (starting from January 1, 2014)

Many scholars and practitioners have been breaking lances over the regulation of the contractual penalty for a long period of time[299]. The problematic issue was contractual penalties, which exceeded more than two times an amount of the principal claim.

The contractual penalty may refer to rental payments or payment for utilities. The Supreme Court evaluating practise of the lower instances made the following conclusions concerning rental relations:

1. The court has to evaluate, if the contractual penalty for delay or non-performance is set by law or a contract. For instance, the binding provisions of the local municipality Riga state that in case of payment delay for water supply the debtor has to pay the contractual penalty in the amount of 0.1

% for each day of delay legal ground is law), at the same time, the contract is a legal ground for the contractual penalties in cases of heating and residential houses management services (legal ground is a contract);

2. If the legal ground is a contract, the court must establish that parties expressed they free will agreeing on the contractual penalty clause, in particular, in consumer contracts;

3. The court has to consider whether the contractual penalty clause infringes good morals or good faith in contracts which are entered by two persons who are legally and actually equal;

4. The court must establish, if the contractual penalty meet the requirements of the principle of equivalence of the performance and counter-performance, in particular the proportionality, interest agreed or set by law, profitability of an area, that is, one party may not make a excessive profit out of misfortune or non-performance of another party[300].

In 2009 Article 1724.1 of the Civil Law was introduced, this article states that a court reviews a clause about the contractual penalty, if a party, obliged to pay it, has asked it.

The legislator considered these measures to be insufficient, accordingly, restrictions on the amount of the contractual penalty have been imposed and the wording of Article 1724.1 of the Civil Law has been amended this year.

Starting from January 1, 2014, the contractual penalty for non-performance in a proper manner (German: *Schlechtleistung*) or for delay in the performance (German: *Leistungsverzug*), may not exceed 10% of a principal claim and interest arisen. When the debtor does not perform this obligations at all (German: *Nichtleistung*), the contractual penalty may not exceed an amount of probable losses. Moreover, the court is *ex officio* obliged to control contractual penalty clauses[301], before the debtor should ask the court to review the amount of the contractual penalty claimed.

Moreover, another supplement of Article 1764 of the Civil Law entering into force on January 1, 2014 states that an interest rate is deemed to be illegal if it does not comply with proportionality and fair dealing. However, this particular amendment does not recognize that disproportional rates agreed by parties under breach of the principle of fair dealing (good faith) are automatically illegal and therefore invalid (Article 1415, 1592 of the Civil Law). The new wording says that such rates are considered to be illegal. It follows from this that the new Article 1764 of the Civil Law introduces

[298] Balodis, K. *Ievads civiltiesībās.* Rīga: Zvaigzne ABC, 2007, 270 - 271
[299] Torgāns, K. *Līgumu un deliktu tiesību problēmas*. Rīga: Tiesu namu aģentūra, 2013, 137-145
[300] Latvijas Republikas Augstākā tiesa. *Tiesu prakse līgumsodu piemērošanā*. 2013, <www.at.tiesa.gov.lv>, 2 September 2013.
[301] 04.07.2013. Grozījumi Civillikumā. <http://likumi.lv/doc.php?id=258008>, 2 September 2013.

a refutable presumption[302] which a creditor is entitled to contest and rebut by proving that the circumstances of a particular case justify such rate, as well as the conclusion and the content of the contract complies with existing law, moral and ethical attitudes.

As it follows from the preparation materials of the amendment to Article 1764 of the Civil Law which can be used as one a means to determine the purpose of the law (teleological law interpretation), the meaning of the amendment of Article 1764 of the Civil Law is not to introduce the new restrictions of the interest rates which did not existed before, but rather to avoid situations when creditors in bad faith tries to recover excessive sums as interest after the amounts of contractual penalty has been statutorily limited[303].

- *Severability (salvatorius) clause* (German: *salvatorische Klausel*)

After discussion of the general remedies of the debtor (tenant), we shall speak about the severability (salvatorius) clause is quite often included in the contracts ruled by Latvian law. According to a usual wording of such clause, if a contract is held to be illegal in part, the remainder of the contract is still in force. There is no explicit law provision about partial invalidity of a contract or a contractual clause in law, except consumer law. Notwithstanding this fact, an obligation arising from a transaction or contract can be indivisible and divisible, rental and other payments are divisible obligations[304]. Article 1507 of the Civil Law states that an interpretation pursuant to which a contract is maintained and remains in effect to the extent possible shall be preferred to an interpretation which has the opposite consequences. Since the obligation to rental and other payments is divisible, it is possible to reduce it in part maintaining the remaining agreement about the interest in force.

The same solution provides Article 1724.1 of the Civil Law which is applicable in cases of contractual penalty: the reduction of a total disproportional amount of contractual penalty instead of invalidation of the whole agreement about the contractual penalty is preferred. In that way the principle of Article 1724.1 of the Civil Law can be applicable by analogy in cases of usurious interest rates which are contrary to Article 1, 1415, 1592 of the Civil Law. The judge shall determine a proportional and fair amount of the interest rate in case of dispute (Article 5 of the Civil Law).

- *Consumer law*

Article 6 Paragraph 8 of the Law on Consumer Law states that unfair conditions of a contract are void, however, other parts of the contract are in force, unless the contract may not remain in force.

Article 6 Paragraph 11 of the Consumer Law stipulates, if the court discovers in course of proceedings that a condition is unfair, then the court does not apply this unfair term. The legal effects of unfair terms are similar to those, following from Article 1415 and 1592 of the Civil Law.

- ***statutory pre-emption rights of the tenant***

The statutory pre-emption right concerns renting of residential dwellings in a communal apartment, owned by the State or a local municipality. A communal apartment is an inheritance from the Soviet times. It usually has several living premises, which are used based on individually entered

[302] Neimanis J., *Ievads tiesības (Introduction to Law)*. Rīga: zv. adv. J. Neimanis, 2004, p. 56

[303] *Grozījumi Civillikumā. 3.lasījums. LP0536_3 (Sēde: 20.06.2013) (Amendments to the Civil Law. 3rd reading. LP0536_3).* <http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/F88F1416A55FA3BEC2257BA400425168?OpenDocument>, 23 January 2014.; also compare: *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa)(Commentaries on the Civil Procedure Law)*. Sagatavojis autoru kolektīvs. Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2011, p. 675

[304] Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata (Law on Obligations. 1st part. Textbook).* Rīga : Tiesu namu aģentūra, 2006, p. 79-81

rental contracts by different tenants or even several families who are not relatives, and auxiliary rooms such as a bathroom, kitchen etc. are in the common use of all tenants (Article 5 Paragraph 6 of the Law on Residential Tenancy). If one or several residential rooms become vacant in the common apartment, the tenant who is renting another room may apply for rent of additional room (-s), if he does not owe rental payments and/or other payments for utilities. If there are several candidates, the tenant, who is using a residential space with less area per person residing permanently in the relevant residential space, has priority to rent the vacant premises.

Furthermore, the statutory pre-emption rights are granted to the tenant of an apartment, rented because of employment or studies, if it is owned by the State or a local municipality. If the tenant continues working or studying, the tenant has the priority right to prolongation of the rental agreement after the expiration thereof (Article 26 Paragraph 5 of the Law on Residential Tenancy).

There is no statutory pre-emption right (German: *Optionsrecht*) in case of sale of the subject-matter of the rental contract; however, parties may establish a contractual pre-emption right. In the latter case, if the landlord (owner) decides to sell the immovable property, the tenant has the pre-emption right,[305]. Nevertheless, even though the pre-emption right was entered in the Land Book in the form of the mark (German: *Vermerk*), this circumstance does not preclude the landlord from selling the immovable to a third person. The existence of the mark invalidates the contract with a third person only in the case, when the tenant sells the property to the landlord, but contracts for a priority right to purchase the property if the landlord decides to resell it later (Article 2060 of the Civil Law); in addition, this right shall be entered in the Land Book (Article 2063 of the Civil Law), otherwise it is not binding for third parties[306].

- ***are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?***

There are no statutory rules about this issue, but parties can agree that a mortgagor is not allowed to lease or rent the dwelling without the consent of the creditor.

According to the newest jurisprudence of the Supreme Court[307] and to the Land Book Law (Latvian: *Zemesgrāmatu likums*[308]), a limited number of personal (obligatory) rights can be entered in the Land Book. From Article 16 of the Land Book Law and Article 1081 of the Civil Law follows, the prohibition to conclude obligatory contracts is outside the scope of the Land Book.

Parties to an agreement on mortgage are entitled to include a condition that a mortgagor is not allowed to rent or lease the dwelling, but this obligation will be not effective towards third persons, because this prohibition do not belong to *in rem* rights[309].

If the mortgagor violated the obligatory prohibition not to conclude obligatory contracts relating the property mortgaged, he is personally liable for harm caused, if another contracting party, with whom a rental agreement was concluded, acted in good faith, otherwise the party to the rental contract also has to compensate all damage and losses. To add, the issue on good faith and bad faith of the contracting party is not fully investigated in the legal doctrine, but the case law is

[305] Torgāns, K. (ed.) *Latvijas Republikas Civillikuma komentāri. Saistību tiesības (1401.–2400. p.)*. 2. izdevums. Rīga: Mans īpašums, 2000, 439

[306] Torgāns, K. (ed.) *Latvijas Republikas Civillikuma komentāri. Saistību tiesības (1401.–2400. p.)*. 2. izdevums. Rīga: Mans īpašums, 2000, 441; Буковский В. И. *Свод гражданских узаконений губерний прибалтийских с продолжением 1912–1914 гг. и разъяснениями в 2 томах*. Том 2, Рига: Г. Гемпель и Ко, 1914, 1690

[307] 20.12.2012.Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta. lēmums lietā nr. SKC-2456/2012. <www.at.gov.lv>, 2 September 2013.

[308] 22.12.1937. Zemesgrāmatu likums. <http://likumi.lv/doc.php?id=60460>, 2 September 2013.

[309] Grūtups A., Kalniņš A. *Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums*. 2.izdevums. Rīga: Tiesu namu aģentūra, 2002, 292; Konradi F., Walter A. *Civīllikumi ar paskaidrojumiem. Otrā grāmata. Lietu tiesības*. Rīga: Grāmatrūpnieks, 1935, 219

contradictory[310]. Nevertheless, the eviction of such tenant may only take place on the basis of the positive court judgement.

d) Contents of tenancy contracts

	Main characteristic(s)
Description of dwelling	Address Cadastre number Fit for living Living area Registration data of the Land Book Subject-matter: a residential house; an individual apartment; a part (i.e. a room or several rooms) of an individual or common apartment; a living room passed to get into other premises of the residential space; part of a room of an individual apartment
Parties to the tenancy contract	Tenant: only natural person; Landlord: natural or legal person, including private and public legal persons (the State or a local municipality)
Duration	Time-limited or open-ended (private renting) Time-limited (social renting)
Rental payments and other related payments	Components of rental payments: maintenance costs and profit of the landlord Payments are determined according to a mutual agreement Other payments for utilities (heating, electricity, water etc.) and the obligatory payments (taxes, compulsory lease) are not rental payments, though are a part of the rental contract
Deposit	Determined according to a mutual agreement Deposit shall not be confused with earnest money and advance payments under the rental contract
Utilities, repairs, etc.	The basic services must be provided and the auxiliary services may be provided; The landlord is liable for capital repairs of a residential house or an apartment, the tenant is responsible for routine repairs of a residential space; Other issues are mainly determined according to a mutual agreement.

- ***Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)***

[310] According to the former practice of the Land Book and the ordinary courts, it was possible to enter the prohibition to encumber a property not only with real, but also with obligatory rights. If there is such prohibition, then it is assumed that a potential tenant knows about it, because the Land Book is public and anyone can acquire information about an immovable property. On the other hand, the question, if a rental contract entered against the prohibition to conclude obligatory contracts is valid, was diverse in case law.

Article 3 and Article 5 Paragraph 6 of the Law on Residential Tenancy relates to the subject-matter and it can be the following:

- A residential house;
- An individual apartment;
- A part of an individual or common apartment (i.e., a room or rooms);
- A living room passed to get into other premises of the residential space;
- A part of a room of an individual apartment.

Neither the Law on Residential Tenancy, nor the Civil Law contains an exact description of premises which are suitable for living, i.e., renting, excluding the notion of a residential apartment. Nevertheless, a dwelling or dwellings have to conform to the mandatory construction and hygiene requirements. If there is a dispute, whether dwellings conform to these requirements, the court decides upon this question.

The notion of a living dwelling in the broad sense means a complex of living and non-living rooms which help to secure the use of living rooms. The notion of a living dwelling in the narrow sense is a living room in a residential apartment or house[311].

Article 3 of the Law on Apartment Property (Latvian: *Dzīvokļa īpašuma likums*[312]) determines what is an apartment. An apartment is a structurally and functionally detached premise or a complex of premises in a residential house, which is recorded as an apartment in the Cadastre register. Parts of a residential apartment are:

1) Constructs of a premise or a complex of premises, including internal partitions, ceilings, floor and wall finishes, doors;

2) Engineering networks and engineering communications;

3) Engineering equipment components, including kitchen facilities, ventilation installations, toilet, shower and bath facilities;

4) Windows and doors.

If a rental contract refers to a living room in the apartment, this room must be isolated from other rooms, only if a landlord - natural person occupies the subject-matter together with the tenant, the room used to get into a part or other parts of the apartment may be rented out.

Article 1417 of the Civil Law states that the subject matter has to be specified. Usually a habitable surface would be indicated in a rental contract, what can happen in different ways. For example, parties may simply provided a habitual area or even a plan of the dwelling with all necessary data. Since it is not mandatory to include the information about the habitable surface, this information can be missing. The fact if the lack of data on the habitable surface influence the validity of a contract depends on agreement of parties and other circumstances.

If a party has mistaken about the habitable surface and this mistake can be qualified as mistake in substance, as well as this mistake induced the person who has made the mistake to enter into the contract with particular contents, the rental contract is null(Article 1445. 1451 of the Civil Law).

[311] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 21

[312] 28.10.2010. Dzīvokļa īpašuma likums. <http://likumi.lv/doc.php?id=221382>, 2 September 2013.

As regards social renting, an apartment, a room or rooms in an individual or common apartment may be a subject-matter of the social rental contract.

The Law on Social Apartments and Social Houses states that a social apartment is the apartment owned by a local municipality which is rented to an eligible person or family entitled to receive assistance in solving of apartment matters (Article 3 Paragraph 1 of the Law on Social Apartments and Social Houses). A social house is a residential house consisting of social apartments (Article 3 Paragraph 2 of the Law on Social Apartments and Social Houses).

Though the Law on Social Apartments and Social Houses only mentions apartments, it follows from the Law on Residential Tenancy subsidiary applicable to social rent (Article 15 of the Law on Social Apartments and Social Houses), that a room or rooms in an individual or common apartment may be a subject-matter of the social rental contract. However, a social rental contract relating to a room which is passed in order to get into other room(-s) or a part of a room are not allowed in cases of social rent (Article 3 Paragraph 2 of the Law on Residential Tenancy).

- ***Allowed uses of the rented dwelling and their limits***

  - ***In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)***

Two different situations have to de distinguished while answering on the question:

- Parties have agreed on mixed use;
- Parties have not agreed on mixed use.

Practically parties can agree on residential and commercial uses of dwellings. However, it is disputable, insofar as the Law on Residential Tenancy allows it, considering the fact that the Civil Law does not prohibit this agreement.

If a rental contract provides mixed use of residential dwellings, this contractual term can be differently interpreted. One can argue that legal provisions of the Law on Residential Tenancy are mandatory, consequently all agreements contrary to the Law on Residential Tenancy, for instance, agreements providing mixed use of living dwellings are invalid (Article 1415, 1592 of the Civil Law). However, the principle freedom of contract is also applicable to rental contracts. Therefore parties could agree to mixed use in their rental contract and use of non-residential dwellings would be regulated by the Civil Law, at least in cases when the subject-matter are residential and non-residential dwellings.

Another approach would be to determine the primary aim of the contract, i.e., to find out whether use of residential dwellings for living is of the first importance. If use for living is primary, but use for other purposes is subsidiary, then the rules of the Law on Residential Tenancy are applicable to the whole rental contract[313]. Nevertheless, the question whether the Law on Residential Tenancy does not allows agreeing on mixed use remains open.

It follows from the jurisprudence of the Supreme Court that mixed residential and commercial contracts are not recognized, although the Law on Residential Tenancy does not prohibit use of residential dwellings for non-living purposes. To stress, the Court dealt with cases when there parties agreed to use dwellings for residential purposes. If the subject-matter of the residential rental contract is used not only for living, it is unlawful. For example, in the court case No. SKC – 389 the landlord asked to terminate the rental agreement because his tenants did not live in the

[313] Aronietis, A. *Likums par telpu īri un tiesu prakse īres lietās (izvilkumi no Senāta spriedumiem)*. Rīga: Autora izdevums, 1930, 63

apartment and concluded a sub-rental agreement without consent of the landlord, as well as gave permission to register legal addresses of two legal persons in the apartment. The lower court instances ruled to terminate the rental contract. The Supreme Court shared this opinion of the lower court instances and additionally indicated that the only purpose of the residential rental contract is living[314].

In cases of the social rent the only use which is allowed is use for living purposes (Article 22 of the Law on Assistance in Solving Apartment Matters).

- ***Parties to a tenancy contract***

- Landlord: who can lawfully be a landlord?

Any natural or legal person, including public legal persons, with a capacity to enter contracts and to dispose property may become a landlord. Accordingly, the landlord can be

- An owner;
- A possessor
- A holder of property.

If joint ownership is established, a rental contract may be concluded by one co-owners, if other co-owners agreed to, or all co-owners (Article 1068 of the Civil Law). The exception from the rule is the case when co-owners agree on the separate use of the joint owned property which has been registered in the Land Book. Then the co-owner is entitled to independently act with the share of the immovable transferred into his actual use, including renting out without consent of others.

A local municipality may enter a rental agreement or a social rental agreement in regard to property owned or leased (Article 4 Paragraph 1 of the Law on Residential Tenancy, Article 19.1 of the Law on Assistance in Solving Apartment Matters).

We have already discussed the issue about possession (Latvian: *valdījums)* and hold (Latvian: *turējums*). Usually an owner of a residential dwelling is a legal possessor or at least believes to be such (Article 875, 909 of the Civil Law). In cases of rent, if the State is an owner of the immovable property, possession and disposal rights can be granted to a particular state institution, for example, the Ministry of Finance[315]. The state institution is regarded as a legal possessor who may act as a landlord, although the State remains an owner.

Furthermore, under specific conditions the tenant being a holder may sub-rent property, becoming a landlord for his (sub-) tenant (Article 17 of the Law on Residential Tenancy, Article 2115 of the Civil Law).

Normally, legal persons, for instance, private limited companies (Latvian: *SIA*) are legally capable and act through their representatives. The right to represent a legal person can be checked in the Commercial Register. If representation takes place on basis of a power of attorney, it is advisable to examine an extent and a time period of the power of attorney.

Furthermore, the legal capacity of a natural person may be restricted in full or in part, when the court establishes a guardianship and also decides on the extent of restrictions: actions which the person (the landlord) may take independently; actions which the person (the landlord) may take together with a guardian; actions which a guardian may take on behalf of the person (thJae

[314] Latvijas Republikas Augstākās tiesas Senāta Civillietu departaments. *Tiesu prakse, piemērojot likumu „Par dzīvojamo telpu īri”*, 2004, 5, <www.at.gov.lv>, 2 September 2013.; 28.08.2002. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC - 398

[315] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 17

landlord) (Article 4 Paragraph 3 of the Law on Residential Tenancy, Article 357, 358.1, 365 and 366 of the Civil Law). Since restrictions are different, it has to be checked in each particular case, whether an owner shall receive permission of his or her guardian for the conclusion of a rental contract.

It is also important to examine, whether the landlord is be entitled to dispose, in particular, to transfer the use of the property (Article 2 of the Law on Residential Tenancy, Article 2115 of the Civil Law), he may not conclude a valid and lawful rental contract.

The right to dispose or its different aspects (use of property) can be restricted by law, a court decision, testament or contract. Regarding restrictions imposed by law, Article 601 Paragraph 1 of the Civil Procedure Law, for example, states that after receipt of the notice of the court bailiff about directing compulsory execution recovery against an immovable property, the debtor is prohibited from entering rental contracts. The validity of a rental contract in these cases will be indicated below. Some more restrictions imposed by law has to be mentioned which is seizure within criminal proceedings (Latvian: *mantas arrests*) and different preliminary injunctions etc.

If disposal of the immovable property has been restricted by the court decision, by contract or by testamentary provision, then the prohibition is valid against third parties after its registration in the Land Book (Article 1081 of the Civil Law), unless another contractual party – tenant has acted in bad faith.

- does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?

According to Article 8 of the Law on the Residential Tenancy the change of the landlord through inheritance, sale or in other cases, when the immovable is alienated in accordance with free will of its owner, does not affect the position of the tenant. To mention, lately the Constitution Court received an application regarding Article 8 of the Law on Residential Tenancy; on January 6, 2014 the Court initiated constitutional court proceedings to examine if the legal provision in question complies with Article 105 of the *Satversme* (the right to property). The Constitutional Court has not decided upon the application yet[316].

There are specific provisions regarding public auctions (Article 601 of the Civil Procedure Law) when the court bailiff sells the property because of debts, here alienation takes place against the will of the owner (landlord). If the rental contract in question had been concluded

- Before the court bailiff has started debt recovery, the contract is valid, unless it is fictive (German: *Scheinvertrag*), aimed to evade law (German: *Umgehungsvertrag*) or other legal grounds of the invalidity exist;

- After the debtor (landlord) has received the notification of the court bailiff about the auction, but before the respective mark (Latvian: *piedziņas atzīme;* German: *Zwangsversteigerungsvermerk)* has been entered in the Land Book, the contract is valid, if the tenant had not known about the debt recovery and auction (good faith), otherwise the contract is void;

- After the mark mentioned above has been entered, the contract is not binding[317] for the creditor selling the property in the auction and the acquirer of such property.

[316] Decision of the Constitutional Court of the Republic of Latvia of 14 January 2014, application No. 230/2013. <www.satv.tiesa.gov.lv>, 15 January 2014.

[317] The reference that the contract is not binding for the alienator and the acquirer means that the contract in question may remain binding between the owner of the property being sold in public auction, and another contractual party, for example, the tenant. As a result, the tenant may claim compensation of losses, if he entered the rental contract in good faith. Although the new owner has not to recognize the existence of rental relations, he may do so. If the new owner

When the rental contract is valid, it is binding for a new acquirer on the same conditions, i.e., the contract is not being amended, except the change of the landlord. Article 8 of the Law on the Residential Tenancy constitutes a legal ground of singular succession when all right and obligations of the rental contract of the previous owner pass on the new acquirer.

- Tenant:

o ***Who can lawfully be a tenant?***

Any natural person who lawfully resides in the Republic of Latvia, may be a tenant or a sub-tenant (Article 4 of the Law on the Residential Tenancy).

If a tenant does not lawfully reside in the Republic of Latvia, i.e. does not receive a residence permit, a residential contract is most likely invalid. Further legal consequences of the rental contract, concluded with a person with a residence permit, are not clear.

The conditions and eligibility of tenants in cases of social rent have been mentioned in the Part 1.

o ***Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?***

There are three categories of persons who can move in together with the tenant, observing different procedure:

1) Natural persons mentioned in Article 9 Paragraph 1 and 2 of the Law on Residential Tenancy or family members of the tenant may live together with the tenant without asking of the landlord's permission, besides they have the same rights and obligations which the tenant does;

2) Guardians of the tenant's family members may live together with the tenant without asking of the landlord's permission, however, they do not acquire a permanent right to use the residential space, consequently the scope of their rights and obligations is narrower (Article 9 Paragraph 4 of the Law on Residential Tenancy);

3) Other natural persons may live together with the tenant with the consent of the landlord, as well as adult family members residing together with the tenant (Article 9 Paragraph 5 of the Law on Residential Tenancy).

The notion "family" adopted by the Law on Residential Tenancy differs from the similar concept of the Civil Law.

The notion of the family of the Civil Law in the broad sense includes the father, mother, grandfather, grandmother, great-grandparents, children, grandchildren, uncles, aunts, cousins etc. (Article 207 of the Civil Law). Article 214 of the Civil Law states that the family in the narrow sense consists of spouses and their children while they are still a part of a common household.

As indicated, the Law on the Residential Tenancy has its own special regulation in regard to who is a family member. The concept of the family of the Law on Residential Tenancy has been criticized because it seems to be too narrow[318], but the Latvian courts do not tend to expand a circle of the

agrees to continue the rental contract, his confirmation has retroactive effect (Article 1077, 1078 of the Civil Law) (*Civilprocesa komentāri. Trešais papildinātais izdevums*. Autoru kolektīvs. Prof. K. Torgāna vispārīgā zinātniskā redakcijā. Rīgā: Tiesu namu aģentūra, 2006, 858)

[318] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem.* Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 54

family members and strictly observe Article 9 Paragraph 1 and 2 of the Law on Residential Tenancy. Article 9 Paragraph 1 and 2 the Law on Residential Tenancy stipulate that the following persons are family members of the tenant:

- A registered spouse;
- Parents and adoptive parents;
- Brothers and sisters incapable of working;
- Adult children without their own family;
- Underage children.

According to Article 179 of the Civil Law, parents must provide for their underage child or children.

Although the Law on the Residential Tenancy does not refer to the fact that brothers and sisters incapable of working are under the guardianship of the tenant or the family members of the tenant, this fact may be assumed (compare with Article 25 Paragraph of the Law on Residential Tenancy: "*A tenant may reside in the rented residential space of an official accommodation facility with (..) dependent family members incapable of work who are under his or her guardianship (..)"*). When the guardianship has been established, the guardian must take care for the adult person under the guardianship (Article 177 and 357 of the Civil Law).

Moreover, Article 188 of the Civil Law states that adult children have to provide for their parents and, if necessary, grandparents regardless the fact, if children have their own families and live together with parents or grandparents.

The Civil Law does not contain an obligation to provide for adult children, however, the Law on Residential Tenancy takes into consideration that parents can voluntary support adult children in the way that they are allowed to live together with the parents and the landlord may not prohibit it.

Thus the concept of the family of the Law on the Residential Tenancy partly complies with the obligation to provide for particular family members determined by the Civil Law, otherwise fulfilment of the obligation would be impossible or could be embarrassed.

The tenant has the right to lodge his family members, on the other hand, the landlord shall be informed thereof in advance in writing. Adult members of the tenant's family have the same rights and duties as the tenant. They are solidary liable[319] for obligations arising from the rental contract of the tenant (Article 10 of the Law on Residential Tenancy). Legally, from the view point of the landlord, there is no difference between the tenant and the family members who have lawfully lodged.

As indicated, the guardians of the tenant's family members may move in and no consent of the landlord or of adult family members is required, although the landlord has to be informed in writing.

[319] Article 1669, 1672 of the Civil Law states that solidary obligation is an obligation established by law, contract (also testament) if one party – a creditor or/and debtor - is represented by several persons who are jointly liable for their performance to another party. In rental relations, it means that if the tenant does not fulfill contractual obligations, for example, does not pay rental payments, repair dwellings etc., his family members have to provide a respective performance to the landlord, if he demands it. In case of solidary obligation with a multiplicity of tenants (debtors), the landlord may claim performance of the obligation in part or in full from any of the debtors. If one of the debtors fulfilled the obligation arising from the rental contract, others have not to perform (Article 1682 of the Civil Law). The debtor who fulfilled the obligation may claim a respective compensation from others who must compensate proportionally it, unless the first debtor acted in bad faith (Article 1683-1686 of the Civil Law)

In general, the duty to inform the landlord does not influence the validity of a rental contract or restricts the right of use of residential premises[320].

All other persons, including, but not limited to non-registered spouses[321], partners (also same sex partners), grandparents, grandchildren, brothers and sisters capable of working, cousins, are not family members in the sense of the Law on Residential Tenancy. The law uses the notion "other persons" to identify such persons, but may occupy the residential space upon the consent of the tenant, as well as the landlord and all adult family members residing together with the tenant. To clarify, we do not speak about sub-rent relations in this case. Sub-rent relations will be described later.

Other persons are mainly family members in the broad sense or natural persons who have personal relations with the tenant[322]. As said, the tenant, the landlord and all adult family members have to agree that other persons will live in the together with the tenant what can happen in different ways (orally, in writing or by the conduct implying the consent (German: *konkludent*); the consent or confirmation may be expressed before or after other moved in (Article 1, 1428 Article 1434, Article 1435 of the Civil Law). The fact that the persons entitled to refuse that other person moves in does not raise objections for a longer period of time, though are aware of the fact, may be qualified as consent/confirmation.

If the landlord is the State or a local municipality, the refusal to give permission to lodge in other persons who are not family members can be appealed in the course of administrative proceedings. On the contrary, the refusal of consent of private natural or legal persons cannot be appealed.

Other persons do not become a party to the rental contract, therefore their right to use the residential dwelling is closely connected to the right of the tenant. When the right of use of the tenant terminates, other persons are not entitled to ask to continue rental relations with them (Article 29.1 of the Law on Residential Tenancy). To compare, the family members may become a party to an existing rental contract instead of the tenant (Article 14 of the Law on Residential Tenancy).

Lately the Supreme Court dealt with the issue about non-married couples. The factual circumstances were as follows:

One spouse of the non-married couple entered a rental contract with the landlord. The party to the rental contract died and her husband asked to continue the rental relations with him. The landlord refused and brought a court action for eviction. The defendant submitted the counterclaim and asked to recognize his status of the family member and his rights to enter the rental contract concluded by his dead spouse.

As a result, the Supreme Court evicted the tenant rejecting the counterclaim, because according to the Court the status of a non-married spouse is not regulated by the Civil Law or Law on Residential Tenancy. The Supreme Court was of opinion that the recognition of the rights of a non-married spouse would be an unjustified interference in legislating competences[323]. For this reason criteria additional to those which are mentioned in Article 9 Paragraph 1 and 2 of the Law on Residential Tenancy, such as common household or character of relations are legally of no importance, therefore a former wife or husband in case of divorce remains a family member of the tenant[324], but not an actual spouse or partner.

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[320] 10.10.2007. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC-695

[321] 01.02.2012. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-4/2012, <www.at.gov.lv>, 2 September 2013.

[322] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 65

[323] 01.02.2012. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-4/2012, <www.at.tiesa.gov.lv>, 2 September 2013.

[324] 05.04.2006. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC-215

Same sex couples are not legally recognized in Latvia, consequently they would be other persons in accordance with Article 9 of the Law on Residential Tenancy.

If a person is not a family member or guardian in the meaning of the Law on Residential Law, the landlord has to give his or her consent to lodging in the residential space, failing which another person will unlawfully reside in the dwellings rented by the tenant.

If the persons who are not family members within the meaning of the Law on Residential Tenancy reside in residential dwellings without the consent of the landlord, the landlord may terminate the rental contract, evicting the tenant, his or her family members and all other persons.

Regarding social rent, the notion of the family is different comparing with private law. Administrative courts, dealing with the issue, must evaluate actual relations between persons, the notion of the Law on the Residential Tenancy is not applicable in cases of social rent. Thus it is possible that according to the Law on the Residential Tenancy a person is not a family member, for example, a grandmother and granddaughter, nevertheless they could be eligible to receive assistance of a local municipality as a family[325].

The name, surname and personal identity number of a family member or other person must be entered into a rental contract within three working days after they have moved in the residential space rented by the tenant (Article 9 Paragraph 7 of the Law on Residential Tenancy).

- ***Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant***

One of the original principles of the Law on Residential Tenancy is that in case of tenant's change a number of rental contracts regarding one and the same subject-matter cannot be increased[326]. This approach, however, is not a legal obstacle to replace the tenant in the cases specified by the Law on Residential Tenancy which we will review later.

To return back to the principle mentioned above, if two independent tenants used parts of an apartment in accordance with two separate rental agreements, but later these tenants became one family, then, under Article 14 Paragraph 1 of the Law on Residential Tenancy, the married couple is entitled to ask to conclude one single rental agreement for all the space that they occupy in the apartment.

Nonetheless, if the couple has divorced or separated, as a result two former spouses remained in the same apartment, it was not allowed to return to the former state, i.e. to conclude two separate agreements. This rule existed till 2001 and was applicable in all rental cases[327]. At the moment the prohibition to increase a number of rental contracts is preserved when the subject-matter of the rental contract is owned by the State, a local municipality or a State owned company (Article 14 Paragraph 2 of the Law on Residential Tenancy). Thus, tenants living, for example, in the state owned apartment may not ask to conclude separate agreements with them, if they had one rental agreement before. On the other hand, if a residential space is owned by a private natural or legal person, the change of the tenant and conclusion of separate agreements may only take place if all

[325] 11.04.2011. Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departamenta spriedums lietā SKA-98/2011, <www.tiesas.lv>, 2 September 2013.; 18.06.2011. Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departamenta spriedums lietā SKA-294/2011, <www.tiesas.lv>, 2 September 2013.

[326] Krauze, R. Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 106; Krauze, R., Krauze I. Dzīvoklis: īre, privatizācija, īpašums :Dokumenti. Komentāri. Rīga: Mans Īpašums, 1996, 20

[327] Krauze, R., Krauze I. Dzīvoklis: īre, privatizācija, īpašums :Dokumenti. Komentāri. Rīga: Mans Īpašums, 1996, 20

parties, including the landlord, agree to it (Article 13 of the Law on Residential Tenancy). Thus, for example, a divorced spouse may continue to use the living dwelling after divorce[328].

Persons - family members or other persons - residing together with the tenant may not be evicted, if personal relations (marriage, friendship etc.) have been terminated, unless the legal grounds established in Article 10.1 of the Law on Residential Tenancy exist.

According to Article 9 Paragraph 1 and 2 of the Law on Residential Tenancy an adult family member who lives or lived together with the tenant (in case of the tenant's death) are entitled to replace the tenant in the rental contract in the following cases:

- Death of the tenant;
- Establishment of a guardianship over the tenant;
- Change of a residence of the tenant.

All adult family members living together with the tenant (or who lived with him in case of death) must agree that a particular person replaces the tenant, otherwise the change may not take place (Article 15 Paragraph 4 of the Law on Residential Tenancy). The consent of the landlord is not necessary in these cases.

Furthermore, the change of the tenant is possible, if the tenant does not perform the obligations of the rental contract for three months or a longer period of time (Article 15 Paragraph 5 of the Law on Residential Tenancy). All adult family members must agree to the replacement of the tenant with the family member who fulfils obligations instead of the tenant and wishes to become a tenant. Nevertheless, the tenant may stay and continue to use the residential premises which before he rented as a tenant.

To note, in all respects, excluding the tenant who is being replaced by another natural person, the rental contract is not amended or reviewed (Article 15 Paragraph 4 and 5 of the Law on Residential Tenancy). Of course, if the landlord and other parties concerned agree, they are entitled to amend their rental contract. If no agreement regarding amendments can be reached the rule described at the beginning of this paragraph is in force.

When the matter concerns other persons in the meaning of the Law on Residential Tenancy, for example, when a non-married or same sex couple separates, there are no statutory provisions for the change of parties. It means that the general rule is applicable - all parties concerned can agree on amendments in writing (Article 13 of the Law on Residential Tenancy).

Eviction of other persons, as well as of family members takes place on the legal grounds stipulated by the Law on Residential Tenancy:

- A particular family member does not fulfil the obligations following from the rental contract for more than three months;
- A particular family member or other person
    - Treats the tenant or persons living together with the tenant with gross disrespect;
    - Unlawfully endangers the life or health of the tenant or persons living together with the tenant;

[328] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 54; 05.04.2006. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC-215

- Was deprived of parental rights and the court ruled that the person may not live together with its child;

- Deliberately causes economic loss to of the tenant or persons living together with the tenant (Article 10.1 of the Law on Residential Tenancy).

In addition, the landlord may ask for eviction of the tenant and all persons who occupy the dwelling together with the tenant, if one of them does not fulfil the obligations arising from the rental contract, since the adult family members (but not other persons in the meaning of the Law on Residential Tenancy) have the same rights and obligations as the tenant does. To avoid the claim of the landlord, the persons who reside together with the tenant may bring a court action for eviction in accordance with Article 28.1 of the Law on Residential Tenancy, if the tenant or its family member, or other person:

- Damages the property transferred under the rental contract;

- Uses the property transferred under the rental contract for other purposes than it was agreed in the contract;

- Disturbs persons living together with the disturber and makes the common residence in the same apartment or house impossible.

To point out, the legal provisions of the Law on Residential Tenancy shall not be confused with very similar rules of the Law on Apartment Property. The latter law is applicable in the cases when the owner of an apartment, its family members or other persons (also a tenant) residing in the apartment violates the law requirements, which apply to the use of the residential property, including sanitary and fire safety norms, as a result endangers the safety and health of other persons, the quality of the surrounding environment (Article 14 of the Law on Apartment Property). This particular claim may be submitted by owners of other apartments or other persons living in the same apartment house.

A court evaluates, whether the circumstances indicated above are present, if there is a dispute between the parties involved.

Finally, the issue whether a student moving out may be replaced by motion of the other students shall be regulated by an agreement of the parties to the rental contract, laws do not contain any rules on the issue in the particular situation.

- ***Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?***

Please pay attention to the fact that Article 5 Paragraph 4 of the Law on Residential Tenancy states, if the landlord rents out a room (or a part of a residential room) and at the same time occupies the residential dwellings, then the position of the person renting the room (or a part of it) is legally equal to the position of the sub-tenant and not the tenant.

The problematical issue is that the legislator has not distinguished rules on subletting, when the landlord lives in the same premises (hereinafter referred to as subletting of the first type), and subletting when the tenant enters the sub-rental contract (hereinafter hereinafter referred to as subletting of the second type). Such approach leads to contradictory conclusions interpreting the Law on Residential Tenancy and may cause unlawful infringement of the rights of the sub-tenant in cases of subletting of the second type. Besides, the rules regarding subletting of subletting of the first type do not coincide with the relevant provisions of the Civil Law.

The notion of subletting of the first type and the second type is similar to the one of the rental contract; according to it subletting is a contract granting use of a not fruit-bearing property. In case of subletting of the first type the landlord enters the sub-rental contract, but in case of subletting of the second type the first tenant enters a sub-rental contract under the consent of the landlord and the tenant's adult family members occupying the same residential space with the tenant (Article 17 Paragraph 1 of the Law on the Residential Law, Article 2115 of the Civil Law).

It is disputable whether other persons in the meaning of the Law on Residential Tenancy who are not supposed to be family members under this law have the right to refuse or agree with the conclusion of a sub-rental contract, if the matter concerns subletting of the second type. The Law on Residential Tenancy does not give an explicit answer on the question. Taking into account that a future sub-rental contract can influence essentially the right of use of all persons who live with the tenant, it would be reasonable to interpret the law in the way that all adult persons who lawfully live together with the tenant have to agree on the conclusion of the sub-rental contract. The consent can be orally given or in writing or by actions implying the consent (German: *konkludent*) (Article 1428 of the Civil Law); besides the consent may be given before or after the conclusion of subletting (Article 1434 - 1426 of the Civil Law). The refusal to consent to subletting may be appeal by the court, if the landlord refusing is the State or a local municipality[329].

The position of the sub-tenant combines property and obligatory rights. We have found out before, that the landlord transfers the right to use (personal right) to the tenant, consequently, the landlord remains a legal possessor (Latvian: *valdījums*), but the tenant receives hold (Latvian: *turējums*), becoming a holder or an actual possessor. If the tenant transfers the right of use further, the tenant becomes a possessor of the right (not the immovable property), but the sub-tenant becomes an actual possessor or holder of the property (Article 878, 896 - 900 of the Civil Law). For this reason, the opinion provided in the literature that the sub-tenant may not become a possessor is true[330], insofar as this opinion relates to legal possession.

At this stage we shall discuss the position of the sub-tenant of subletting of the first type, since the landlord remains a possessor of at least a part of the residential dwellings, since he resides together with the sub-tenant. As indicated, Article 878 of the Civil Law provides that simultaneously several persons may not possess one and the same immovable property. The conclusion could be drawn that the sub-tenant does not obtain any *in rem* rights in this case. However, there is one particularity of the Civil Law of 1937 which was also typical for the Civil Law of 1864. Some of the legal provisions of the law of 1937 similar to its forerunner of 1864 only apply to movables[331], although this conclusion does not follow from the wording (the grammatical interpretation) or the position of a legal provision in the structure of the law (the systematic interpretation)[332]. It means that to be able to apply the Civil Law of 1937 correctly, one, establishing an aim and purpose of the provision in question (the teleological interpretation), should also know the Roman law and Germanic (medieval) law (the historical interpretation) because the present law is closely connected with their principles[333]. Finally, one should be aware that sometimes there are no general provisions for an issue or these provisions are situated in different parts (Books) of the law without any logical system[334]. To make it short, in cases of immovables the rules on co-ownership, in particular, Article 1067 Paragraph 2 of the Civil Law could be applied by analogy that hold

[329] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 113
[330] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 113
[331] Rozenfelds J. *Lietu tiesību normu piemērošana tiesu praksē. Aktuālas problēmas*. <http://www.juristavards.lv/index.php?menu=DOC&id=228812>, 2 September 2013.
[332] Ducmans K. *Par Latvijas civīllikumu valodu, terminoloģiju un sistemātiku*. Tieslietu Ministrijas Vēstnesis, 1936. 1.janvāris, nr. 1, 103; Loebers A. Par preklusīviem termiņiem. Tieslietu Ministrijas Vēstnesis, 1924, nr. 1, 40-41
[333] Civilists. Revizija vai reforma? Piezīme pie Latvijas Civiltiesību kodeksa projekta. Jurists, 1928. 22. marts, nr. 1, 4-5
[334] Ducmans K. *Par Latvijas civīllikumu valodu, terminoloģiju un sistemātiku*. Tieslietu Ministrijas Vēstnesis, 1936. 1.janvāris, nr. 1, 104; Torgāns K. Zvērinātu advokātu birojs „Lejiņš, Torgāns un Partneri". *Zinātnisks pētījums „Civillikuma Saistību tiesību daļas modernizācijas nepieciešamība un aktuālo privāttiesiskā regulējuma tendenču (UNIDROIT, ELTP) iespējamā ietekme uz Civillikuma Saistību tiesību daļas modernizāciju". Rīga, 2007. g. aprīlis – decembris*, 31 < www.tm.gov.lv>, 2 September 2013.

(possession) could be established over an actual share of immovable: a room or a part of it. This conclusion is similar to the practice of co-owners agreeing on agree on the separate use of the joint owned property. Different opinions on the issue can be expressed yet.

In case of subletting of the second type transfer of hold (possession) on the whole apartment or residential house establishes hold (possession) of the sub-tenant which is property right, simultaneously the sub-rental contract is a legal source of personal rights of the parties involved. Speaking about *in rem* rights, the tenant, being a holder or an actual possessor of the immovable property transfers the right to use it (Latvian: *lietošanas tiesība*) to the sub-tenant who becomes a holder of the sub-rented space[335].

According to Article 17 Paragraph 3 of the Law on Residential Law the sub-tenant has already no right to rent the subject-matter of its contract to a third person in subletting of the first and second type.

Although subletting (of the second type) relates to the subject-matter of the contract of the tenant and the landlord, the sub-rental contract is an independent contract. The tenant becomes a party of the sub-rental contract and the former rental contract between the tenant and his landlord remains in force (Article 17 Paragraph 2 of the Law on Residential Tenancy, Article 2117 of the Civil Law). The latter contract constitutes a legal basis for the conclusion of the sub-rental contract[336]. The tenant has to pay rental payments and fulfil other obligations of his rental contract, in this connection the tenant may even authorize his sub-tenant to pay rental payments and other payments to the tenant's landlord directly, observing the contractual terms of the tenant's contract[337] (Article 2117 of the Civil Law).

The sub-rental contract is to be concluded in writing. The similar provisions which apply to the "normal" rental contract, are relevant for subletting. Information (name, surname and personal identity (also personal code) number) of all persons lawfully residing together with the sub-tenant shall be included in the sub-rental contract within three days after their moving in (Article 19 of the Law on Residential Tenancy).

The sub-rental contract (subletting of the second type) is not binding for the landlord. The landlord is a third person in relation to the sub-rental contract of the tenant and sub-tenant, for this reason neither rights, nor obligations of the landlord arise from the sub-rental contract, until he enters the respective contract of subletting (Article 1519, 1522, 2117 of the Civil Law).

In accordance with the Law on Residential Tenancy and Article 2116 of the Civil Law, the tenant may not transfer the rented dwelling for a different use, i.e. for commercial or mixed use to the sub-tenant in cases of subletting of the second type, at least the rental contract of the tenant does not provide commercial or mixed use, though the issue, insofar as the parties may agree on commercial use in cases of residential tenancy, is disputable.

The tenant's rental contract term with a third person may not be shorter than the term of sub-rent contract where the matter concerns the subletting of second type (Article 18 Paragraph 2 of the Law on Residential Tenancy, Article 2116 of the Civil Law). At the same time, the tenant and the sub-tenant are entitled to prolong their contract by a mutual agreement, but the permission (consent) of the landlord and other persons has to be obtained in this case. If the rental contract between the tenant and the landlord has been lawfully terminated, including the pre-term

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[335] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 113; Torgāns, K. (ed.) *Latvijas Republikas Civillikuma komentāri. Saistību tiesības (1401.–2400. p.)*. 2. izdevums. Rīga: Mans īpašums, 2000, 472; Буковский В. *И. Свод гражданских узаконений губерний прибалтийских с продолжением 1912–1914 гг. и разъяснениями в 2 томах*. Том 2, Рига: Г. Гемпель и Ко, 1914, 1737

[336] 22.03.2006. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC – 197

[337] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 112

termination, subletting automatically ends as well[338]. As a result, in cases of subletting of the second type the position of the sub-tenant is very similar to the position of other persons living together with the tenant, if these persons are not family members. The difference between other persons and sub-tenants is that the right of use of other persons is based on family, friendship or other personal relations, but in case of subletting these relations are based on a legal transaction – sub-rental contract.

In the both cases: subletting of the first and second type - the rules about lodging of family members of the sub-tenant are less protective comparing with the tenant. The only family member of the sub-tenant who may move in without formalities is an underage child (also adopted)[339]. All other persons may lawfully occupy the sublet dwellings after the landlord, the tenant and his adult family members[340]. Refusal to allow to lodge in family members of the sub-tenant can be appealed when a residential space is owned by the State or a local municipality[341].

It follows from Article 20 of the Law on Residential Tenancy that the protection of the sub-tenant and other persons residing with him is not that high as the protection of the tenant in cases of eviction; in addition, freedom of contract is applicable to a larger extent to subletting. The article stipulates that subletting may be unilaterally terminated by the tenant or the landlord with one-month prior written notification unless other procedures have been specified in a residential sub-tenancy agreement (Article 20 of the Law on Residential Tenancy). The rule that the landlord may terminate the sub-rental contract without being a party to this contract unless the landlord has entered the sub-rental contract is problematical because the landlord could use this right arbitrary[342]. The legal literature suggests interpreting Article 20 in connection with Article 18 of the Law on the Residential Tenancy and concludes that the landlord is entitled to terminate subletting, if the rental contract with the tenant has expired[343]. This approach, however, does not coincide with the Civil Law provisions that subletting is independent legal relations between the tenant and the sub-tenant. Moreover, the rental contract of the landlord and the tenant may be legally terminated in other cases as well. Most likely, the reference to the right of the landlord to terminate subletting refers to the situation described in Article 5 Paragraph 4 of the Law on Residential Tenancy – subletting of the first type. Unfortunately, the legislator did not distinguished different types of subletting properly.

Subletting is not possible in rental contracts with the subject-matter owned by the state or a local municipality which were concluded because of employment or studies (Article 26 Paragraph 1 of the Law on Residential Tenancy).

Subletting is not allowed, if a residential space is rented in accordance with a social rental contract. Since social rent is a part of public law, the lack of a provision about subletting indicates that it is not allowed. Furthermore, the opposite conclusion that subletting might take place would not comply with the aims of social renting. It is recognized by the jurisprudence of administrative courts that assistance in apartment matters is only provided, if a person or family does not have a place to live and cannot find a residential space themselves because of justified objective reasons. If a person were entitled to sub-rent a social residential space, it would mean that it has found another

[338] 22.03.2006. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC – 197

[339] This legal provision is questionable with respect to the preservation of the family of the sub-tenant and proportionality in cases, when the residential space allows that several family members move in together with the sub-tenant. The Law on Residential Tenancy could be more precise and define specific circumstances under which the landlord and other eligible persons may refuse to lodge in family members of the sub-tenant so that interests of all parties are observed.

[340] As indicated, the Law on Residential Tenancy does not grant rights to other persons who are not family members in the meaning of Article 9 of the law mentioned to participate in deciding on subletting.

[341] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 114

[342] Till 2001 Article 20 of the Law on Residential Tenancy stipulated that the sub-rental contract may be terminated by a mutual agreement of the tenant and sub-tenant; besides the Article listed three grounds, when a tenant could terminate the sub-rental contract without consent of the sub-tenant. In 2001 the wording of Article 20 has been amended, the reasons for the amendment are not available.

[343] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 118

place for living. Moreover, the option to sublet a social dwelling would mean that a local municipality could not rent a living dwelling to other persons. Considering that social houses and apartment are not numerous, subletting would endanger the provision of assistance in apartment matters by local municipalities.

As shown, the legal rules on subletting are less protecting than the rules on the rental contract. If the landlord offers not an ordinary rental contract, but a sub-rental contract, the subject-matter of the contract has to be examined whether the matter concerns subletting of the first type which is mandatory regulated by the Law on Residential Tenancy. If the case relates to subletting of the second time, in addition, it has to be examined whether the rental contract is fictive or its aim is to evade law, i.e., the Law on Residential Tenancy. If the answer is positive, the only possibility to protect self is to bring a court action, asking the court to declare the rental contract void (Article 1415, 1592, 1438 of the Civil Law) because of its fictive nature (Article 1438 of the Civil Law) or law circumvention (Article 1415, 1592 of the Civil Law). Of course, such action assumes that the sub-tenant entered the sub-rental contract in good faith, but later discovered *mala fide* of the tenant and the landlord.

- ***Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?***

It is possible to conclude a contract with a multiplicity of tenants:

- Several tenants may conclude individual rental contracts over individual use of particular rooms and common use of auxiliary rooms (kitchen, bath, etc.) (the common apartment);

- Several tenants may conclude one single rental as one party, in this case solidary (German: *gesamtschuldnerisch*) obligation is established.

A solidary obligation means that it is based on one and the same legal ground and several participants of a contract are considered to be one party, still it is possible to include different conditions of the common (solidar) obligation with respect to different tenants (Article 1669, 1671 of the Civil Law)[344].

In case of a solidary obligation with a multiplicity of tenants (debtors), the landlord may claim performance of the obligation in part or in full from any of the debtors at his discretion. If one of the debtors fulfilled the obligation arising from the rental contract, others have not to perform (Article 1682 of the Civil Law). The debtor who fulfilled the obligation may claim a respective compensation from others who must compensate proportionally it, unless the first debtor acted in bad faith (Article 1683-1686 of the Civil Law)[345].

Contractual terms are subject to free mutual agreement of the parties concerned. The only legal provision concerns routine repairs of the apartment if there is no agreement. Article 42 of the Law on Residential Tenancy states that, if several tenants rent one apartment, all tenants are solidary responsible for keeping of such apartment in order and the routine repairs.

- ***Duration of contract***

  - ***Open-ended vs. limited in time contracts***

[344] Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 79-87
[345] Ibid.

- for limited in time contracts: is there a mandatory minimum or maximum duration?

A rental contract can be open-ended or limited in time; its duration depends on a free mutual agreement of parties. Neither the Law on the Residential Tenancy, nor other law determines a minimum or maximum duration of the rental contract, if the case in point is renting without public tasks.

The term of a rental contract can be based on the occurrence of a certain moment in time, for example, till November 17, 2017, or a future event, for example, until the landlord returns from abroad (Article 1579, 1582 of the Civil Law).

The rental agreement with public tasks is usually concluded for six months (Article 11 of the Law on Social Apartments and Social Houses), i.e., is time-limited.

- ***Other agreements and legal regulations on duration and their validity: periodic tenancies ("chain contracts", i.e. several contracts limited in time among the same parties concluded one after the other); prolongation options; contracts for life etc.***

Due to freedom of contract and private autonomy parties may agree on different contractual terms on duration, including, but not limited to "chain contracts", prolongation options, contracts for life, which will be valid, unless they are fictive or its aim is to circumvent law (Article 1415, 1438, 1592 of the Civil Law).

Regarding private renting, the Law on Residential Tenancy stipulates that, if the rental contract has been entered into for a specific period of time, the tenant has to vacate the residential space upon the expiration of the term, unless the clause on prolongation (without the landlord's consent) has been included (Article 6 of the Law on Residential Tenancy); nevertheless the landlord has the right to refuse the prolongation, if at least one of the alternative circumstances exists:

- The tenant does (did) not fulfil the obligations specified in the rental contract;
- The landlord or the landlord's family members need the residential space for private use;
- The residential house is to be demolished or capital repairs have to be made (Article 6 Paragraph 2 of the Law on Tenancy).

The prolongation clause can be drawn up in a different manner. The clause may state that the contract is prolonged upon unilateral request of the tenant or with the consent of the landlord; if the consent of the landlord is necessary, the landlord may refuse to prolong the rental contract without providing reasons for this answer[346]. Lately the Supreme court also recognized that "chain contracts" are allowed[347].

The legal evaluation of the fact that after the term expiration the tenant continues using the rented dwelling and covers all payments depends on circumstances of a particular case. The prolongation clause of the contract has to examined to establish, whether the particular clause applies automatically, if none of the parties notifies of the termination, or the tenant have to request the

[346] 06.10.2004. Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-506/2004. <www.at.gov.lv>, 13 January 2014.; 20.10.2004. Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-543/2004. <www.at.gov.lv>, 13 January 2014.

[347] 31.05.2013. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-177/2013. <www.at.gov.lv>, 13 January 2014.

prolongation within a reasonable time[348]; whether the prolongation may take place with consent of the landlord[349] or without it etc.

In cases when no prolongation clause exists, Article 1488 of the Civil Law could be applicable, i.e., the tenant continues using the rented dwelling, covers all payments, but the landlord has not objected to it, has not demanded that the tenant vacates the dwelling, as well as accepts payments. According to Article 1488 of the Civil Law this attitude of the landlord would lead to the prolongation of the contract expired. In addition, it is important to establish whether the landlord has acted in good or bad faith, as well as whether the landlord has consented later for the prolongation, although at beginning asked to vacate the premises. (Article 1 of the Civil Law). If the landlord has asked for eviction, but then accepted payments it would not mean that the landlord automatically agreed to the prolongation, because additional evidence proving the consent of the landlord has to be present. However, if the landlord accepted payments for a half year and did request the vacation, the later objections would not be taken into account because this behaviour would contract the principle of good faith[350].

According to Article 6 Paragraph 3 of the Law on Residential Tenancy, the tenant may appeal the refusal of the landlord to prolong the rental contract in the court.

After the six-months term of a social rental contract is expired, competent institutions must re-evaluate, whether circumstances of a particular tenant or family have been changed and whether the tenant or family may continue renting a social apartment (Article 11 of the Law on Social Apartments and Social Houses). If the answer is positive, the rental agreement is prolonged for more six months.

- ***Rent payment***

- In general: freedom of contract vs. rent control

In general, freedom of contract prevails.

- Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent

Let us start with private renting. Article 11 of the Law on Residential Tenancy stipulates that rent consists of residential house (space) maintenance expenses and profit. Please note that all other payments which are not residential house maintenance expenses and profit, though they are agreed or have to be made because of law, are not rent in the meaning of the Law on Residential Tenancy.

After the judgement of the Constitutional Court in case No. 2005-16-01[351], explicit rent control as the determination of the highest possible rental payments in relations of two private persons does not exist in private renting, but at the moment the Law on Residential Tenancy uses other means that can be regarded as rent controls means.

[348] 06.10.2004. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā Nr. SKC-506/2004. <www.at.gov.lv>, 2 September 2013.
[349] 06.10.2013. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-506/2004. <www.at.gov.lv>, 2 September 2013.
[350] Balodis, K. *Ievads civiltiesībās.* Rīga: Zvaigzne ABC, 2007, 143-144
[351] Judgement of the Constitutional Court of the Republic of Latvia of 8 March 2006, Case No. 2005-16-01. <www.satv.tiesa.gov.lv>, 2 September 2013.

First of all the law stipulates which expenses of house maintenance may be shifted to the tenant (sanitary, technical maintenance of the residential house, staff employed for these purposes etc.), the list of the expenses set by the law may not be extended by the landlord, even though the tenant agrees[352]. Nonetheless, the principle of freedom of contract applies to the second part of rent which is profit, therefore parties may freely agree on an amount of this part of rent.

Furthermore, rent is also controlled in the way that services (utilities) provided under the rental contract are divided into two categories. There are so called the basic services (Latvian: *pamatpakalpojumi*) which are inseparably related to the use of the residential space and the auxiliary services (Latvian: *papildpakalpojumi*) regarding the provision of which the renter and the tenant have agreed on in the rental contract (Article 11.3 of the Law on Residential Tenancy). The separation of the two kinds of services aims to reduce financial burden of the tenant because the landlord is not entitled to expand the list of the basic services, even though an agreement on several auxiliary services have been reached, Article 11.3 of the Law on Residential Tenancy grants the right to the tenant to unilaterally refuse to receive the auxiliary services in future observing the law provisions in this regard.

Eventually if payments for rent or payments for utilities are increased, the landlord has to explain the reasons of increase and, if the tenant asks for it, provide a financial justification, including (but not limited to) calculations of the amount for which a payment shall be increased.

The ordinary courts are those who control whether the rules of the Law on Residential Tenancy are observed (Article 50 of the Law on Residential Tenancy). Control of maintenance expenses seems to be relatively easy, since the Law on Maintenance of Residential Houses regulates the issue, while another rent component - profit is a problematical issue. The Constitutional Court pointed out that landlords are entitled to make profit renting their property[353]. The general rule is that if the court may decide at its discretion, i.e., determine an exact amount of the profit which the tenant must pay in case of a dispute, is that the court is guided by a sense of justice and the general principles of law (Article 5 of the Civil Law). To avoid, subjective findings of judges in the cases with similar or identical facts it would be advisable to develop practical guidelines at least or publish a summary of court practise on the issue which is unfortunately not available at the moment.

Freedom of contract can be restricted where a local municipality or the State (Article 11.1 – 11.2 of the Law on Residential Tenancy).

If a local municipality is a party, that is, the municipality is a landlord, but the tenant is eligible to receive assistance in apartment matters (social rent), the municipality may determine an amount of rent which does not include profit and reduce payments for maintenance; besides, the respective municipality is entitled to cover payments for utilities in part (Article 11.1 of the Law on Residential Tenancy, Article 12 of the Law on Social Apartments and Social Houses). In cases of "normal" rent, rental payments consist of the maintenance expenses and profit determined by a competent body of a local municipality[354], if a private person agrees to the amount determined, a rental contract can be concluded.

Where the State enters the rental contract, rent may consist of the maintenance expenses specified by law (Article 11.2 Paragraph 1 of the Law on Residential Tenancy).

- ***Maturity (fixed payment date); consequences in case of delayed payment***

[352] *Likumprojekta „Dzīvojamo telpu īres likums" sākotnējās ietekmes novērtējuma ziņojums (anotācija)*. <http://www.mk.gov.lv/doc/2005/EMAnot_201113.2127.doc>, 18 March 2014.
[353] Judgement of the Constitutional Court of the Republic of Latvia of 8 March 2006, Case No. 2005-16-01. <www.satv.tiesa.gov.lv>, 2 September 2013.
[354] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 86-87

Article 12 of the Law on Residential Tenancy states that maturity of the rental payment and other payments for residential space has to be specified in the rental contract. The person to whom the rental payment and the payment for services (utilities) has to be made, as well as the place of residence (address) of this natural person or the legal address of the legal person is to provide in the rental contract. Furthermore, it has to be determined, if the rental payment and the payment for services (utilities) is to be made in cash or on a bank account, in the latter case the information necessary for such payment has to be indicated.

We will start with rent payments. If maturity of rent has not been determined, the rules of the Civil Law on rental contracts could apply. Thus, Article 2142 of the Civil Law is applicable to rental contracts outside cities, but Article 2143 – cities. Article 2142 of the Civil Law stipulates that, if the fixed rent payment date has not been set in the rental contract concluded for less than a year, the tenant has to pay the rental payment after the expiration of the rental contract; if the rental contract has been entered for a year or for a longer period, the rental payment have to be paid for every six months in advance[355]. Under Article of 2143 of the Civil Law, while renting immovables in cities, rent payment has to be made for the whole month in advance; if the rental contract is concluded for less than one month the tenant has to give earnest money[356] .

Another possibility would be to apply Article 1829 and 1830 of the Civil Law. If maturity has not been set, the landlord may request the performance – rent payment at any time, but the debtor may perform at any reasonable time (Article 1829 of the Civil Law). If the debtor cannot fulfil the obligation in a reasonable time and no agreement with the landlord can be reached, the court determines a term of performance (Article 1830 of the Civil Law).

If the tenant does not pay rent or make other payment in time, it leads to an illegal delay of the performance (Article 1651, 1652 of the Civil Law). If maturity has been determined, but the tenant failed to pay on time, the landlord may demand interest based on a default payment, even though there is no such obligation in a contract (Article 1759 of the Civil Law) and contractual penalty for delay, if it has been agreed in the contract, which may not exceed 10% of a principal claim and interest arisen though.

To fulfil the obligation to pay on time, when the landlord refuses without any legal basis to accept payments or cannot be found etc., the tenant may transfer the subject-matter of the obligation, i.e., may pay a notary public who will directly pay out a respective sum to the landlord (Article 1837 of the Civil Law).

If there is a dispute whether the landlord has secured the use of living premises in a proper manner, i.e., according to the rental contract and/or law, as well as an amount of rent is disputed, the debtor has not delayed payments (Article 1656 of the Civil Law, Article 50 of the Law on Residential Tenancy)[357].

Payment for utilities (the basic and auxiliary utilities) related to the use of residential space have to be paid in accordance with time periods and procedures specified by regulatory enactments or the rental contract. The main models of payments for utilities on which the tenant and the landlord may agree are as follows: 1) the tenant pays directly to service providers; 2) the tenant transfers payments for utilities to the landlord and the latter pays to service providers. The landlord and tenant are also entitled to choose another model. One more fact which has to be taken into account while agreeing on the model is whether the landlord is a service(-s') provider at the same time. If the answer is positive, then a date payment for services will be included in the rental contract.

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[355] *Civillikuma komentāri. Saistību tiesības (1401.-2400.p.).* Sagatavojis autoru kolektīvs prof. K.Torgāna vispārīgā zinātniskā redakcijā. Rīga, 1998, 484

[356] Ibid.

[357] 09.03.2005. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC – 153; 11.01.2006; Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC – 17; 15.08.2007. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC – 509

Sanctions for delayed payments for utilities are determined in accordance with the rental contract or contracts with third service providers. In addition to the contract, laws in broad sense may comprise sanctions relating to payment delays, for example, the binding Regulations of the Council Riga on water supply and sewerage state that in case of payment delays the client has to pay contractual penalty in amount of 0.1% the overdue amount for *each day* of delay [358]. As another example the Cabinet Regulations on Electricity supply can be mentioned Section 32 of which states that the consumer shall pay delayed interest in the amount of 0.15% from the amount not paid on time for each day of delay, unless otherwise prescribed in the contract[359].

If the tenant delayed rental payments or/and payments for the basic services (utilities) for more than three months, the landlord may initiate eviction court proceeding (Article 28.2 of the Law on Residential Tenancy).

There are also obligatory payments which are a part of the rental contract: the immovable tax payment and compulsory lease payments which must be paid in accordance with the procedure and within terms stipulated by law. The tax is paid in accordance with a notification of a respective municipality. An amount and terms of compulsory lease payments are set by the compulsory lease contract. The landlord may claim 0.05%, if the tenant failed to pay obligatory payments, unless the rental contract provides otherwise (Article 12 of the Law on Residential Tenancy).

- ***May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it when the landlord does not respect his contractual duties, e.g. does not repair a defect);***

Both parties may exercise set off and retention rights (Latvian: *aizturējuma tiesība*) in accordance with the Civil Law legal provisions.

The legal notion of set off is termination of obligation by a counterclaim. The counterclaim can arise from a rental contract, from tort or law provisions (Article 1400 of the Civil Law); therefore a legal ground of obligation (counterclaim) is insignificant.

Article 1847 of the Civil Law provides that a debtor may use a counterclaim against the will of the creditor if the subject matters of both claims are similar and due. For example, a tenant has a claim regarding re-calculation of rental payments (reduction) and landlord – damages caused by the tenant. The both claim are pecuniary, therefore set off is allowed. Set off is prohibited, when it concerns the property which the opposing party has taken illegally.

If an action is brought to the court, then set off is possible submitting a counterclaim within civil proceedings[360]. Up to the moment of the closing of adjudication on the merits a defendant is entitled to bring a counterclaim against the plaintiff (Article 136 of the Civil Procedure Law). A court or a judge must accept a counterclaim if a mutual set off is possible (Article 136 Paragraph 3 Clause 1 of the Civil Procedure Law). It has to be pointed out that the Supreme Court supposes that set off is only possible by submitting a (counter-)claim[361], though Article 1853 of the Civil Law establishes that the debtor shall have the right to request set-off at any time, even after a judgment of a court.

[358] 17.12.2002. Rīgas domes saistošie noteikumi „*Rīgas ūdensvada un kanalizācijas tīklu un būvju ekspluatācijas, lietošanas un aizsardzības noteikumi*". <http://likumi.lv/doc.php?id=69967>, 2 September 2013.

[359] 29.11.2011. Ministru kabineta noteikumi Nr. 914 „Elektroenerģijas tirdzniecības un lietošanas noteikumi", <http://likumi.lv/doc.php?id=241279>, 2 September 2013.

[360] 18.12.1996. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta lēmums lietā SPC-131/1996

[361] *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa)*. Sagatavojis autoru kolektīvs. Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2011, 334-335; 18.12.1996. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SPC-131/1996

Following Article 1735 and 1736 of the Civil Law, the landlord is entitled to exercise the retention rights (also a lien). The historical legal sources also analyze the retention rights in connection of the right of the landlord[362]. The modern scholars regard the retention rights as the right of the landlord towards the tenant or sub-tenant and not vice versa[363]. Notwithstanding this fact Article 2155 of the Civil Law grants the right to the tenant to retain property of the landlord, if the tenant has made necessary and useful expenditures, that is, repaired the residential space and/or the residential house[364], until the landlord covers the costs of the tenant. Here all principles indicated speaking about the landlord's retention rights will be relevant[365].The question whether this article is also applicable in cases of residential rental contract, since the Law on Residential Tenancy regulates the issue as well, is not clarified by the legal doctrine or court practise.

The retention rights in the meaning that the tenant or the landlord withholds performance under the contract are not provided in Latvian Law, though Article 1589 of the Civil Law grants the right not to start the performance of obligations, until another party – the landlord has fulfilled his obligations[366].

To sum up, the tenant does may probable have the retention rights on movables, but only set-off observing the conditions explained above.

- ***May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)***

A landlord or tenant can assign claim to third persons under the rules of the Civil Law. Assignment only concerns particular specific claims which arise from a contract, general succession is impossible. Consequently, the landlord or tenant remains a party to their rental contract, even though the cessionary receives the performance of the debtor (Article 1804 of the Civil Law).

All claims may be the subject-matter of assignment, including undue, as well as conditional and even future and uncertain claims (Article 1798 of the Civil Law).

Restrictions on assignment in regard to rental contracts is that assignment may not worsen the situation of the debtor, therefore if the cessionary personally has other claims with respect to the debtor, he may not exercise them (Article 1807 of the Civil Law).

Permission or prohibition of claim assignment is subject to a mutual agreement of the tenant or landlord; accordingly, they may prohibit or allow assignment to third persons. If there are no provisions on assignment, it is allowed. Practically landlords try to agree on the contractual clause according to which the tenant permits assignment of claims to third persons such as a debt collecting company.

- ***May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)? Does the tenant have a statutory right to this effect? Could a lien of the "tenant-contractor" create problems in that case? (a lien is a statutory right of a contractor to ensure his***

[362] Буковский В.И. *Свод гражданских узаконений губерний прибалтийских с продолжением 1912-1914 гг. и разъяснениями в 2 томах. Том I.* Рига: Г. Гемпель и Ко, 1914, 565-573
[363] Rozenfelds J. *Lietu tiesības*. 3. izdevums. Rīga: Zvaigzne ABC, 2004, 184 – 185; Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 218-217
[364] Please see the answer on the question about repairs
[365] *Civillikuma komentāri. Saistību tiesības (1401.-2400.p.).* Sagatavojis autoru kolektīvs prof. K.Torgāna vispārīgā zinātniskā redakcijā. Rīga, 1998, 489
[366] Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 214

being paid for his performances, e.g. improvements to the house, e.g. § 648 BGB)

This may happen under a mutual agreement of all parties.

- Does the landlord have a lien on the tenant's (movable) property in the house (Vermieterpfandrecht as in § 562 BGB, which functions as a guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?

The landlord has a lien that is called or the retention rights under the Latvian Civil Law, if a claim or claims: rental payments owed and any other claim - arise from a rental contract (Article 1735 of the Civil Law). Article 1736 of the Civil Law states that retention rights belong to the person who rents out a building or premises therein. The retention right is a personal right, for this reason it does not influence in *rem* rights; consequently, the rules about pledge or acquisition of the ownership are not applicable when the retention rights are exercised. The possibility is a compulsory measure which grants the right to the creditor who is in possession of property may keep it until his claim is satisfied[367]; the creditor has no right to sell the property in cases of the retention rights exercised in accordance with law.

Retention means that the creditor gains actual control over movables which the tenant has placed in the dwellings. If the tenant does not allow to obtain actual control over his movables, the landlord may use force observing the rules about self-help(German: *Selbsthilfe*), i.e., use of force should be proportional to resistance and character of actions of the tenant (Article 1733 of the Civil Law)[368].

The Civil Law does not provide any limitations of the retention rights in connection with a value of a claim or in cases, if other security means (deposit, pledge, personal guarantee, contractual penalties) have been contracted.

The retention rights terminate when claims are satisfied or property is given back; in the latter case the claim of the person entitled to exercise the retention rights does not vanish (Article 1740 of the Civil Law).

These rights are applicable to property of the tenant which the tenant has brought into the building, but not in relation to intangible property and claims of the tenant. If a tenant sublets the building, then retention rights may be executed in regard to property of the sub-tenant. The sub-tenant is liable for the claims of the original landlord against the tenant, insofar as as the sub-tenant shall be liable to the tenant.

The retention rights (Latvian: *aizturējuma tiesība*) shall not be confused with pledge rights (Latvian: *ķīlas tiesība*). The aim of pledge is to secure a claim of the creditor (Article 1691 of the Civil Law). Under Article 1278, 1319 of the Civil Law, the creditor is entitled to sell pledged property, if the debtor has not satisfied a claim of the creditor in the term agreed. Moreover, to establish pledge, parties have to conclude a separate agreement[369], but the retention right are granted by law. Furthermore, pledge rights are *in rem* rights, but the retention right are personal (obligatory) rights.

- ***Clauses on rent increase***

  - ***Open-ended vs. limited in time contracts***

[367] H. van Biema. *Īres nodrošināšanas, tiesības ar īrnieka ienestajām lietām*. 1935.09.01 Jurists Nr. 6-7, 159-162; Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 218-217
[368] H. van Biema. *Īres nodrošināšanas, tiesības ar īrnieka ienestajām lietām*. 1935.09.01 Jurists Nr. 6-7, 161-162
[369] Rozenfelds J. *Lietu tiesības*. 3. izdevums. Rīga: Zvaigzne ABC, 2004, 182

- ***Automatic increase clauses (e.g. 3% per year)***

- ***Index-oriented increase clauses***

In Latvia rent increase may take place, if a rental contract contains the respective clause (Article 13 Paragraph 1 of the Law on Residential Tenancy). Parties may also agree on automatic or index-oriented increase etc. (Article 13 Paragraph 1 of the Law on Residential Tenancy).

- ***Utilities***

  - ***Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation***

According to Article 11.3 of the Law on Residential Tenancy all utilities may be divided in the following groups:

- The basic utilities are inseparably related to use of the residential space (heating, cold water, sewerage and removal of waste);

- The auxiliary utilities are all other services (hot water, gas, electricity, garage, parking place, etc.)

The idea is that in case of cutting off of the auxiliary services the tenant can continue to live in the dwelling, in addition, the law states that the tenant may decline future use of the auxiliary services (utilities) by notifying the landlord in writing two weeks in advance. This approach is also connected with the fact that the lack of the basic services would negatively influence the overall state of the residential building that is why the tenant may not refuse to receive the basic services. When one or several of the basic services are lacking, a residential house (residential space) does not fit for living[370].

The Law on Residential Tenancy is a bit inconsistent because it places electricity among the auxiliary services (Article 11.3 Paragraph 1), but at the same time Article 28.2 of the law provides that, when the tenant eligible to receive assistance in apartment solving matter has been evicted because of debts, a local municipality must to provide this tenant with other residential space fit for living. A residential space fits for living when it is a lit, heated space which is suitable for long-term human shelter and placement of household items and complies with the construction and hygiene requirements (Article 28.3 Paragraph 5 of the Law on Residential Tenancy). Nevertheless, Article 28.3 Paragraph 5 of the Law on Residential Tenancy does not specify how exactly a dwelling has to be lit.

Furthermore, services can be also divided into private and public utilities under the Law on Regulators of Public Utilities (Latvian: *Likums "Par sabiedrisko pakalpojumu regulatoriem"[371]).* The State regulates the provision of the following services: energy (natural gas, thermal energy, electricity), electronic communications, municipal waste management and water management (Article 2 of the Law on Regulators of Public Utilities). All other services are private utilities. The purpose of the regulation of public services is to ensure the possibility of receiving continuous, safe and qualitative public utilities whose tariffs (prices) conform to economically substantiated costs, as well as to promote development and economically substantiated competition in regulated sectors, determining the procedures for the regulation of public utilities and the legal relations in the

[370] 12.10.2011. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-292/2011, <www.at.gov.lv>, 2 September 2013.
[371] 19.10.2000. *Likums "Par sabiedrisko pakalpojumu regulatoriem"* <http://likumi.lv/doc.php?id=12483>, 2 September 2013.

provision of public utilities (Article 1 of the Law on Regulators of Public Utilities). We will speak about this regulation in the context of payment increase for utilities.

- ***Responsibility of and distribution among the parties:***

  - ***Does the landlord or the tenant have to conclude the contracts of supply?***

Answering on the question, it would be reasonable to distinguish residential apartment houses from other residential dwellings because under the Law on Maintenance of Residential Houses a manager of a residential house has to conclude agreements regarding the basic utilities (heating, cold water, sewerage and removal of waste), the auxiliary services and a compulsory lease agreement, if necessary (Article 6 Paragraph 2 of the Law on Administration of Residential Houses; Section 3 of the Cabinet Regulations No. 1013 of December 9, 2008[372]).

The legal provisions whether the landlord or the tenant have to conclude the contracts of supply are as follows:

Utility	Legal source	Person entitled to conclude a contract
Natural gas	Energy Law[373], Cabinet Regulation on Supply and Use of Natural Gas No 1048 of December 16, 2008[374]	The landlord or the tenant
Thermal energy	Energy Law, Cabinet Regulation on Supply and Use of Thermal Energy No. 876 of October 21, 2008[375]	The landlord or the tenant
Electricity	Electricity Market Law[376], Cabinet Regulation on Supply and Use of Electricity No. 914 of November 29, 2011[377]	The landlord or the tenant
Waste removal	Waste Management Law[378]	The landlord or the tenant
Internet, telecommunications, etc.	Electronic Communications Law[379]	The landlord or the tenant

[372] 09.12.2008. Ministru Kabineta noteikumi Nr. 1031 "*Kārtība, kādā dzīvokļa īpašnieks daudzdzīvokļu dzīvojamā mājā norēķinās par pakalpojumiem, kas saistīti ar dzīvokļa īpašuma lietošanu*" <http://likumi.lv/doc.php?id=185342>, 2 September 2013.
[373] 03.09.1998. *Enerģētikas likums*, <http://likumi.lv/doc.php?id=49833#p46&pd=1>, 2 September 2013.
[374] 16.12.2008. Ministru Kabineta noteikumi nr. 1048 „*Dabasgāzes piegādes un lietošanas noteikumi"* , <http://likumi.lv/doc.php?id=185784>, 2 September 2013.
[375] 21.10.2008. Ministru Kabineta noteikumi nr. 876 „Siltumenerģijas piegādes un lietošanas noteikumi" , <http://likumi.lv/doc.php?id=183035>, 2 September 2013.
[376] 05.05.2005. Elektroenerģijas tirgus likums. <http://likumi.lv/doc.php?id=108834>, 2 September 2013.
[377] 29.11.2011. Ministru kabineta noteikumi Nr.914 „Elektroenerģijas tirdzniecības un lietošanas noteikumi", <http://likumi.lv/doc.php?id=108834>, 2 September 2013.
[378] 28.10.2010. Atkritumu apsaimniekošanas likums, , <http://likumi.lv/doc.php?id=221378>, 2 September 2013.
[379] 28.10.2004. Elektronisko sakaru likums. , <http://likumi.lv/doc.php?id=96611>, 2 September 2013.

As mentioned, local municipalities have to organise the provision of utilities (water supply and sewerage; heating; management of waste; collection, conducting and purification of waste water) (Article 15 of the Law on Local Municipalities). For this reason, each local municipality has issued binding regulations in the respective areas, including the issues connected with conclusion of contracts, for example, the Regulations of the Council Riga on water supply and sewerage state provides that the landlord or the tenant may conclude a contract.[380]

It shall be kept in mind that the landlord must secure the basic services before the conclusion of a rental contract; otherwise a residential dwelling is not fit for living. The landlord can fulfil this duty by authorizing his tenant to conclude such agreements with third parties – service providers.

The landlord is entitled to provide services related to the use of a residential space to a tenant directly, becoming a service provider (Article 11.3 of the Law on Residential Tenancy).

- ***Which utilities may be charged from the tenant?***

The basic, as well as all auxiliary utilities agreed in a rental contract may be charged from the tenant.

What is the standing practice?

Article 11.3 of the Law on Residential Tenancy and the Cabinet Regulation No. 999 of December 12, 2006 determines that the tenant may pay directly to service providers or to the landlord who pays to service providers, unless the landlord and the tenant agreed on another procedure, for example, a manager of a residential apartment house receives payments and transfers them to service providers. Thus, the approach how and to whom payments for utilities will be made depends on the rental contract between the tenant and the landlord; the fact whether the landlord provides all or some utilities; the fact who has concluded contracts with the service providers, however, it is not the decisive moment, since in cases when the landlord has concluded contract the tenant may pay directly to a service provider – third person, if it was agreed; the fact whether there is a manager of a residential house (usually of apartment houses), who acts as an intermediary and receives payments for utilities etc.

In addition, the tenant living in an apartment of an apartment house may be required to cover expenditures for interior lighting of spaces of the common use of the residential house (a corridor, stairs, etc.), maintenance of engineering systems of the residential house and the difference of readings of the common water meter of the residential house and an actual water consume of all residential units (apartments) calculated proportional to the area of the apartment rented or owned. Speaking about the difference of readings of the common water meter of the residential house and an actual water consume of all residential units of the residential house, the problem is that some consumers unlawfully manipulate with water meters to decrease readings of water consume or do not pay for water at all. As a result, the difference mentioned have to be covered by others, i.e., is indicated in invoices as a payment to perform. The situation has not changed even after the Supreme Court ruled in its judgement of May 23, 2012 that this difference of water consume is not a service and a person (an owner or tenant) has not to pay for the service which it has not received[381].

Unfortunately, activities of managers of residential apartment houses are not controlled effectively, what may cause different problems, including the obligation to pay double for utilities due to

[380] 17.12.2002. Rīgas domes saistošie noteikumi „*Rīgas ūdensvada un kanalizācijas tīklu un būvju ekspluatācijas, lietošanas un aizsardzības noteikumi*". <http://likumi.lv/doc.php?id=69967>, 2 September 2013.
[381] 23.05.2012. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC-250/2012. <www.at.gov.lv>, 2 September 2013.

unlawful conduct of their manager. There have been a number of cases when owners and tenants of apartments were not aware whether managers of residential apartment fulfil their duties[382]. in the worst cases managers disappeared with all money[383], but owners and tenants had to cover payments for utilities once more.

One more problem is connected with responsibility of the owner (landlord) and the tenant for debts for overdue utilities, besides this problem also relates to distinguishing of personal rights and *in rem* rights. For instance, the Latvian supplier of natural gas has considered debts to be encumbrances *in rem* some time ago that an owner who owns a property at the moment of claiming debts is responsible for debts, including debts of a former owner or a tenant, for natural gas has been considered[384]. Besides, in spite of the fact that the tenant may contract that he pays to services providers, Article 10 of the Law on Apartment Property states that the owner of an apartment is liable for payments for services related to use of the apartment (for example, heating, cold water, sewerage, waste removal), taxes and compulsory rental payments. For this reason it is not quite clear, if the owner has to pay his tenant's debt and, if yes, under what conditions.

- ***How may the increase of prices for utilities be carried out lawfully?***

Article 11.3 of the Law on Residential Tenancy establishes that the tenant has to be warned of increase, i.e., reasons of increase of prices for:

- The basic services in writing at least three months in advance;
- The auxiliary services in writing at least one month in advance.

Together with the notification, if the tenant requests, a financial justification of such increase has to be submitted to the tenant, the financial justification has to contain calculations and all components of a new payment for a service.

Different facts are to be observed in relation to increase of prices for utilities: a rental contract, a contract about a particular service, a character of a relevant service: basic/auxiliary, public/private.

Increase of prices for private services occurs in accordance with a particular service agreement and laws, if there are any.

The Public Utilities Commission or the Regulator (http://www.sprk.gov.lv) is established to control provision of public utilities, increase of prices for these utilities and other connected issues. The Public Utilities Commission is institutionally and functionally independent, full-fledged, autonomous body governed by public law which carries out regulation of public services in accordance with the Law on Regulators of Public Utilities and special legal acts of the regulated services. The Regulator independently performs the functions transferred by law and within its competence independently adopts decisions and issues administrative acts which are binding to specific providers and users of public services[385].

The Law on Regulators of Public Utilities also states how prices for public utilities must be calculated. Moreover, the Regulator evaluates the draft tariffs submitted by a provider of public utilities to it. If circumstances, for example, profitability, changed, the Regulator may propose a review of tariffs and request that a provider of public utilities submits calculated draft tariffs together

[382] *No ūdens atslēgšanas izvairījās*. <http://www.kopaa.lv/pakalpojumi/no-udens-atslegsanas-izvairijas.html>, 14 January 2014.
[383] *Krāpnieku dēļ paliek bez karstā ūdens un iekuļas parādos.*
[384] Neilands, R. AS "Latvijas Gāze" parādu atgūšanas prakses prettiesiskums. *Jurista Vārds Nr.19 (770).* <www.juristavards.lv>, 2 September 2013.
[385] The Public Utilities Commission or the Regulator. <http://www.sprk.gov.lv/lapas/The-Public-Utilities-Commission-and-the-Regulator>, 2 September 2013.

with a financial justification. The methodology of calculating tariffs determined by the Regulator is published in the Latvian official paper *Latvijas Vēstnesis* and on the Internet homepage thereof within 10 days from the determination thereof. The Regulator shall determine the procedure by which the users may familiarise themselves with the draft tariffs submitted by the providers of public utilities, and submit their proposals and recommendations to the Regulator and the provider of public utilities. After evaluation of all circumstances and information, the Regulator may take a decision about increase of price for a service. The Regulator shall publish a decision by which a tariff is determined in the Latvian official paper *Latvijas Vēstnesis* within 10 days following the taking thereof. If the determined tariff applies to users of a certain administrative territory, the Regulator shall send the decision by which the tariff is determined to the relevant local government for informing the inhabitants and publishing on the Internet homepage thereof. The approved tariffs enter into effect not earlier than on the thirtieth day following their publication[386].

- ***Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?***

The landlord, if he provides services directly, or a service provider may not disrupt supply of the basic services, if the tenant does not have overdue payments (Article 11.3 of the Law on Residential Tenancy). Article 150.3 of Administrative Violations Code provides that a fine may be imposed on a natural person up to EUR 1400 and a legal person up to EUR 14000 for unlawful non-provision of the basic services to tenants, if law (in the broad sense) states that the basic services may be provided.

Disruption of different services is possible if a contract (the rental contract, contracts with service providers) and/or law allows it. Law states when disturbance of supply is possible:

- *Electricity (auxiliary and public utility)*

If the consumer has not paid for the electricity within the time period specified in the contract, a provider has the right to disturb the provision of the service, if it sent a warning about the discontinuation of electricity supply to the consumer 10 days after the expiration of the payment date, then, if the consumer does not perform payments within 20 days after the expiration date of the payment, the service provider is entitled to disconnect the electrical installations of the consumer, completely or partly distrupting electricity supply to the consumer. The service provider has the duty to renew electricity supply within five days after the consumer has in full performed the payment for the received electricity and services of the system operator[387].

- *Natural gas (auxiliary/basic and public utility)*

The utility can be used in different ways, for example, for heating (basic utility) or for cooking (auxiliary utility). A supplier has the right to withdraw a contract unilaterally and interrupt the supply of natural gas, if the consumer is not the owner or the tenant of the property anymore[388]. Furthermore, the service provider of natural gas (heating) is entitled to disturb the provision of service in full or in part, if the consumer does not have a contract about the service provision, acted unlawfully (violated laws or a contract), has overdue payments, after the service provider has warned the consumer 3 days[389].

[386] Article 19 -21 of the Law on Regulators of Public Utilities
[387] 29.11.2011. Ministru kabineta noteikumi Nr. 914 „Elektroenerģijas tirdzniecības un lietošanas noteikumi", <http://likumi.lv/doc.php?id=241279>, 2 September 2013.
[388] Article 42.1 of the Energy Law
[389] 21.10.2008. Ministru kabineta noteikumi Nr. 876 „Siltumenerģijas piegādes un lietošanas noteikumi", < http://likumi.lv/doc.php?id=183035 >, 2 September 2013.

- *Removal of waste (basic and public utility)*

If the consumer has overdue payments which should be paid according to a contract, a service provider may disturb the service provision, after a service provider has warned the consumer 30 days in advance and then once more 3 days before cutting off of the services[390].

- *Telecommunications (auxiliary and public utility)*

If the consumer has overdue payments which should be paid according to a contract, a *public* service provider may disturb the service provision, after a service provider has warned the consumer 10 days in advance[391].

- *Thermal energy (basic and public utility)*

A service provider of thermal energy (heating) is entitled to disturb the provision of service in full or in part, if the consumer does not have a contract about the service provision, acted unlawfully (violated laws or a contract), has overdue payments, after the service provider has warned the consumer 3 days[392].

- *Water supply and sewerage (basic and public utility)*

If the consumer acted unlawfully or has overdue payments which should be paid according to a contract, supply of water and sewerage services may be interrupted after a service provider has warned the consumer 30 days in advance and then once more 3 days before cutting off of the services. Nevertheless, in case of disruption of supply the service provider must provide 25 l of water per person within the time period of 24 hours. Moreover, disruption of water supply and sewerage services in full is possible, only if it does not disturb other consumers. Within 3 days after the payment of debts, a service provider renews the provision of water and sewerage[393].

The auxiliary services may be disrupted[394]:

- The tenant does not agree to an payment amount for a service;
- The tenant declined future use of an auxiliary services by notifying the landlord in writing two weeks in advance;
- The tenant has not paid for a relevant auxiliary service for three months, unless the rental contract specifies another time period and if the tenant has been warned in writing that the auxiliary service shall not be provided henceforth at least two weeks in advance
- In other cases provided in law (see above, for example, electricity) or in the rental contract[395].

[390] 03.07.2001. Ministru kabineta noteikumi Nr. 298 „Kārtība, kādā pārtraucama sabiedrisko pakalpojumu sniegšana", <http://likumi.lv/doc.php?id=26043>, 2 September 2013.
[391] 03.07.2001. Ministru kabineta noteikumi Nr. 298 „Kārtība, kādā pārtraucama sabiedrisko pakalpojumu sniegšana", <http://likumi.lv/doc.php?id=26043>, 2 September 2013.
[392] 21.10.2008. Ministru kabineta noteikumi Nr. 876 „Siltumenerģijas piegādes un lietošanas noteikumi", < http://likumi.lv/doc.php?id=183035 >, 2 September 2013.
[393] 03.07.2001. Ministru kabineta noteikumi Nr. 298 „Kārtība, kādā pārtraucama sabiedrisko pakalpojumu sniegšana", <http://likumi.lv/doc.php?id=26043>, 2 September 2013.
[394] Please note that a contract regarding a particular auxiliary service may comprise different additional clauses on disruption of supply of auxiliary services.
[395] Article 11.3 of the Law on Residential Tenancy

- ***Deposit:***

    - ***What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?***

The Latvian law uses the notion of the security money for deposit (Latvian: *drošības nauda*).

The deposit shall be distinguished from other similar, but not equal concepts:

- Earnest money (Latvian: *rokasnauda*);
- Advance payment (Latvian: *avanss*).

Earnest money is money or other valuable things transferred to another party in order to prove the conclusion of a (rental) contract and to secure performance of obligations under the rental contract in future[396] (Article 1725 of the Civil Law). In other words, if earnest money has been given and accepted, it proves that the contract is concluded, in addition, this money may be used as security. A party who is most interested in the conclusion of a (rental) contract, but is not confident that another party will keep its promise and enters the contract, can give earnest money to another party, as soon as earnest money are accepted, the contract is supposed to be concluded [397].

Similar to the deposit, earnest money is a mutual agreement, which is a real agreement[398] (Article 1727 of the Civil Law)[399]. Considering the fact that the rental contract has to be concluded in writing, after parties have agreed on all essential provisions of the rental contract, a party (a giver or recipient of earnest money) may request the preparation of a respective deed (Article 1485 of the Civil Law), as well as performance of obligations arising from the rental contract[400].

According to Article 1730 of the Civil Law the party who has given earnest money must receive it back from another party, if the contract secured by earnest money, was cancelled by a mutual agreement or its performance became impossible under the condition that the giver of earnest money is not liable for it. The same article provides, if the contract was not fulfilled due to fault of one of the parties, then the following is applicable:

- If the giver of earnest money was in fault he loses the right to request repayment of earnest money;
- If the recipient of earnest money was in fault, he must pay two amounts of earnest money to the giver.

In addition, a party in fault has to compensate another party all losses.

If the contract secured by earnest money has been fulfilled, earnest money is to be returned to the party, from whom it was received, or is to be included in the performance of the contract (for example, rental payments), unless the contracting parties have expressly agreed otherwise (Article 1729 of the Civil Law).

Finally, earnest money may serve as money paid for the mutual cancellation of the contract already concluded. Article 1731 of the Civil Law stipulates that, if parties agreed that they may unilaterally terminate the rental contract and

- If the the giver of earnest money exercises this right he loses the right to request repayment of earnest money;

[396] Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 136
[397] Буковский В. И. *Свод гражданских узаконений губерний прибалтийских с продолжением 1912–1914 гг. и разъяснениями в 2 томах. Том 2*. Рига: Г. Гемпель и Ко, 1914, 1342
[398] For more information, see the general information
[399] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC-225/2007
[400] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta nolēmums lietā SKC-35/2006

- If the recipient of earnest money exercises this right to terminate the contract, he must pay two amounts of earnest money to the giver.

Advance payment is a payment made for future performance before a legal ground for such payment appeared[401]. Normally, the landlord may ask to make two rental payments: for the first and last month in advance.

In order to distinguish earnest money from advance payments made in accordance with the contract, the content of an agreement of parties has to examined; moreover, the fact that earnest money is given may not be assumed if parties have not named a payment as earnest money[402].

Article 12.1 Paragraph 1 of the Law on Residential Tenancy states that the security money (or deposit) is a sum of money transferred to the landlord to cover his future claims. The deposit shall cover debts for rental payments, utilities, as well as secure recovery of losses caused by the tenant.

The Law on Residential Tenancy regulates a few questions connected with the deposit; thus, Article 12.1 of the Law on Residential Tenancy provides that parties have to agree on the amount, the payment procedure, use and repayment of the deposit. The obligation to pay the security money is established by a rental contract or separate agreement; however, the security money (deposit) is not an obligatory or essential component of the rental contract. The Civil Law does not contain any regulation on the deposit. As a result, Article 12.1 of the Law on Residential Tenancy is the sole regulation referring to the security money in rental contracts.

Considering the arguments given about earnest money and advance payments, parties have to indicate precisely in their contract, if a payment is a deposit (security money), earnest money or advance payment.

Since the deposit is a one-time payment, the landlord may not unilaterally ask for an additional deposit, for example, in cases of the prolongation of an existing rent contract[403]. Nevertheless, the Law on Residential Tenancy does not prohibit agreements on the security money increase by a mutual agreement.

According to law, the landlord is entitled to use the security money after the termination of the rental contract. The Law on Residential Tenancy does not associate the use of the security money with particular termination grounds.

The landlord must return a part of the security money remained not later than the day when the tenant moves out, unless the parties have not agreed on an earlier term. To pay attention to, the contract termination day does not always coincide with the day of moving out.

- ***What is the usual and lawful amount of a deposit?***

The situations where a party to the rental contract is a public person are ruled in a different way than the situations where the rental contract is concluded by private actors.

When the State or a local municipality concludes a rental contract without public tasks, an amount of the deposit may not exceed the amount of a twelve-month rental payment for the residential

[401] Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 138

[402] Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 138; 18.03.1996.Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta nolēmums lietā SKC-3; Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta nolēmums lietā SKC-543/2001; Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-735/2005

[403] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 100

space (Article 12.1 Paragraph 3 of the Law on Residential Tenancy). If the matter concerns social rent, when a local municipality has to provide assistance in solving apartment matters, the deposit may not be required at all (Article 12.1 Paragraph 3 of the Law on Residential Tenancy).

There is no lawful amount of the deposit set by law, if the landlord may ask for it, that is, in cases of private renting; the amount depends on a mutual agreement of parties. The usual amount of the deposit usually equals the amount of rental and/or payments for utilities for two- three months.

- ***How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)***

The Law on Residential Tenancy only stipulates that the deposit or the remaining part thereof has to be returned to the tenant not later than on the same day when the residential space is vacated, unless the rental agreement states otherwise (Article 12.1 Paragraph 2 of the Law on Residential Tenancy). It means that party have to regulate all the questions connected with the management of the deposit by their agreement.

If parties failed to agree on the management of the deposit, the legal provisions on custody or loan of the Civil Law could be applicable, insofar as they comply with the rules and aim of Article 12.1 Paragraph 2 of the Law on Residential Tenancy. The general provision about management of money entrusted is that the custodian (the landlord) has to manage the deposit reasonably and carefully (Article 1972 of the Civil Law). Article 1973 of the Civil Law stipulates that the custodian has no right to use the money, unless such right has been expressly or implicitly granted to him. If the custodian uses money for his benefit without permission, or does not return it when due, he shall pay delayed interest to the tenant (Article 1979 of the Civil Law).

Besides, Article 1992-1994 of the Civil Law state that custody may be turned into loan, if the tenant grants the right to the landlord to use money at the landlord's discretion. If custody is turned into loan, interest payable to the tenant may be also contracted. If interest is not provided by a contract, then the landlord must pay only interest if the payment is in default.

To sum up, the questions how exactly the landlord have to manage the deposit are not set by law, therefore parties have to agree on these issues. If there is no particular agreement, at the same time the landlord has to return the deposit in full or in part, interest shall be paid, if parties have agreed on this issue and the landlord has used the deposit for his interest. All disputes are usually resolved by courts.

- ***What are the allowed uses of the deposit by the landlord?***

To say again, the landlord may use the deposit to cover the following claims: rental payments, payments for utilities and losses. The allowed uses can be established by an agreement of the landlord and tenant, since the Law on Residential Tenancy does not contain guidelines in this regard. The Civil Law stipulates that the landlord may not use the deposit, unless such right has been expressly or implicitly granted to him.

- ***Repairs***

  - ***Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)***

The landlord is obliged to transfer a residential space in the condition which corresponds to a rental contract, concluded with the tenant (Article 40 of the Law on Residential Tenancy, Article 2134 of the Civil Law). The landlord has to secure that the tenant can use of the rented dwelling all the time period for which the rental contract has been concluded (Article 2131 of the Civil Law). In order to secure the use of the residential space the landlord must perform capital repairs of the residential house (residential space). The capital repairs means repairs of the constructional elements, engineering and communications systems of the residential house or residential space (Article 40 of the Law on Residential Tenancy).

Although the tenant is not responsible for the natural wear and tear of the property (Article 2150 of the Civil Law), the tenant is responsible for routine repairs and has the duty to maintain the occupied residential space (Article 42 of the Law on Residential Tenancy). As indicated, if several tenants occupy the residential space all of them are solidary responsible for routine repairs, unless their contracts state otherwise (Article 42 of the Law on Residential Tenancy). Routine repairs are, for example, handing of wall-papers, painting of ceiling etc. The law does not determine how often routine repairs shall be performed or specify circumstances under which the routine repair must be done, therefore a court decides upon those questions in case of disputes[404].

Article 40 of the Law on Residential Tenancy stipulates that the landlord and the tenant may agree that the tenant performs the necessary capital repairs or fully or partially covers the costs thereof, and then the tenant has the right to an appropriate deduction of rental payments. This seems to contradict to the legal provision that a part of rental payments is maintenance costs of the residential house which theoretically shall be a financial source for capital repairs, however, there is no an explicit obligation of the landlord set by law that these earnings have to be used for the capital repairs.

Furthermore, the question about reimbursement of expenses, if no agreement has been reached, but the tenant repaired the residential house instead of the landlord, is not clearly regulated by the Law on Residential Tenancy; in addition, law does not stipulate that the tenant has to make routine repairs *at its own expense* because the obligation to make routine repairs is not one and the same as the obligation to pay for routine repairs. The issue who bears costs for routine repairs is usually determined by a mutual agreement.

If there is no agreement, under Article 2140 of the Civil Law the landlord shall compensate of the Civil Law necessary and useful expenditures done by the tenant. Expenditures are necessary, if they help to maintain or protect property from total destruction, collapse or devastation. Expenditures are useful, if they improve the property (Article 865 of the Civil Law). Examining Article 40 of the Law on Residential Tenancy in connection with Article 2140, it can be concluded that, if the tenant has done capital repairs or routine repairs, i.e., made necessary or useful expenditures, these expenditures shall be compensated in full by the landlord. In the legal literature it is also suggested that useful expenditures, i.e., expenditures which are connected with repairs (Article 42 of the Law on Residential Tenancy), are reimbursed in the cases, if the landlord was aware and consented to them[405]. All other expenditures which are not necessary or useful, as well as have not been approved by the landlord are not reimbursed[406].

Moreover, Article 2155 of the Civil Law[407] grants the right to the tenant to retain property of the landlord, if the tenant has made necessary and useful expenditures, that is, repaired the residential

[404] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 192

[405] Буковский В. *И. Свод гражданских узаконений губерний прибалтийских с продолжением 1912–1914 гг. и разъяснениями в 2 томах*. Том 2, Рига: Г. Гемпель и Ко, 1914, 1756-1757

[406] 12.10.2011. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-292/2011

[407] The question whether this article is applicable in cases of residential rental contract, since the Law on Residential Tenancy regulates the issue as well, is not clarified by the legal doctrine or court practise.

space and/or the residential house, till the moment the landlord covers the costs of the tenant. Here all principles indicated speaking about the landlord's retention rights will be relevant[408].

The tenant may change a layout of the residential space and rebuild it only with the consent of the landlord (Article 43 of the Law on Residential Tenancy).

- ***Connections of the contract to third parties***

  - ***Rights of tenants in relation to a mortgagee (before and after foreclosure)***

There is no connection of the rights of tenants in relation to the mortgagee in Latvia, unless the prohibition mark (Latvian: *aizlieguma zīme*) entered in the Land Book provides that the owner may not encumber the pledged property with *in rem* and personal rights. Even though the prohibition mark is present, its effect on rental contract is disputable.

The rental contract and the credit contract secured by the mortgage are two independent obligatory contracts, but the landlord's rights of disposal of property can be restricted by the credit contract in the way that the landlord has to ask for the permission to conclude a rental contract (the obligatory prohibition), the credit contract can also impose different obligations on the landlord regarding maintenance of the property.

The Civil Law does not regulate the issue, but applying the rules about the alienation prohibition, in particular Article 1080 and 1081 of the Civil Law, by analogy, i.e., if the prohibition is based on a mutual agreement, for example, on a credit or mortgage contract, it has to be entered in the Land Book to become binding for third persons. At the same time the conclusion of rental contracts, unless they are fictive, violate laws etc., will not be touched by the prohibition mark. The reasons are as follows:

The violation of the alienation prohibition (Latvian: *atsavināšanas aizliegums*; German: *Veräußerungsverbot*) does not invalidate a respective legal action, however, the party suffered may claim losses (Article 1080 of the Civil Law). If law does not invalidate the alienation contract contrary to the alienation prohibition, it may not invalidate the rental contract contrary to the prohibition of transfer of use which is even not a property right (*argumentum a maiori ad minus*), nonetheless, this conclusion can be disputed[409].

Finally, the question about good faith of the tenant who entered the contract knowing about an registered or registered prohibition to conclude rental contracts based on a agreement, can be discussed here as well (Article 1, 1415, 1592 of the Civil Law).

e) Implementation of tenancy contracts

	Main characteristic(s)

[408] *Civillikuma komentāri. Saistību tiesības (1401.-2400.p.).* Sagatavojis autoru kolektīvs prof. K.Torgāna vispārīgā zinātniskā redakcijā. Rīga, 1998, 489

[409] According to the former practice of the Land Book and the ordinary courts, it was possible to enter the prohibition to encumber a property not only with real, but also with obligatory rights. If there is such prohibition, then it is assumed that a potential tenant knows about it, because the Land Book is public and anyone can acquire information about an immovable property. On the other hand, the question, if a rental contract entered against the prohibition to conclude obligatory contracts is valid, was diverse in case law.

Breaches prior to handover	Rental payments and payments recalculation, including reduction Loss compensation Reclaiming of already made payments Retention of the performance Termination of the rental contract Payment of contractual penalty, if agreed Payment of earnest money, if agreed Use of deposit, if agreed
Breaches after handover	Rental payments and payments recalculation, including reduction Loss compensation Reclaiming of already made payments Retention of the performance Termination of the rental contract Payment of contractual penalty, if agreed Payment of earnest money, if agreed Use of deposit, if agreed
Rent increases	For maintenance expenses and profit: six months prior notice + financial justification of increase unless the rental contract contains other provisions; For the basic services: three months prior notice; For the auxiliary services: three months prior notice
Changes to the dwelling	Only with consent of the landlord
Use of the dwelling	Mainly for residential purposes, however, parties may probably agree on commercial use and residential use

Disruptions of performance (in particular "breach of contract") prior to the handover of the dwelling

- ***In the sphere of the landlord:***

- Delayed completion of dwelling

If the landlord refuses to hand over the dwelling, we have to establish, if a specific term for handing over of the dwelling has been determined in the contract, if yes, then delay is illegal (Article 1652 of the Civil Law). If there is no term, the tenant has to request the performance, but the landlord may perform at any reasonable time (Article 1653, 1829 of the Civil Law). If the debtor - landlord cannot fulfil the obligation in a reasonable time and no agreement with the landlord can be reached, the court determines a term of performance (Article 1830 of the Civil Law).

If the completion of dwelling has been delayed, unless the rental contract provides otherwise, the tenant is entitled to ask the landlord to:

- Recalculate (usually reduce proportionally) the rental payment and the payments for services (utilities) for a time of delay (Article 41 of the Law on Residential Tenancy Law);

- Claim back already paid rental payments, if delay happened because of fault of the landlord (Article 2147 of the Civil Law)[410] unless they are not covered by the previous legal means;

- Refuse the performance of the rental contract, until the landlord hands over the dwelling (Article 1589, 1591 of the Civil Law)[411];

- Compensate losses occurred (Article 1635, 1770-1792, 2128 etc. of the Civil Law) unless they are not covered by the previous legal means;

[410] It is disputable whether the legal rules of the Civil are applicable in full in residential tenancy cases.
[411] It is disputable whether the legal rules of the Civil are applicable in full in residential tenancy cases.

- Terminate unilaterally the valid rental contract, if the landlord delays the transfer of the property for so long that the tenant is no more interested in acquiring it for use[412] (Article 1586, 1663, 2172 Subsection 1 of the Civil Law);

- Pay contractual penalty, insofar as it has been agreed for non-performance or delayed performance (Article 1716-1724.1 of the Civil Law);

- Pay earnest money, insofar as it has been agreed (Article 1725-1731 of the Civil Law)[413].

Unilateral actions are not allowed, if the contract does not grant such rights, for example, in cases when the landlord does not agree and undertakes no actions to cure the defect. If a dispute arises, the court resolves it.

To point out, the landlord is not liable in cases of *force majeure.* Force majeure is

- An unavoidable event consequences of which cannot be overcome;

- An event which the reasonable person could not foresee at the moment of the contract's conclusion;

- An event which did not happen because of actions of a contractual party;

- An event because of which the performance of contractual obligations became impossible[414].

Force majeure circumstance releases the debtor from the obligation to perform (Article 1657, 1774, 2147 of the Civil Law), loss compensation (Articles 1773 – 1775, 1998., 2220, 2233 of the of the Civil Law). At the same time, if the landlord has already received rental payments and payments for utilities from the tenant who cannot use the property in full or its essential part because of *force majeure*, the tenant may reclaim the rental payments made by him (Article 2147 of the Civil Law).

Eventually, in cases when the landlord and the tenant are in default, none of parties has any claims (Article 1667 of the Civil Law). If the tenant exercise the rights listed above, it will not lead to his delay to perform. The tenant may also accept the delayed performance later, this, however, does not abolish its rights and claims following from the delay in performance of the landlord (Article 1668 of the Civil Law).

- Refusal of handover of the dwelling by landlord (in particular: case of "double lease" in which the landlord has concluded two valid contracts with different tenants over the same house)

The same legal provisions of the Civil Law as regarding the delay of performance, the legal remedies and force majeure which are explained in connection with delayed completion of dwelling are also relevant in this case.

The situation, when the landlord has concluded two valid rental contracts with different tenants over the same subject-matter, is not regulated by law. Refusal to hand over the property constitutes breach of the contract.

[412] It is disputable whether the legal rules of the Civil Law are applicable in full in residential tenancy cases. If the answer is positive, then under Article 1589 of the Civil Law the tenant may exercise the unilateral contract termination based on the Civil Law even though no such rights have been stipulated in the rental contract.
[413] Kārkliņš, J. *Latvijas līgumtiesību modernizācijas galvenie virzieni*. <https://luis.lu.lv/pls/pub/wct.doktd?l=1>, 2 September 2013.; Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 214
[414] Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 70-72

However, Article 2131 of the Civil Law, which relates to the purchase contracts, can be applicable by analogy. The results of such application are as follows: If one and the same property is rented to two different tenants, then priority is given to the tenant to whom the property has been handed over. If neither of the tenants has hold of the property, the priority right is given to the one who first entered into a rental contract. Consequently, the landlord must compensate all losses to the tenant who has not received the property into use. The obligation to compensate losses will follow from Article 1543 and 1635 of the Civil Law that states that a party has to compensate losses, when this party cannot fulfil its obligations because of its own actions. Under Article 1543 and 1635 of the Civil Law the obligation to perform turns into the obligation to compensate losses if the performance became impossible due to fault of the landlord.

Usually the landlord warrants in the rental contract that neither the subject-matter of the contract, nor any part of it thereof have been leased or submitted for use in any other way to any natural or legal person. These kinds of warranties are not obligatory, but still they are very common, because they facilitate loss recovery afterwards.

- Refusal of clearing and handover by previous tenant

Article 44 stipulates that persons occupying a residential space without a rental contract may be evicted on the basis of a court judgement. This article is applicable when the contract of a previous tenant is expired or is invalid because of other reasons, but the previous tenant remains in the dwelling.

If the previous tenant refuses to clear and hand over the premises, a new tenant has no legal means which he could use against the former tenant, although the new tenant may use the legal remedies against the landlord which are indicated above. If it happened, the landlord may reclaim his losses from the former tenant (Article 40 of the Law on Residential Tenancy).

The only exception from Article 40 of the Law on Residential Tenancy is the violation of the principle of good faith (Article 1 of the Civil Law) and good morals (Article 1415, 1592 of the Civil Law) by the former tenant, or even by the previous tenant and the landlord, if the latter connives with the former tenant to harm the new tenant. However, the former tenant may be evicted only on basis of a court judgement also in these cases.

- Public law impediments to handover to the tenant

If the landlord cannot transfer the use of the rented dwelling because of public law impediments, this circumstance can be qualified as *force majeure*. If a public law impediment is a *force majeure* circumstance, losses occurred are not compensated to another party (Article 1773, 1774, 1775 of the Civil Law). If public law impediments are not considered to be force *majeure*, the tenant is entitled to exercise the rights described in connection with delayed completion of dwelling.

- ***In the sphere of the tenant:***
    - ***refusal of the new tenant to take possession of the house***

The similar legal provisions of the Civil Law as regarding the delay of performance, the legal remedies and force majeure which are explained in connection with delayed completion of dwelling are also relevant in this case. Thus, if not the rental contract provides otherwise, the landlord is entitled to

- Refuse the performance of the rental contract, in particular, not to provide utilities until the tenant takes possession of the dwelling, insofar as it is legally and practically possible, for

example, it is not allowed to cut off the basic services (Article 1589, 1591 of the Civil Law)[415];

- Ask to compensate losses occurred (Article 1635, 1770-1792, 2144 etc. of the Civil Law), including, but not limited to use of the deposit money, if agreed;

- Terminate unilaterally the valid rental contract, if the tenant delays taking over of the property for so long that the landlord is no more interested in renting it out[416] (Article 1586, 1663, 2172 Subsection 1 of the Civil Law);

- Ask to pay contractual penalty, insofar as it has been agreed for non-performance or delayed performance (Article 1716-1724.1 of the Civil Law);

- Ask to pay earnest money, insofar as it has been agreed (Article 1725-1731 of the Civil Law)[417].

Disruptions of performance (in particular "breach of contract") after the handover of the dwelling

Defects of the dwelling

Notion of defects: is there a general definition?

Neither the Law on Residential Tenancy, nor the Civil Law contains the definition of defects for rental contracts, nevertheless, some authors suggest applying the notion of defects provided for alienation of property for consideration[418]. Hence we can distinguish between legal and material defects, as well as essential and minor defects[419].

The defect is legal if a third person has such real, personal or other right on the property rented, that as a result of the exercise of these rights the tenant is disturbed and cannot not use the property in full or its essential part (Article 1593 Subsection 1, 2131-2133 of the Civil Law). The landlord must compensate the losses caused to the tenant in these cases, but there is an additional requirement imposed by Article 2132 of the Civil Law, which is that the tenant (not the landlord!) has to act in good faith, i.e., not to know of rights of the third person before entering the rental contract. However, if the landlord can replace the property lost due to claims of the third person with equal one, the landlord shall not compensate the losses (Article 2133 of the Civil Law)[420].

As regarding material defects, the landlord is responsible that

- The property has no hidden defects, including such defects which the landlord was not aware of, and has all the good features which are usually presumed or positively warranted by the landlord (Article 1593, 1612 of the Civil Law);

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[415] It is disputable whether the legal rules of the Civil are applicable in full in residential tenancy cases.
[416] It is disputable whether the legal rules of the Civil Law are applicable in full in residential tenancy cases. If the answer is positive, then under Article 1589 of the Civil Law the landlord may exercise the unilateral contract termination based on the Civil Law even though no such rights have been stipulated in the rental contract.
[417] Kārkliņš, J. *Latvijas līgumtiesību modernizācijas galvenie virzieni*. <https://luis.lu.lv/pls/pub/wct.doktd?l=1>, 2 September 2013.; Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 214
[418] Torgāns, K. (ed.) *Latvijas Republikas Civillikuma komentāri. Saistību tiesības (1401.–2400. p.)*. 2. izdevums. Rīga: Mans īpašums, 2000, 481; Буковский В. И. *Свод гражданских узаконений губерний прибалтийских с продолжением 1912–1914 гг. и разъяснениями в 2 томах*. Том 2, Рига: Г. Гемпель и Ко, 1914, 1752-1753
[419] Please note that it is disputable whether the legal rules of the Civil are applicable in full in residential tenancy cases.
[420] It is disputable whether the legal rules of the Civil are applicable in full in residential tenancy cases.

- The property does not have any defects which the landlord has not knowingly disclosed to the tenant (Article 1612 of the Civil Law);

- The property has no defects which the landlord has declared to be non-existent (Article 1616, 1618 of the Civil Law);

- The property has been transferred to the tenant together with all its appurtenances, utilities, etc. and in such state that the tenant had the right to expect or that have been agreed in the rental contract (Article 40 of the Law on Residential Tenancy; Article 2134 of the Civil Law).

The landlord is only responsible for the defects existed before entering into the rental contract (Article 1614 of the Civil Law). The landlord shall not compensate losses yet, if defects were obvious, i.e. could not remain hidden to the tenant after ordinary examination (Article 1613 of the Civil Law).

The defect is essential, if it hinders use of a property in full or of its main part (Article 1613, Article 2172 Subsection 2 and 3 of the Civil Law) so that the tenant could claim losses or use other legal remedies. If a dispute arises, the court has to decide, whether defects are essential. Even though a defect is not essential, but the landlord has explicitly warranted it, the latter is liable for non-performance.

Examples: Is the exposure of the house to noise from a building site in front of the house or are noisy neighbours a defect? What about damages caused by a party or third persons? Is the occupation of the house by third parties such as squatters considered as a defect in the legal terms?

Generally speaking, the exposure of the house to noise from a building site in front of the house or are noisy neighbours will be a defect of the residential space, if the landlord has declared them to be non-existent or warranted that no building works are planned/neighbours are quiet.

There are public law rules regulating issues about maximum allowable noise in the both cases. If a person violates these legal provisions an administrative fine in accordance with Article 167.1 of the Administrative Violation Code may be imposed. Paragraph 1 of the article indicated stipulates that in case of any activity, which creates noise exceeding the specified daytime hour acoustic noise norms or environmental noise limit values, a warning may be issued to natural persons or a fine shall be imposed in an amount from EUR 30 up to EUR 350, but for legal persons a fine in an amount from EUR 70 up to EUR 700 shall be imposed. Article 167.1 Paragraph 2 of the Administrative Violation Code provides that if the same violation recommitted within a year after the imposition of an administrative sanction a fine shall be imposed on natural persons in an amount from EUR 70 up to EUR 700, but for legal persons from EUR 700 up to EUR 4000. As a consequence defects such as noise can be eliminated.

It shall be also distinguished between the scopes of liability of the landlord and tenant. The general rule is that the landlord may not disturb use of the rented residential tenancy. It includes the prohibition to cause damage or allow that third persons damage a residential house (apartment), its constructional elements and engineering and communications systems (Article 40 of the Law on Residential Tenancy, Article 2131, 2132 of the Civil Law). When third persons cause damages, the tenant has to inform the landlord about this fact and the landlord can act himself or authorize the tenant or a third person to take respective actions[421] insofar as the tenant is not entitled to act on his own behalf.

[421] 12.10.2011. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-292/2011, <www.at.gov.lv>, 2 September 2013.

If the tenant's family members or other persons living together with the tenant cause damages, the landlord may start court eviction proceedings (Article 28.1 of the Law on Residential Tenancy). The tenant is liable for actions of the family members or other persons residing together with him. If these person or persons damage the living space, the tenant must prevent it and, if necessary, submit an eviction court action (Article 10.1 and 42 of the Law on Residential Tenancy, Article 2153 of the Civil Law), failing which the landlord may terminate a rental agreement with all persons residing in the rented dwelling (Article 28.1 of the Law on Residential Tenancy).

The phenomenon of squatting is unknown in Latvia.

Discuss the possible legal consequences: rent reduction; damages; "right to cure" (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies

As mentioned, unless the rental contract contains other contractual terms, the tenant is entitled to ask the landlord to:

- Recalculate (usually reduce proportionally) the rental payment and the payments for services (utilities) if a defect disturbed use of the space and/or utilities (Article 41 of the Law on Residential Tenancy Law);

- Claim back already paid rental and other payments, if the dwelling may not be used in full or its essential part because of fault of the landlord or *force majeure* (Article 2147 of the Civil Law), if the first option has not been chosen[422];

- Compensate losses occurred (Article 1635, 1770-1792, 2128 etc. of the Civil Law), unless they are not covered by the previous legal means;

- Receive contractual penalty in any case, insofar as it has been agreed for non-performance or delayed performance (Article 1716-1724.1 of the Civil Law);

- Receive earnest money in any case, insofar as it has been agreed (Article 1725-1731 of the Civil Law)[423].

The tenant may freely choose between different options.

In addition, the landlord (as a legal possessor) or the tenant (as a actual possessor) may take a possessory action, if

- A third person (not the tenant) disturbing the possession does not reside in the rented property (Article 912 – 915, 925 of the Civil Law);

- A third person does not vindicate the rented property, i.e., the third person is not an actual owner of the property in question.

As indicated, answering the question about the position of the tenant, whether it considered as a real property right or as a personal (obligatory) right, the legal doctrine has not fully investigated

[422] It is disputable whether the legal rules of the Civil are applicable in full in residential tenancy cases.
[423] Kārkliņš, J. *Latvijas līgumtiesību modernizācijas galvenie virzieni*. <https://luis.lu.lv/pls/pub/wct.doktd?l=1>, 2 September 2013.; Torgāns, K. *Saistību tiesības. I daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2006, 214

mutual relations of *in rem* and personal rights, including different legal remedies, bu practitioners prefer personal rights over *in rem* rights[424].

The prescription period of 10 years applies for all obligatory claims (actions) (Article 1895 of the Civil Law), excluding the possessory claim, where the prescription period is one year (Article 925 of the Civil Law).

Entering the premises and related issues

Under what conditions may the landlord enter the premises?

This issue is not regulated by law, it depends on a mutual agreement of parties.

Sometimes Article 143 of the Criminal Law (Illegal entering of the residential dwelling), if the landlord enters an apartment without permission or secretly, or with fraud, breaks in or gets in against the will of the tenant residing there[425] may be applicable.

Is the landlord allowed to keep a set of keys to the rented apartment?

This issue is not regulated by law and depends on a mutual agreement of parties.

Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

In such case the landlord must warn the tenant and require paying rent and payments for the basic utilities, after the expiration of the term of specified by law the landlord is entitled to initiate eviction court proceedings (Article 28.2 of the Law on Residential Tenancy).

- ***Rent regulation (in particular implementation of rent increases by the landlord)***

  - ***Ordinary rent increases to compensate inflation/ increase gains***

Under Article 13 Paragraph 2 of the Law on Residential Tenancy ordinary rent increase may take place, if a rental contract contains a respective clause. If it is the case, the landlord must notify the tenant of ordinary rent increase six months in advance unless parties agreed otherwise. The financial justification of the rental payment increase shall be specified in the notification. The Supreme Court ruled that the goal of the warning is to provide timely and appropriate information on new contractual terms and conditions to the tenant so that he can decide whether to agree with rent increase[426]. The rent increase may not be justified by a possible inflation, other planned costs etc.[427] The tenant has to notify the landlord within six months from the day of the receipt of the warning, if he agrees with the proposed new amount of rent[428], otherwise it will be presumed that

[424] Rozenfelds J. *Lietu tiesības*. 4. labotais, papildinātais izdevums. Autora redakcijā. Rīgā: Apgāds Zvaigzne ABC, 2011, 127

[425] Krastiņš U., Liholaja V., Niedre A. *Krimināltiesības :Sevišķā daļa*. Rīga : Tiesu namu aģentūra, 2009, 232

[426] 25.01.2012. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta. lēmums lietā nr. SKC-27/2012. <www.at.gov.lv>, 2 September 2013.

[427] 26.06.2012.Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta. lēmums lietā nr. SKC-401/2012. <www.at.gov.lv>, 2 September 2013.; 16.11.2011.Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta. lēmums lietā nr. SKC-195/2011. <www.at.gov.lv>, 2 September 2013.

[428] 16.11.2011.Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta. lēmums lietā nr. SKC-195/2011. <www.at.gov.lv>, 2 September 2013.

the tenant has consent to rent increase. It will be also assumed that the tenant agreed, if the tenant starts paying the new increased amount. After the consent has been given or presumed, the tenant may not withdraw it because it would be contrary to the principle of stability of civil relations[429].

Article 13 Paragraph 2 of the Law on Residential Tenancy states that the court settles all disputes connected with rental increase.

- ***Is a rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?***

The same rule is applicable in these situations, i.e., rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar will be lawful, if the there is a respective clause. If not, the landlord may offer his tenant to amend the contract, this may happen according to a mutual agreement. It would be possible that the landlord can bring a court action, asking a court to settle a new rent payment amount, as well as determine the day from which the tenant is obliged to pay this new rent. The court will evaluate all circumstance and decide whether increase is justified, as well as to what amount rental payments may be increased.

- **Rent increases in "housing with public task"**

The Law on Social Apartments and Social Houses does not contain specific rules or procedure on rent payment increase, therefore it is performed according to the Law on Residential Tenancy which is reviewed above, if necessary. In addition, the aims of social renting has to be observed.

- **Procedure to be followed for rent increases**
  - **Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel [= rent statistics for a certain area])?**

As indicated, when parties of a rental contract have agreed on particular provisions and procedure of rent increase, the landlord must warn the tenant at least six months in advance about future increase. The tenant can agree or can start looking for a new residential space.

- ***Possible objections of the tenant against the rent increase***

The tenant may raise objection against the financial justification. To mention, a component of the rental payment called maintenance costs are determined according to the Law on Maintenance of Residential Houses. In this connection the tenant may provide his calculations or invite an expert to help with clarification of facts relevant to the matter which requires specific knowledge in science, technology or another field.

If a dispute between a landlord and tenant could be peacefully settled, at least one party has to start civil proceedings.

[429] 14.11.2011.Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta. lēmums lietā nr. SKC-427/2011. <www.at.gov.lv>, 2 September 2013.

- **Alterations and improvements by the tenant**

  - ***Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?***

  See above[430].

  - ***Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?***

  See above[431].

  - ***Is the tenant allowed to make other changes to the dwelling?***

    - ***in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?***

    - ***fixing antennas, including parabolic antennas***

  Antennas can be fixed after the consent of the owner of the building has been received, as well as construction and connected laws have to be observed[432].

- ***Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord***

  - ***What kinds of maintenance measures and improvements does the tenant have to tolerate?***

  See above[433].

  - ***What conditions and procedures does a landlord who wants to make renovations need to respect (e.g. giving adequate [i.e. sufficiently long] notice; offer an alternative dwelling; offer a rent reduction to compensate for disturbances)?***

  See above[434].

- **Uses of the dwelling**

[430] For more information, see the section about repairs
[431] Ibid.
[432] Ibid.
[433] Ibid.
[434] For more information, see the section about repairs, as well as the sections about the possible legal consequences of defects of the residential space

- ***Keeping animals; producing smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.***

As discussed above, the lawful use of premises is residential, consequently, commercial uses are usually not allowed. The Law on the Residential Tenancy does not recognize mixed, i.e., residence and commercial rent contracts; using of living dwellings for purposes other than living can lead to termination of the rental contract[435]. However, the nature of the norm, whether it is a dispositive (German: *dispositive Rechtsnorm*) or mandatory (German: *zwingende (unabdingbare) Rechtsnorm)* legal rule, is disputable, another question is if the legal rule in question is a prohibition (German: *Verbotsnorm*). The Supreme Court has not provided interpretation under particular circumstances yet if parties agree on mixed use.

In respect of prostitution, the Cabinet Regulations No. 32 of January 22, 2008[436] states that a person may engage in prostitution in the dwellings owned or rented. However, if other persons living with the person engaged in prostitution in the same apartment or house are against prostitution, prostitution is prohibited (Section 3 and 4.4. of the Cabinet Regulations No. 32).

There are various administrative provisions which relate to keeping animals, producing smells and sounds, fixing pamphlets outside etc. All these things are allowed, observing mandatory provisions of public law and receiving the landlord's consent. The tenant may not disturb other persons making it is impossible for them to reside together with the tenant in the same house or apartment (Article 28.1 Paragraph 1 Section 3 of the Law on Residential Tenancy).

- ***Is there an obligation of the tenant to live in the dwelling? Are there specificities for holiday homes?***

Articles 37 and 38 of the Law on Residential Tenancy deal with the issue about the temporary absence of the tenant and/or family members of the tenants.

The notion of the temporary absence can be determined considering an intent of a person, not on the basis of duration, but in accordance with intent (Article 7 of the Civil Law). If there is a dispute about the character of the absence, a court will obviously decide upon this question according to its sense of justice (Article 5 of the Civil Law).

At the same time the Law on Residential Tenancy does not link the absence of the tenant to the termination of the right to use the property rented unless the tenant or other persons residing with the tenant fulfil all obligations arising from their rental contract concluded with the tenant. Consequently, Article 37 of the Law on Residential Tenancy states, if the tenant, his family members or other persons are temporarily absent, they have the right to retain the residential tenancy relations if they fulfill all duties in accordance with the rental contract. It is possible to define more precisely in the rental contract what parties understand under the temporary absence.

Article 38 of the Law on Residential Tenancy actually repeats once more what is stated in the previous Article. This article relates to the absence of the tenant and grants the right to his members of family and other persons who live together with the tenant to continue using of the residential space.

The rules relating to holiday houses are the same, specific regulation is not provided by law.

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[435] Latvijas Republikas Augstākās tiesas Senāta Civillietu departaments. *Tiesu prakse, piemērojot likumu „Par dzīvojamo telpu īri"*, 2004, 5, <www.at.gov.lv>, 2 September 2013.

[436] 22.01.2008. Ministru kabineta noteikumi Nr. 32 „Prostitūcijas ierobežošanas noteikumi". < http://likumi.lv/doc.php?id=169772 >, 2 September 2013.

Video surveillance of the building

Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?

The surveillance of certain parts of buildings is not that usual, but is not prohibited. Under the Personal Data Protection Law the aim of the surveillance must be clearly identified, for instance, safety. It has to be determined, whether the aim of the surveillance can be achieved by other means, for instance, whether it cannot be replaced with a combination entry door lock. Moreover, all persons concerned must clarified, at least of those who are living in the residential house. An explicit consent of a person is usually necessary for the surveillance (Article 7 Subsection 1 of the Personal Data Protection Law), although in some cases it is possible to install the surveillance without it, if the data processing is necessary to protect vitally important interests of the data subject, including life and health. Nevertheless, a reasonable balance between the restriction imposed on the right to privacy and collective interests of inhabitants to secure safety or achieve other aims has to be found. One may start the video surveillance, if advantages of the surveillance are greater than interference in the private life of inhabitants of the residential house, as well as of other persons, but, if, for example, there were no attacks, thefts or other crimes which would endanger inhabitants of the residential house, the surveillance will be unlawful[437].

The data system administrator has to ensure that the personal data are accurate and that they are updated, rectified or erased (Article 10 of the Personal Data Protection Law). Article 10 of the Personal Data Protection Law also stipulates that the personal data are stored for a period of time, which does not exceed the time period prescribed for the intended purpose of the data processing.

Eventually, different measures to reduce a negative influence on the right to privacy shall be taken[438].

[437] *Datu valsts inspekcijas rekomendācija. Datu apstrāde videonovērošanas jomā*. Rīga: 2009, <http://www.dvi.gov.lv/files/Rekomendacija_videonoverosana.pdf>, 2 September 2013.

[438] *Datu valsts inspekcijas rekomendācija. Datu apstrāde videonovērošanas jomā*. Rīga: 2009, <http://www.dvi.gov.lv/files/Rekomendacija_videonoverosana.pdf>, 2 September 2013.

f) Termination of tenancy contracts

	Contracts without public task	Contracts with public task
Mutual termination	in any case	in any case
Notice by tenant	Written notice one month in advance	in any case
Notice by landlord	- Damage to or demolition of dwellings transferred into use of the tenant (termination notice without prior warning); - Damage to or demolition of dwellings in the common use which the tenant uses together with other inhabitants or users of the building, for example, stairs (termination notice without prior warning); - Disturbance other persons living with the tenant in one common apartment or one house impossible for other persons (termination notice without prior warning); - Not agreed use of dwellings (termination notice one month in advance); - Unlawful use of dwelling by third persons allowed by the tenant without consent of the landlord (termination notice one month in advance); - Overdue rental payment or/and basic services for more than three months (termination notice one month in advance); - Necessity of capital repairs of dwellings (termination notice three months in advance); - Demolition of a house, apartment etc. (termination notice three months in advance); Necessity of personal use of dwellings for living purposes by the landlord who regained his immovable property in the course of denationalisation (termination notice six months in advance);	- Six months expiration (termination notice three months in advance); - Loss of eligibility (termination notice three months in advance); - Damage to or demolition of dwellings transferred into use of the tenant (termination notice without prior warning); - Damage to or demolition of dwellings in the common use which the tenant uses together with other inhabitants or users of the building, for example, stairs (termination notice without prior warning); - Disturbance other persons living with the tenant in one common apartment or one house impossible for other persons (termination notice without prior warning); - Not agreed use of dwellings (termination notice one month in advance); - Overdue rental payment and basic services for more than three months (termination notice one month in advance); - Necessity of capital repairs of dwellings (termination notice three months in advance); - Demolition of a house, apartment etc. (termination notice three months in advance);

Other reasons for termination	- Termination of the right of the landlord to rent the subject-matter; - Confusion of rights; - Public auction; - Takeover of the building for public interests.	-

- **Mutual termination agreements**

If the both parties: landlord and tenant - decide to terminate their rental agreement before the term expired, they are entitled to conclude the termination agreement (Latvian: *atcēlējlīgums*) (Article 1863 of the Civil Law). Article 1865 of the Civil law states that, if the contract requires a particular form, as indicated, rental contracts must be concluded in writing, then mutual termination agreements must be concluded in writing as well. If parties cancel their rental contract by the termination agreement, it is considered that such contract has never existed (Article 1865 of the Civil Law); according to law, if parties have not agreed on compensation or restitution issues, they may not claim the compensation later (Article 1865 of the Civil Law)[439].

- **Notice by the tenant**

  - ***Periods and deadlines to be respected***

Periods and deadlines can be determined by an agreement in accordance with the party autonomy principle[440]. If there is no agreement, the tenant may terminate the rental contract at any time, notifying the landlord thereof in writing one month in advance (Article 27 of the Law on Residential Tenancy).

The tenant can deliver the notice personally, by post, as well as by a registered mail, by asking the court bailiff (Article 74 of the Law on Court Bailiffs (Latvian: *Tiesu izpildītāju likums*[441]) or by asking the notary public Article 136 -139 of the Notariate Law) to deliver the notice. The court bailiff can be asked, if the landlord (unlawfully) refuses to receive the notice if the place of residence of the landlord is known. The notary may deliver the notice of termination to the landlord in person or send by post as a registered mail, one of the advantages of this approach is that, if the domicile of the landlord is unknown, then the notary publishes the notice in the official paper *Latvijas Vēstnesis*.

  - ***May the tenant terminate the agreement before the agreed date of termination (in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?***

[439] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr. SKC-126/2008. <www.at.gov.lv>, 2 September 2013.
[440] It is disputable to what extent the principle of party autonomy is applicable so that the protection of the tenant is not practically diminished by an agreement.
[441] 13.11.2002. *Tiesu izpildītāju likums.*< http://likumi.lv/doc.php?id=68295>, 13 January 2014.

The Latvian tenancy law does not distinguish ordinary and extra-ordinary notice of the tenant, the same applies to differentiation of termination of time-limited or open-ended rental contracts by the tenant, i.e., the Latvian Law on Residential Tenancy sets the general regulation for all cases. However, practically the parties may most likely contract further conditions, the procedure of the unilateral termination, compensation and other issues if the tenant unilaterally terminates the rental contract.

The right of the tenant to terminate the rental contract follows from Article 27 of the Law on Residential Tenancy, considering the wording of the legal provision, this right is not unrestricted. The obligation to pay outstanding rental and other payments or compensate losses, if the tenant terminates the contract before the end of the agreed term, if a time-limited contract has been concluded, is not established. In this regard the restrictive and extensive interpretation of Article 27 of the Law on Residential Tenancy would possible.

According to the extensive interpretation and considering the newest jurisprudence of the Supreme court in the similar questions, the tenant is obliged to make rental payments and payments for utilities only for the time period when the rental contract was valid[442], unless the contract does not contain further contractual terms on the legal consequences of the termination. If the rental contract does not comprise the obligation to cover losses in cases of pre-term termination, the answer if losses may be claimed is disputable. Not to mention, Article 1636 of the Civil Law states that, if a person exercises its right, there is no unlawful act. The legal source of right can be a law or a contract[443], the person has to act in good faith yet[444].

In order to balance the right of the tenant with the landlord's rights, we could try to restrict the legal provision of Article 27 of the Law on Residential Tenancy by supplementing it with other rules of the Civil Law, which constitute an exception from Article 1636 of the Civil Law. This is, however, very debatable because could lead to worsening of the tenant's position, when the tenant will not exercise his right because of negative legal consequences such as the obligation to compensate losses to the landlord, for example. Still if we are guided by Article 1 of the Law on Residential Tenancy which stipulates that the Civil Law is applicable to the legal relations of rent insofar as the Law on Residential Tenancy does not regulate such relations, it seems possible to find a reasonable balance of the landlord's and tenant's interests. Since the Law on Residential Tenancy does not regulate the issues following from termination notice of the tenant in detail, Article 2144 of the Civil Law could apply. That article differentiates legal consequences in cases of the tenant's unilateral termination according to the fact, whether a termination ground was justified or unjustified.

Furthermore, if we analyse Article 2144 of the Civil Law in connection with Article 2172 of the Civil Law, the following situations belong to the justified reasons:

1) The landlord delays transfer of the property for so long that the tenant is no more interested in renting;

2) The tenant cannot use the rented property in full or its essential part because

   2.1) The landlord does not make the necessary repairs to the property;

   2.2) It is impossible to repair the property and occupy it at the same time;

   2.3) The landlord makes the necessary capital repairs and reside in it at the same time;

[442] Compare: 30.01.2013. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-644/2013. <www.at.gov.lv>, 14 March 2014.
[443] Bitāns A. Civiltiesiskā atbildība un tās veidi. Rīga: AGB, 1997, 66
[444] *Civillikuma komentāri. Saistību tiesības (1401.-2400.p.).* Sagatavojis autoru kolektīvs prof. K.Torgāna vispārīgā zinātniskā redakcijā. Rīga, 1998

2.4) Living dwellings do not comply with legal sanitary or technical standards, as a result, they cause harm to health of tenant, family members or other persons living together with the tenant.

Article 2172 of the Civil Law crosses with the regulation of Article 28.3 and 28.4 of the Law on Residential Tenancy which grant the right to terminate the contract by the landlord notice. Article 28.3 and 28.4 of the Law on Residential Tenancy refer to the situations of capital repairs or demolishing of the building, consequently the tenant cannot use the rented property in full or its significant (substantial) part in these situations as well. If the landlord terminates the rental contract under Article 28.3 or 28.4 of the Law on Residential Tenancy, he must provide a new not less valuable or less equipped residential space to the tenant. If the tenant does not wait till the landlord terminates the contract on the basis of Article 28.3 or 28.4 of the Law on Residential Tenancy, the tenant may terminate the contract himself in accordance with Article 27 of the Law on Residential Tenancy, Article 2144, 2172 of the Civil Law without suffering any legal negative consequences (losses, earnest money, etc.) However, the tenant has to find a new place for living himself and the landlord is released from the obligation to provide another living space in the cases where Article 28.2 or 28.4 of the Law on Residential Tenancy are not applicable.

Moreover, Article 2170 of the Civil Law providing that the tenant may unilaterally terminate the contract in cases of excessive losses (*laesio enormis)* would also constitute a justified reason of the contract termination, though some sources reject the possibility to apply this rule in rental relations[445]. There are no reasonable arguments why this provision may not be applicable since it improves the situation of the tenant. If one argues that Article 1 of the Tenancy Law cited above is interpreted in the way that all legal rules of the Civil Law somehow connected with the contract termination are not applicable, this approach would contradict the aims of tenancy law, besides the Law on Residential Tenancy does not regulate many issues in detail, consequently the opinion that the Civil Law may not be applicable would lead to legal vacuum, in particular in cases when parties have not reached any mutual agreement. Anyway, the preconditions of *laesio enormis* of the tenant are as follows:

1) One year from the day of entering into the contract;

2) Single rental payment exceeds more than twice average rental payments[446];

3) Bad faith of the landlord (Article 2170 in connection with Articles 2042-2046 of the Civil Law).

The landlord could prevent termination of the contract by reducing the rental payment up to the amount indicated above what would result into amending of the rental contract (Article 13 of the Civil Law).

Since it is difficult to prove all the circumstances indicated in the court, especially is problematic the bad faith condition, the *laesio enormis* provisions are applicable in rare cases. Virtually, the tenant will most likely base his notice on Article 27 of the Law on Residential Tenancy instead of *laesio enormis* because it would be more simple.

To mention, the Latvian private law introduces the principle *pacta sunt servanda* in a very strict manner, there are almost no exceptions from this rule, naturally the grounds provided before constitute the exception from the rule *pacta sunt servanda* (Article 1589 of the Civil Law). The matter rather concerns other exceptions, for instance, significant change of circumstances of a party. In this connection the amendments were submitted to the Parliament in 2007 and they were similar to Article 6:111 of the Principles of European Contract Law. It was proposed to supplement the Civil Law with the following provision:

[445] 19.12.2013. *Ekonomikas Ministrija. Likumprojekts "Dzīvojamo telpu īres likums".* <http://mk.gov.lv/lv/mk/tap/?pid=40309801>,13 January 2014.

[446] Normally it would be determined by the court establishing average rental payments at the time when the rental contract was entered into, since no official information source exists.

"*If performance of the contract becomes excessively onerous because of change of circumstances, the parties have to enter into negotiations in order to amend (adapt) the contract or terminate it when:*

1) *The change of circumstances occurred after the contract conclusion; and*

2) *The change of circumstances could not be reasonably foreseen at the time of contract conclusion; and*

3) *The party affected should not be required to bear the risk of the change of circumstances.*

If the parties fail to reach an agreement within a reasonable period of time, the court may:

1) *Terminate the contract at a date and on terms determined by the court; or*

2) *Amend the contract in order to distribute between the parties in a just and equitable manner the losses and gains resulting from the change of circumstances.*

In either case, the court may award damages for the loss suffered through a party refusing to negotiate or breaking off negotiations contrary to good faith and fair dealing."[447]

Nevertheless, the amendments proposed have not been accepted by the Parliament, because the proposal deemed to be incompatible with the Latvian system of private law, despite the fact that it is recognized by theory that, if performance of the contract becomes excessively onerous because of change of circumstances, a party may ask to terminate or amend the contract, according to Article 1 (good faith) and 5 (fairness) of the Civil law[448], on the other hand, this theoretical approach has not been excepted by practise because of the fears of arbitrariness and other reasons.

Another open issue relating to the tenant's unilateral termination of the contract is whether the tenant is entitled to terminate the contract without any prior notice when due to good faith (Article 1 of the Civil Law), fairness (Article 5 of the Civil Law) or good morals (Article 1415, 1592 of the Civil Law) the continuation of rental relations is impossible. Most likely the court will recognize such reason to be quite serious and approves the lawfulness of the contract termination when the tenant has only to pay for actual use, if the landlord did not agree and bring a court action (Article 50 of the law on Residential Tenancy).

The right of the tenant to terminate the contract in cases where the matter concerns social renting is not provided. The Law on Social Houses and Social Apartments stipulates that, if a tenant is no longer entitled to receive assistance in solving apartment matters, the social rental agreement has to be terminated, unless, upon the request of the tenant, the respective local municipality agrees to conclude a new "normal" rental agreement (Article 14 Paragraph 4 of the Law on Social Houses and Social Apartments).

The right to revoke the termination notice is not regulated by the Law on Residential Tenancy or the Civil Law, consequently we could apply the principle set by the Labour Law in cases of the termination notice of employer or employee by analogy[449], namely, the landlord determines if the tenant might revoke the termination notice.

- ***Are there preconditions such as proposing another tenant to the landlord?***

[447] 27.07.2007. *Grozījumi Latvijas Republikas Civillikumā. Likumprojekts*. <http://www.saeima.lv/saeima9/lasa?dd=LP0528_0>, 13 January 2014.
[448] Balodis, K. *Ievads civiltiesībās.* Rīga: Zvaigzne ABC, 2007, 140.-149.lpp.
[449] 20.06.2001. *Darba likums.* <http://likumi.lv/doc.php?id=26019>, 13 January 2014.

As indicated, Article 27 of the Law on the Residential Tenancy does not provide other preconditions, unless they were agreed.

- **Notice by the landlord**

    - Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)

Similar to the notice of the tenant, tenancy law neither formally distinguishes among ordinary and extra-ordinary termination nor provides specific rules for open-ended and time-limited contracts in case of the landlord's notice. Besides, Article 28 of the Law on Residential Tenancy stipulates that the rental contract may be terminated at the initiative of the landlord only in the cases set by the Law on Residential Tenancy.

If we regard the termination grounds of the Law on Residential Tenancy in essence, we, however, can divide them into the two groups:

1) The ordinary termination:

- Time expiration (Article 6);

2) The extraordinary termination:

- Breach of the rental contract

    - o Damage to or demolition of dwellings transferred into the use of the tenant (termination notice without prior warning) (Article 28.1);

    - o Damage to or demolition of dwellings in the common use, which the tenant uses together with other inhabitants or users of the building, for example, stairs (termination notice without prior warning) (Article 28.1);

    - o Disturbance of other persons living with the tenant in one common apartment or one house impossible for other persons (termination notice without prior warning) (Article 28.1);

    - o Not agreed use of dwellings (termination notice one month in advance) (Article 28.1);

    - o Unlawful use of dwelling by third persons allowed by the tenant without consent of the landlord (termination notice one month in advance) (Article 28.6);

    - o Overdue rental payment or/and basic services for more than three months (termination notice one month in advance) (Article 28.2);

- Necessity of capital repairs of dwellings (termination notice three months in advance) (Article 28.4)

- Demolition of a house, apartment, etc. (termination notice three months in advance) (Article 28.3)

- Necessity of personal use of dwellings for living purposes by the landlord who regained his immovable property in the course of denationalisation (termination notice six months in advance) (Article 28.4).

In addition, Article 2166 of the Civil Law stipulates that an open-ended rental contract regarding immovable property can be terminated, unless otherwise agreed, after six months prior notice that may be given by the landlord. As indicated, it follows from Article 28 of the Law on Residential Tenancy that the grounds of the contract termination by the landlord are exhaustive and completely replace the respective regulation of the Civil Law. This circumstance can be explained from the historical perspective when the main landlord was the State, concluding open-ended contracts because it was impossible to acquire property rights on immovable properties, excluding single-family residential houses, after the second independence of Latvia this method has been preserved.

In cases of the extraordinary termination, the landlord can use the same means of delivery which were described while speaking about the tenant's termination notice. In addition, the Law on Residential Tenancy provides that when the tenant owes rental payment or payments for more than three months and the tenant does not occupy the rented property, therefore the domicile of the tenant is not known, the landlord must personally publish the termination notice in the official paper *Latvijas Vēstnesis* without any intermediaries (Article 28.2 of the Law on Residential Tenancy).

The aim of the notice is to warn the tenant to give a chance to the tenant to improve his behaviour and to stop unlawful actions, if it happens, there is no reason to ask the eviction[450], although other rights related to former unlawful acts of the tenant, for example, the duty to compensate losses, remains.

Articles 28.1-28.6 refer to the tenant and his family members in the meaning of Article 9 of the Law on Residential Tenancy who have the same rights and obligations as the tenant does, as well as who are solidary responsible for material claims (rental payments, payments for utilities, interest payments, loss compensation etc.) arising from the rental contract concluded by the tenant (Article 10 Paragraph 2 of the Law on Residential Tenancy). Other persons do not have the rights and obligations of the family members, besides the tenant remains responsible for the behaviour and actions of these persons (Article 10 Paragraph 3 of the Law on Residential Tenancy).

Let us review the extraordinary eviction grounds of the Law on Residential Tenancy closer:

If the tenant, his family member (-s) or other persons living with them 1) damage or demolish dwellings transferred into use of the tenant or dwellings in the common use, or 2) disturb other persons living with the tenant in one common apartment or one residential house impossible for other persons, or 3) use dwellings otherwise than it has been agreed in the rental contract, then the guilt (Article 28.1 of the Law on Residential Tenancy), the objective illegality of action (-s) and causality has to be established in order to ask for eviction[451]. In accordance with another theory which has been developing, but still is not widely accepted, the objective illegality of the action (-s), justifications or the lack of justifications, as well as causal link must be determined to claim the eviction[452]. The difference between two approaches refers to the precondition of guilt. The practise of the Latvian courts shows that the courts are unable to establish guilt in many cases[453]. To simplify the task of the court, the new theory (theory No. 2) has been proposed, in spite of the fact

[450] 26.11.2008. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-435/2008, <www.at.gov.lv>, 2 September 2013.
[451] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 131.-144.lpp.; Latvijas Republikas Augstākās tiesas Senāta Civillietu departaments. *Tiesu prakse, piemērojot likumu „Par dzīvojamo telpu īri"*, 2004, <www.at.tiesa.gov.lv>, 2 September 2013.
[452] Torgāns, K. *Saistību tiesības. II daļa :Mācību grāmata.* Rīga : Tiesu namu aģentūra, 2008, 271.lpp.
[453] Ibid.

that the Civil Law provides that guilt has to be established (Article 1640 – 1650 of the Civil Law etc.).

Under Article 28.6 of the Law on Residential Tenancy unlawful use of dwelling by third persons allowed by the tenant without consent of the landlord can lead to the eviction. This article also involves unlawful subletting, i.e., sub-renting without the consent of the landlord, moreover, it is applicable to other persons unlawfully residing together with the tenant.

Furthermore, if the tenant, its family members or other persons have violated the rental contract, proportionality of the violation must be evaluated. If, for example, a breach of the rental contract is not systematic and not essential, made only once, the eviction would be ungrounded. In general, if only one person has violated the rental contract, the eviction claim shall be directed against this particular person. However, additional factors may influence the solution, for example, if the tenant knowingly tolerated the breach of another person.

The proportionality principle requires that the landlord or the judge in case of a dispute determines whether the eviction is necessary and is suitable to prevent future breaches; whether it is possible to attain such goal by means which are less restrictive than the eviction; whether comparing the eviction of a person and the benefits of the landlord, the eviction leads to a significant benefit of the landlord[454].

It is also questionable whether the landlord may ask for the eviction, after he has accepted the compensation of losses instead of the eviction, but then the same violation repeats. The question is, if the landlord may refer to the former violation and base his eviction claim on the former and a new repeated violation at the same time. Considering the approach to the similar situations developed by the Labour Law[455] and taking into account the principle of good faith (Article 1 of the Civil Law), most likely the landlord may only relate to the new violation as the main reasoning.

The next the eviction/contract termination ground which we will focus on, is unpaid rental payments and/or payments for basic services (Article 28.2 of the Law on Residential Tenancy). The Law on Residential Tenancy does not specify if overdue payments have to amount to rental payments (or payments for the basic utilities) for four months in full or in part, as well as whether the matter concerns months in a row or any four months. The Supreme Court and the legal literature explains that the landlord may ask for eviction if the tenant delayed rental payments or payments for basic services amounting to full payments for four any months or more[456]. It is also important that the landlord must fulfil his obligations under the rental agreement to be entitled to request the eviction. If the landlord failed to secure provision of the basic services or the subject-matter of the contract does not conform to the agreement or law, the eviction claim is not justified.

Although Article 2171 Paragraph 1 of the Civil Law provides that the tenant may prevent the eviction claim by paying debts before a court action has been brought, nowadays the tenant may also prevent the eviction paying off the debt till the court starts adjudication of the matter on the merits under the condition that the landlord withdrew the claim (Article 223 Paragraph 4 of the Civil Procedure Law). If the tenant has paid, but the landlord continues court proceedings, the solution depends on the court evaluation of the situation.

The necessity of capital repairs of dwellings (Article 28.4 of the Law on Residential Tenancy) and demolition of a living building (Article 28.3 of the Law on Residential Tenancy) are the termination grounds which are not associated with the behaviour of the tenant.

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[454] Compare: 25.10.2001. Administratīvā procesa likums. <http://likumi.lv/doc.php?id=55567>, 13 January 2014.
[455] Latvijas Republikas Augstākās tiesas Senāta tiesu prakses apkopojums lietās par individuālajiem darba strīdiem, 2010.-2011. <www.at.tiesa.gov.lv>, 13 January 2014.
[456] Krauze, R. *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 145.-155.lpp.; Latvijas Republikas Augstākās tiesas Senāta Civillietu departaments. *Tiesu prakse, piemērojot likumu „Par dzīvojamo telpu īri"*, 2004, <www.at.tiesa.gov.lv>, 2 September 2013. 8.-9.lpp.

In case of capital repairs a current rental agreement may be terminated by the landlord's notice, if the tenant cannot continue to use a significant part of living dwellings. In cases of a dispute, the landlord must prove the fact that he has already started preparations for capital repairs, hence he has to provide the calculation of costs, technical documentation about the repairs approved by the State and a municipality institution, if necessary, confirm that he has financial sources to complete the repairs, etc. The landlord may terminate the rental agreement, if capital repairs are necessary, but he must provide a new equivalent residential space and conclude a new rental contract with the same tenant. Article 28.4 of the Law on Residential Tenancy stipulates that an equivalent residential space is a residential space which has, in comparison to the residential space the tenant occupied previously, the same comparable services, the similar area and other essential features, as well as it has to be located in the same town or region. The Law on Residential Tenancy does not specify other details of contractual terms of the new rental contract, thus, it is possible to include different contractual terms in comparison with the previous contract in the new contract. Furthermore, Article 28.4 of the Law on Residential Tenancy contains the special rule regarding denationalised residential spaces returned to previous owners or their heirs. If the owner (landlord) of the house denationalised or returned has taken the decision to perform capital repairs of the house and is unable to perform such repairs with the tenant residing in the house or using the relevant space, the landlord may terminate the rental contract, providing the tenant and the members of his family with other equivalent residential space. The landlord has, however, such duty during the first seven years after the restoration of property rights, as well as if the residential house (residential space) is intended to transform into a non-residential house (non-residential space). In other cases, the relevant local municipality is entitled to provide the tenant and his family members with residential space.

The demolition of residential space (Article 28.3 of the Law on Residential Tenancy) constitutes another extraordinary termination ground; the owner may freely take such decision, but must provide an equivalent residential space and conclude a new rental contract. The rules are very similar to the previous case of the unilateral termination because of capital repairs.

What is more, the landlord, who is an owner of denationalised or restituted property, if he needs the property for his own use, may terminate the rental contract (Article 28.5 of the Law on Residential Tenancy). It is important to stress that, firstly, this opportunity is provided only for the owners of the denationalised (or restituted) property and not for other landlords who suddenly have a necessity to use the property. Secondly, the owners of denationalised property must need the property for their residence and not for other purposes, for example, not for renting out to other tenant. Thirdly, Article 28.5 of the Law on Residential Tenancy only concerns such tenants who have entered their rental contracts in the Soviet time. Thus the owner of denationalised or restituted property is entitled to terminate the contract only once and only in regard to tenants renting residential spaces from the Soviet time.

One more option to unilaterally terminate the rental agreement could be *laesio enormis* (Article 2170 of the Civil Law). Article 2170 of the Civil Law provides that the landlord is entitled to terminate the contract in cases of *laesio enormis* or excessive losses. The application of *laesio enormis* claim is very doubtful and most likely Article 28 of the Law on Residential Tenancy restricts its application[457]. The preconditions of *laesio enormis* of the landlord are the same as in the case of the tenant.

The right to revoke the termination notice is also not regulated by law, but in accordance with the principle set by the Labour Law[458], if we consider that rental relations are similar to labour relations, the tenant is entitled to determine if the landlord might revoke the termination notice.

The Law on the Residential Tenancy states that, if the tenant, family members and other persons living together with the tenant (Article 9 the Law on Residential Tenancy) do not vacate and

[457] 19.12.2013. *Ekonomikas Ministrija. Likumprojekts "Dzīvojamo telpu īres likums"*. <http://mk.gov.lv/lv/mk/tap/?pid=40309801>,13 January 2014.
[458] 20.06.2001. *Darba likums.* <http://likumi.lv/doc.php?id=26019>, 13 January 2014.

transfer the rented property back, the landlord may evict them only by bringing a court action (Article 28 of the Law on Residential Tenancy).

When a social apartment or house is rented out, the rental contract is time-limited and after every six months it has to be re-evaluated, if the tenant and his family are still entitled to use the dwelling. The expiration of the six-month period is an ordinary termination ground (Article 14 Paragraph 1 Section 1 of the Law on Social Apartments and Social Houses). If the tenant or his family member (-s) breaches the social rental contract, that is, damages or demolishes dwellings transferred into use of the tenant or dwellings in the common use, or disturb other persons living with the tenant in one common apartment or one house impossible for other persons, or use dwellings otherwise than it has been agreed in the rental contract, the landlord may terminate the contract with six months notice (Article 14 Paragraph 1 Section 2 of the Law on Social Apartments and Social Houses). When the tenant does not make rental payments and payments for basic services, the local municipality has to offer another less comfortable residential space for a lesser payment concluding a new social rent agreement (Article 14 Paragraph 3 of the Law on Social Apartments and Social Houses). Finally, if a local municipality has taken the decision about capital repairs of dwellings or demolition of the living building, or if it could collapse, the local municipality terminates an existing rental agreement, but must conclude a new social rent agreement (Article 14 Paragraph 1 Section 4 of the Law on Social Apartments and Social Houses). The termination notice has to be sent three months in advance, but the tenant may be evicted only by the court, i.e., court judgment, if he does not vacate the living space (Article 14 Paragraph 4 of the Law on Social Apartments and Social Houses).

- ***Statutory restrictions on notice:***

  - ***for specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.***

No restrictions or special regulation.

  - ***in favour of certain tenants (old, ill, in risk of homelessness)***

Instead of restriction of notice, the Law of Residential Tenancy stipulates that a local municipality has to provide help, i.e., assistance in solving apartment matters to particular groups of tenants after the termination or at the stage of execution of the eviction. The following groups of persons are entitled to receive help: needy persons reached retirement age (62 years old)[459]; persons incapable of work due to disability; persons with at least one underage child or a person under the guardianship, or a low-income pensioner, or a low-income person who is incapable of work due to disability etc.[460]

  - ***for certain periods***

No regulation.

[459] *Old age pension*. < *http://www.vsaa.lv/en/services/seniors/old-age-pension* >, 14 March 2014.
[460] Article 36.1 -36.3 of the Law on Residential Tenancy, in addition, see also Part 1 about the rules of the Law on Assistance in appartement solving matters, this where issue has been explained

- ***after sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling***

According to Article 8 of the Law on Residential Tenancy inheritance (universal succession) or transfer of the ownership (single succession) under an alienation contract, does not constitute a legal ground for the contract termination[461], unless Article 601 of the Civil Procedure Law is applicable[462].

- ***Requirement of giving valid reasons for notice: admissible reasons***

According to Article 1509 of the Civil Law the landlord or the tenant must clearly and definitely express himself so that another party understands it. As indicated, the Law on Residential Tenancy does not state that the tenant has to provide any particular ground why he terminates the contract, though the lack of a legally justified reason in particular in cases of time-limited contracts could probably result into the obligation of the tenant to compensate losses of the landlord. The landlord must indicate the termination ground and factual circumstances to such extent that the court could control the validity of it, that is, the sole reference to one of the article of the Law on Residential Tenancy is not sufficient[463].

- ***Objections by the tenant***

As mentioned, the Law on Residential Tenancy – Article 50 of it - states that all disputes, including possible objections of the tenant, are resolved by the court. The tenant is entitled to make use of all legal means which provides the Civil Procedure Law: to rise different objections of the procedural nature (Latvian: *ierunas*; German: *Einrede*) aimed to end court proceedings. The objections can follow from substantial law (owed payments are not due; payments have been already made etc.) or from the procedural law (the landlord has not submitted a written notice to the tenant; the parties have concluded a settlement agreement etc.). Moreover, the tenant may submit a counter-claim[464] asking, for example, to recognize factual rental relations, or to perform set-off etc.

- ***Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?***

No.

- ***Challenging the notice before court (or similar bodies)***

The tenant is entitled to challenge the notice before the court[465].

[461] To remind, on January 6, 2014 he Court initiated constitutional court proceedings to examine if the legal provision in question complies with Article 105 of the *Satversme* (the right to property). The Constitutional Court has not decided upon the application yet.

[462] For more information, see the question about the change of the landlord through inheritance, sale or public auction affects the position of the tenant.

[463] compare: Latvijas Republikas Augstākās tiesas Senāta Civillietu departament*s. Tiesu pakse lietās par individuālajiem darba strīdiem, 2011,* 15, <www.at.gov.lv>, 2 September 2013.

[464] Bukovskis V. *Civilprocesa mācības grāmata*. Rīga: Autora izdevums, 1933, 313-324; *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa)*. Sagatavojis autoru kolektīvs. Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2011, 334-335, 489-508

[465] For more information, see the question about the court structure in tenancy law, jurisdiction the possibilities of appeal.

- ***in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law***

Neither substantive nor procedural law contains the explicit right to claim extension of the rental contract, although eviction of the person eligible to receive assistance in solving apartment matters can be postponed until a respective municipality finds a new residential space for this person (Article 36.3 of the Law on Residential Tenancy), at the same time this postpone is not considered to constitute prolongation of the terminated contract.

- **Termination for other reasons**

Article 2168 of the Civil Law states that rental contracts terminate automatically, before the expiration of the term in the following cases: termination of the right of the landlord to rent the subject-matter; confusion of rights when the tenant obtains the ownership of the rented property.

- ***Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)***

See above[466].

- ***Termination as a result of urban renewal or expropriation of the landlord, in particular:***

- What are the rights of tenants in urban renewal? What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?

The case of demolition has been already discussed[467].

Regarding urban renewal, the Law on Territory Development Planning (Latvian: *Teritorijas attīstības plānošanas likums* [468]) states that every natural or legal person may become acquainted with future territory planning of a local municipality, as well as submit its proposals or opinion, besides, public consultations shall take place and public opinion – found out and considered by public authorities. The tenant may take part in these activities within the procedure of planning of the territory's development.

If the State or a local municipality institution is taking over a building which is rented out for residential purposes, a respective institution evaluates the building in question. Among different actions referring to the evaluation, the owner is invited to provide information about the existing rental agreements (Article 18 of the Law on Alienation of Immovable Necessary for Public Purposes (Latvian: *Sabiedrības vajadzībām nepieciešamā īpašuma atsavināšanas likums*[469])). The circumstance, whether there are residential rental agreements, is taken into account assessing the

[466] For more information, see the question about the contract termination after sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling
[467] For more information, see the questions about the notice of the landlord and the tenant.
[468] 13.10.2011. *Teritorijas attīstības plānošanas likums*. <http://likumi.lv/doc.php?id=238807>, 13 January 2014.
[469] 14.10.2010. *Sabiedrības vajadzībām nepieciešamā īpašuma atsavināšanas likums.* <http://likumi.lv/doc.php?id=220517>, 13 January 2014.

value of the building to determine a fair compensation for taking over (Article 4 of the Law on Alienation of Immovable Necessary for Public Purposes). Rental agreements for residential purposes are binding for the institution if it is informed about rental agreements. If not, they are invalid (Article 16 Paragraph 2 of the Law on Alienation of Immovable Necessary for Public Purposes). In essence, the rules are very similar to selling of the property in public auction. When the State became an owner of the residential space which is rented out, the legal provisions of the Law on Residential Tenancy are applicable.

g) Enforcing tenancy contracts

	Contracts without public tasks	Contracts with public tasks
Eviction procedure	Court judgement entered into force and writs of execution	
Protection from eviction	Persons eligible to receive social apartment may not be evicted until a local government does not find a residential space, however they have to cover all losses of the landlord for the period of their stay.	-
Effects of bankruptcy	Insolvency (bankruptcy) does not directly affect rental contracts, except the cases where the landlord brings a court action on eviction and recovery of monetary debts.	-

- ***Eviction procedure: conditions, competent courts, main procedural steps and objections***

After the ordinary court and administrative court ruled to evict the tenant and persons residing with him, the Civil Procedure Law regulates the eviction procedure.

Normally, the court indicates the time period for voluntary execution of the judgment after the judgment enters into force (Article 193 Paragraph 6 of the Civil Procedure Law). The court determines the term for voluntary execution on at its own discretion, though this time period may not be longer than 10 days from the day of the coming into effect of the judgment (Article 204.1 of the Civil Procedure Law)[470]. Entering into effect of a judgment shall be distinguished from execution of a court judgment. Article 538 of the Civil Procedure Law provides that court judgments shall be executed after they come into lawful effect, except in cases where pursuant to law or a court judgment they are to be executed without delay. The indication that the judgment and decision shall be executed without delay must be contained in the writ of execution itself, eviction is usually performed after the judgment came into force.

The landlord may submit the judgement for execution within ten years after the judgement entered into force (Article 546 Paragraph 1 of the Civil Procedure Law)[471].The landlord must apply for the

[470] *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa)*. Sagatavojis autoru kolektīvs. Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2011, 421

[471] *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa)*. Sagatavojis autoru kolektīvs. Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2011, 725-726

execution document or writ of execution (German: *Vollstreckungstitel*) to be able to start the compulsory enforcement of the judgment when the time period for voluntary is expired, but the tenant has not vacated the premises (Article 540 and 541 of the Civil Procedure Law),

After all necessary documents has been submitted to the court bailiff, the court bailiff informs the debtor about initiation of compulsory enforcement and asks the tenant to vacate the residential premises in 10 days after receipt of the notification (Article 555 of the Civil Procedure Law).

Eviction of the judgment may take place in the presence of the debtor- tenant or without him (Article 620.2 and 620.3 of the Civil Procedure Law). In the first case the landlord and tenant are entitled to invite not more than two witnesses each to compulsory eviction, in the second case, if the debtor fails to appear at the time specified for eviction and there is no information regarding the reason for his or her absence or he or she has not appeared due to a justified reason, the bailiff shall postpone the eviction. In the commentaries on the Civil Procedure Law is pointed out that eviction of the persons and clearing of the premises from property belonging to the tenant and persons residing with the latter has to be distinguished because different principles apply, although eviction of persons is usually connected with clearing of the residential space from movables of the debtor[472]. Only clearing of the residential space happens, if the debtor has repeatedly failed to appear for eviction at the time specified and has not informed about the reason for his absence or has not appeared due to a reason which is not recognised as justified by the bailiff, the premises have to be opened in the presence of a police representative; the bailiff makes an inventory and appraisal of the tenant's movable property, as well as appoints a custodian of the property, removes the property and transfers it for storage to the custodian. The bailiff issues one copy of the statement of an inventory and appraisal to the debtor.

The debtor may submit a complaint against the activities of a court bailiff, but the complaint does not stop execution proceedings (Article 623 of the Civil Procedure Law).

In practise, eviction is confused with obtaining of possession of an immovable sold in the public action (Latvian: *ieviešana valdījumā*). Article 995 of the Civil Law stipulates that upon request of the acquirer the court bailiff may help the new owner to enter the residential space if there are obstacles for it (Article 882 of the Civil Law). The actions of the court bailiff are quite similar to the eviction proceedings, but obtaining of possession is regulated by Articles 620.5 – 620.8 of the Civil Procedure Law and is directed against the former owner who, for instance, locked in the property bought by the acquirer and does not allow to enter[473]. Thus if the new owner uses "help" of the court bailiff to obtain "possession", evicting the tenant, he violates Article 8 of the Law on Residential Tenancy unless Article 601 of the Civil Procedure Law is relevant, as a result the tenant's contract is null. The tenant residing in the dwelling on basis of the valid residential contract is not an obstacle to enter the residential space, besides the contract of the tenant is binding for the new owner according to Article 8 of the Law on Residential Tenancy. Nevertheless, there are numerous cases when the new acquirer uses Articles 620.5 – 620.8 of the Civil Procedure Law to evict the tenant without any court judgement[474]. To mention, court bailiffs tend to approach the issue on obtaining of possession of immovable by the new owner in a formal way, to put it differently, if it is written to help to obtain possession by the court, they will do it under Articles 620.5 – 620.8 of the Civil Procedure Law not taking into consideration any additional factors[475] such as the rental contract.

[472] *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa)*. Sagatavojis autoru kolektīvs. Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2011, 892-893

[473] *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa)*. Sagatavojis autoru kolektīvs. Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2011, 897; Grūtups A., Kalniņš E. *Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums*. 2.izdevums. Rīga: Tiesu namu aģentūra, 2002, 132-133; Višņakova G., Balodis K. *Latvijas Republikas Civillikuma komentāri. Lietas. Valdījums. Tiesības uz svešu lietu*. Rīga: Mans īpašums, 1998, 38 etc.

[474] Rone, D. *Pētījums „Ieviešana valdījumā problemātikas izpēte un analīze*", Rīga, 2012, 41– 42. <www.tiesibsargs.lv>, 2 September 2013.

[475] Makurina J., Grīvnieks J. *Piespiedu izpildes līdzekļa samērīgums*. www.juristavards.lv, 14 January 2014

The main problem connected with the protection of the tenant is that the tenant has no effective legal means and remedies to stop unlawful eviction, unless he brings a court action and applies for preliminary injunction – the prohibition of execution (eviction) proceedings in order not to be evicted before the court adjudicates the tenant's claim (Article 138, Article 620.8 of the Civil Procedure Law).

It would be also possible to submit an application to the police (Article 143 (Illegal entering of the residential dwelling) or 279 (arbitrariness) of the Criminal Law[476]), if the new owner tries to circumvent Article 8 and other legal rules of the Law on Residential Tenancy. Criminal proceedings are not always effective yet since there are cases when the state police does not initiate criminal proceedings, pointing out that it is a civil dispute, i.e., the ordinary court has to deal with it in the course of civil proceedings. Usually criminal proceedings are initiated by the police if other persons are unlawfully lodged and, as a result, the tenant is essentially disturbed and cannot use the premises rented out[477].

- ***Rules on protection ("social defences") from eviction***

Article 36.1 of the Law on Residential Tenancy establishes which groups of tenants are entitled to receive social aid from a local municipality in cases of private renting. If eligible persons are evicted because of debts for rental payments or payments for basic services and a judgment is entered into force, the eviction is postponed till the local government provides the eligible tenant with other residential space. However, the landlord – private person - may claim costs connected with postponement of eviction which the tenant has to cover. At the same time, if the tenant does not carry out the activities provided for by law in order to receive assistance of a local government or delays the provision of assistance without a justified reason, the judgement shall be executed (Article 36.3 of the Law on Residential Tenancy).

When the tenant is not eligible to receive the social help in accordance with law, still he may ask to postpone execution (eviction) in accordance with Article 206 of the Civil Procedure Law, in this case the tenant have to submit an application of eviction postponement, sometimes the prosecutor, institution of the State or a local municipality may apply for this instead of the tenant[478]. The court which has rendered a judgment in a matter is entitled, taking into account the financial situation of the parties, children's rights or other circumstances, to take a decision to postpone the execution of the judgment, the tenant may apply for postponement after the court bailiff has started compulsory execution of the eviction judgement[479].

- ***May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?***

Latvia is one of the European countries adopted the consumer insolvency regulation. Natural persons (excluding individual traders) may apply for initiation of consumer insolvency proceedings. Insolvency proceedings may be started if at least one of the grounds mentioned below is established:

- Due and payable obligations which separately or in total exceed EUR 7 114 and which the debtor cannot fulfil;

[476] For more information, see the question about the origin of national tenancy law and its legal sources
[477] *Tiesībsarga 2012.gada ziņojums*.
<http://www.tiesibsargs.lv/files/content/Tiesibsarga%20gada%20zinojums_2012.%20gads.pdf >, 2 September 2013.
[478] *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa)*. Sagatavojis autoru kolektīvs. Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2011, 450-451
[479] Ibid.

- Obligations which will become due within one year and separately or in total exceed EUR 14 228 and which the debtor will not be able to fulfil.

In addition, the debtor must be able to settle one-off remuneration of the insolvency administer of two minimum monthly wages totalling EUR 640 in 2014[480].

Both parties to a rental contract may become insolvent. The Civil Law determines that in cases of insolvency of the landlord the rental contract has to be continued, i.e., may not be terminated; in cases of insolvency of the tenant, the contract is not binding for the landlord (Articles 2176-2177 of the Civil Law). The legal provisions of the Civil Law are not applicable now because the Insolvency Law (Latvian: *Maksātnespējas likums*[481]) as a newest law regulating the particular subject-matter contains different rules. The principles of the current Insolvency Law regarding different contracts concluded by a debtor - natural or legal person - are as follows:

1) Contracts may be found null and void regardless of type of contract if they caused losses to the debtor;

2) Contracts concluded three months prior to insolvency proceedings and transactions concluded three years prior to insolvency proceedings, if concluded with persons related to the debtor may be found null and void if they caused losses to the debtor (Article 96-100, 144 of the Insolvency Law).

If the landlord is insolvent, but he has concluded a rental contract before the insolvency, which does not cause losses to the landlord, the contract as a financial source for creditors' claim satisfaction will be usually continued by the insolvency administrator[482].

If a tenant who may be only a natural person becomes insolvent, a legal solution depends on many circumstances of a particular case. The Insolvency Law does not state that a rental contract remains in force, if the tenant owes for rental payments or basic services for four or more months. When the landlord has already obtained the positive judgment on eviction and initiated compulsory enforcement proceedings, insolvency of the debtor has effect only towards recovery of monetary claims and not towards eviction. According to Article 134 Paragraph 2 of the Insolvency Law stipulates that, following the proclamation of the insolvency proceedings of a natural person the execution proceedings in the matters on the recovery of the amounts adjudged but not recovered, as well as court cases regarding debt recovery must be suspended. Consequently, the landlord may terminate the contract because of debts, but cannot enforce recovery of monetary claims.

One more principle of insolvency of the natural person is that the debtor prepares and fulfils a plan regarding recovery of his creditors' claims in part within a time period specified by the plan and the Insolvency Law. This plan is also approved by the court. The tenant may not have new debts, for instance, unpaid rental payments occurred after the court approved the debt recovery plan because it would mean that the debtor does not fulfil the debt recovery plan. If the debtor does not fulfil the plan, the court upon an application of a creditor, terminates insolvency proceedings (Article 165 of the Insolvency Law). For the debtor it would mean that all debt recovery proceedings may be continued in a full amount in a usual way. Finally, the Insolvency Law also establishes that in the course of insolvency proceedings the debtor shall keep 2/3 of the income in order to cover his or her maintenance costs (Article 161), as well as be able to pay for rent (Article 140, 154 of the Insolvency Law). The subject-matter of a rental contract may be a new one or the previous one, the solution depends on will of the parties involved and other circumstances.

[480] 27.08.2013. Ministru Kabineta noteikumi Nr.665 „*Noteikumi par minimālo mēneša darba algu un minimālo stundas tarifa likmi*". <http://likumi.lv/doc.php?id=259405>, 13 January 2014
[481] 26.07.2010. *Maksātnespējas likums.* <http://likumi.lv/doc.php?id=214590>, 13 January 2014.
[482] Maksātnespējas administrācija "Fiziskās personas maksātnespējas process", 30.lpp. <*www.mna.gov.lv/download/632*>, 13 January 2014

h) Tenancy law and procedure "in action"

- ***What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?***

In Latvia the Law on Residential Tenancy does not specify the legal status, the roles, tasks and responsibilities of associations of landlords and tenants, practically they have little or no influence at all.

- ***What is the role of standard contracts prepared by associations or other actors?***

Of no importance.

- ***How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?***

Tenancy law disputes are mainly carried out in the court, the Law on Residential Tenancy and the Law on Social Apartment and Social Houses state that all disputes, including eviction, are resolved by the court. The courts of the general jurisdiction (contracts without a public task) and of administrative jurisdiction (contracts with public task) resolve such disputes.

Some questions may be reviewed by the Consumer Right Protection Centre in cases where a landlord is an entrepreneur and a disputable issue belongs to consumer law. In most of the cases the Centre deals with questions about the unfair conditions in rental contracts of the consumer.

The Rental Board, which has been only established in the Riga city can consult specific disputes (Article 48 of the Law on Residential Tenancy). The Riga Rental Board deals with the following problems:

1) Essential residential tenancy contract amendments;
2) Rental and penalty payments, calculation of payments for services (utilities);
3) Conformity of calculation of a house (a building) maintenance expenses to law;
4) Failure to provide the basic services or provision of the basic services improper quality;
5) Refusal to accept rental and payments for services (utilities);
6) Refusal to agree to lodge in the family members and other persons of the tenant;
7) Violation of rules of use of a residential space;
8) Observance of rules referring to maintenance and repair of a dwelling/house;
9) Other issues[483].

It is important that decisions of the Rental Board are not administrative act and its execution is secured by the local government of Riga (Article 49.1 of the Law on Residential Tenancy)[484]. Thus,

[483] 29.03.2011. *Rīgas pilsētas Īres valdes nolikums*. <https://www.riga.lv/LV/Channels/Riga_Municipality/Executive_authority/ipasa_statusa_institucijas/Ires_valde/default.htm>, 13 January 2014.

if the matter concerns administrative violations in area of tenancy, then another body of the municipality Riga – the executive commission is entitled to punish a person, issuing an administrative act (Article 210 of the Latvian Administrative Violations Code). The decisions regarding rental contracts are not administrative acts as well, they are recommendations, therefore may not be enforced by means of the Civil Procedure Law. If one of the persons or both of them do not fulfil a decision of the Rental Board, then they can bring a court action or turn to the Consumer Right Protection Centre, if the dispute belongs to consumer law.

The Mediation Law (Latvian: *Mediācijas likums*) is being prepared by the Parliament at the moment[485]. The Mediation Law introduces alternative dispute resolution means – mediation. Mediation will be only possible in disputes concerning civil matters, including, but not limited to rental contracts, thus, social renting is excluded from the scope of alternative dispute resolution. Mediation will be extrajudicial and judicial. The main disadvantage of the extrajudicial mediation will be that an agreement reached will be only enforceable, if the settlement has been drawn up as a notary act. The Mediation Law will transfer the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters seeks to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings into Latvian Law.

Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?

In general procedures work normal, although unreasonable delays happen.

The average length of civil proceedings of the first instance is 9,8 months[486], the court of appeal - 10,5 months [487], the court of cassation - 11,5 months [488]. There are no special rules for tenancy disputes, although some cases have priority, for example, labour or insolvency cases under the Civil Procedure Law. Please find below two tables about length of court proceedings by the ordinary courts which hear a case on its merits. The tables show the percentage of cases calculated from the total case number which have been adjudicated in less than 3 months, 3-6 months etc. Court proceedings usually last from three months up to one year in the tenancy disputes.

Courts of the first instance[489]

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[484] Grudulis M., Eltermane K. *Dzīvojamo telpu īre: likums un tiesu prakse*. Rīga: Baltijas juridiskā kompānija. Baltijas juridiskā kompānija, 2008, 46.lpp.

[485] 26.11.2012. *Mediācijas likumprojekts Nr.90/TA-1734* (2012). <http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/C8D1DCB808392E71C2257AC2004FE48F?OpenDocument , http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/BA8514F17F01759DC2257C16003613C9?OpenDocument >, 13 January 2014.

[486] 08.11.2011. Informatīvais ziņojums. *„Par tiesu praksi attiecībā uz termiņiem, kādos tiek izskatītas lietas*". <*polsis.mk.gov.lv/LoadAtt/file17904.doc*>, 13 January 2014.*; Statistikas pārskats par civillietu izskatīšanas ilgumu pirmajā instancē 2012.gadā*. <http://www.ta.gov.lv/lv/statistika_un_petijumi__29/statistikas_dati_58/civillietas_246>, 13 January 2014.

[487] *Civillietu kategorijas*. Lietu *izskatīšanas ilgums mēnešos.* <http://www.ta.gov.lv/UserFiles/cl_apel_ilg_2011.pdf>, 13 January 2014.

[488] *Lietu skaits, izskatīšanas ilgums un tiesnešu slodze Senātā un tiesu palātās 2012. gadā*. <http://www.at.gov.lv/lv/info/statistics/2012/>, 13 January 2014.

[489] *TIS statistika*. *Visas pirmās instances tiesas un zemesgrāmatu nodaļas kopā*. Pārskata periods: no 01.01.2013 līdz 31.12.2013 <https://tis.ta.gov.lv/tisreal?Form=TIS_STAT_O&SessionId=26CDA396982C5846474F826947AEE70F>, 13 January 2014.

Case	Length of proceedings							
	up to 3 months	3 -6 months	6-12 months	12 -18 months	18 - 24 months	24 - 30 months	30 - 36 months	36 months and more
A	1	2	3	4	5	6	7	8
Eviction without conclusion of a new rental contract	11 %	25 %	30 %	12 %	7 %	4 %	3 %	8 %
Eviction with conclusion of a new rental contract	9 %	9 %	9 %	45 %	18 %	0 %	9 %	0 %
Eviction because of debts	11 %	29 %	32 %	11 %	9 %	5 %	1 %	3 %
Other tenancy law disputes	23 %	21 %	20 %	15 %	9 %	7 %	3 %	3 %

Courts of appeal[490]

Case	Length of proceedings							
	up to 3 months	3 -6 months	6-12 months	12 -18 months	18 - 24 months	24 - 30 months	30 - 36 months	36 months and more
A	1	2	3	4	5	6	7	8
Eviction without conclusion of a new rental contract	23 %	32 %	23 %	14 %	6 %	0 %	2 %	2%
Eviction with conclusion of a new rental contract	0 %	0%	100 %	0 %	0 %	0 %	0 %	0 %

[490] *TIS statistika. Apgabaltiesu apelācijas instances***.** Pārskata periods: no 01.01.2013 līdz 31.12.2013. <https://tis.ta.gov.lv/tisreal?Form=TIS_STAT_O&SessionId=26CDA396982C5846474F826947AEE70F>, 13 January 2014.

Eviction because of debts	28 %	20 %	26 %	13 %	7 %	4 %	0 %	2 %
Other tenancy law disputes	46 %	23 %	21 %	5 %	1 %	0 %	0 %	4 %

The ordinary courts of the Riga city are overloaded in comparison with courts of other regions, for instance, there is one court case in the Riga District court which have been adjudicated for six years[491].

Lately the new law amendments[492] have been passed in order to improve procedural law in general, here will be named selected innovations: the first-level courts and the regional courts may ask the chief of the court of the next level to transfer a court dispute to the ordinary courts of another region mainly to speed up court proceedings initiated in the courts of Riga; the introduction of the presumption that court documents are received if they have been sent to the declared place of residence to avoid postponements due to unjustified refusal to accept the court documents by the addressee; the introduction of the requirement to submit all essential evidence to the court of the first instance (with some exceptions) to avoid unjustified prolongation of appeal court proceedings; the improvement of the rules regarding sick leave, from now on the court hearing can be postponed if a person has a bed regime or cannot appear at the court because of other justified reasons connected with health[493]; obligatory participation of attorneys at law (advocates) in court hearings of the Supreme Court[494]. Moreover, from 2014 the courts of Riga have received 10 additional positions for new judges[495] to speed up court proceedings[496].

- ***Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?***

There are some problems of fairness and justice which are not essential.

[491] *LR tiesībsargs. Gari tiesāšanās termiņi joprojām ir Latvijas tiesu ikdiena* <http://www.tiesibsargs.lv/files/content/vestules/Saeimai_par_tiesibam_uz_taisnigu_tiesu_29.07.2013.pdf>, 13 January 2014.;*Tiesībsargs lūdz rīkoties, lai tiesās nodrošinātu lietu savlaicīgu izskatīšanu*. <http://www.juristavards.lv/doc.php?id=258740>,13 January 2014.

[492] 29.11.2012. *Civilprocesa likuma grozījumi.*< http://likumi.lv/doc.php?id=253447 >, 13 January 2014.; 19.12.2013. *Civilprocesa likuma grozījumi.*< http://likumi.lv/doc.php?id=263490 >, 13 January 2014.

[493] 29.04.2012. *Sērga tiesās: bieži atliek tiesas sēdes slimības dēļ*. <http://www.tvnet.lv/zinas/latvija/419987-serga_tiesas_biezi_atliek_tiesas_sedes_slimibas_del>, 13 January 2014.

[494] 09.01.2014. *Role of an advocate in civil proceedings in cassation instance is fortified*. <http://at.gov.lv/en/news/about-notable-events/2014/january/6235-role-of-an-advocate-in-civil-proceedings-in-cassation-instance-is-fortified/>, 13 January 2014.; Gobzems A. *„Advokātu process – par un pret*", <http://www.juristavards.lv/doc.php?id=257819>, 13 January 2014. ; Rimša A., Onževs M. *Cik pamatota ir monopoltiesību piešķiršana advokātiem*. <http://www.juristavards.lv/doc.php?id=256050>, 13 January 2014.; Litviņova I. *Par advokātu obligāto iesaisti civilprocesā*. <http://www.juristavards.lv/doc.php?id=256051 >, 13 January 2014.

[495] 20.12.2013. *Palielina tiesnešu skaitu Rīgas tiesu apgabala tiesās un Jelgavas tiesā*. <http://at.gov.lv/lv/pazinojumi-presei/par-tieslietu-padomi/2013/decembris/6198-palielina-tiesnesu-skaitu-rigas-tiesu-apgabala-tiesas-un-jelgavas-tiesa/ >, 13 January 2014.

[496] Bičkovičs A. *POZITĪVI MAINĪJUSIES IZPRATNE PAR TIESLIETU PADOMES VIETU UN LOMU. Augstākās tiesas un Tieslietu padomes priekšsēdētāja Ivara Bičkoviča ziņojums Latvijas Tiesnešu konferencē 2012.gada 2. novembrī.* <http://webcache.googleusercontent.com/search?q=cache:iX0d1Q-0O4wJ:at.gov.lv/files/uploads/files/docs/uzrunas/bickovics-gala.doc+&cd=3&hl=ru&ct=clnk&gl=lv&client=firefox-a >, 13 January 2014.

The tenant may address an attorney at law (Latvian: *zvērināts advokāts*) or a lawyer (Latvian: *jurists*) and ask for legal assistance. Legal fees are determined in accordance with a mutual agreement, the only restriction is *pactum de quota litis* agreements.

For free legal aid the Legal Aid Administration (Latvian: *Juridiskās palīdzības administrācija*) has to be contacted.

Article 3 of the State Ensured Legal Aid Law (Latvian: *Valsts nodrošinātās juridiskās palīdzības likums*[497]) stipulates that a natural person can receive legal aid, if

1) Income of the person amounts to EUR 130 - EUR 360 per month; or

2) This person found itself suddenly in a situation and material condition which prevents it from ensuring the protection of its rights (due to a natural disaster or *force majeure* or other circumstances beyond its control), or is on full support of the State or a local government.

The Legal Aid Administration is the institution subordinated to the Ministry of Justice of the Republic of Latvia and it performs the following tasks:

- Examines persons' applications for request of the state guaranteed legal aid and decide on granting or refusal to grant the state guaranteed legal aid;
- Examines the state compensation claims and decides on payments of the state compensation or refusal to pay it;
- Pays state compensations to the victims;
- Maintains the register of the state guaranteed legal aid and the state compensation[498] etc.

According to the statistics provided by the Legal Aid Administration for 2013, in approx. 2/3 of all cases the Legal Aid Administration takes a positive decision for a person applying for such help[499]:

	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	Total
Number of Applications	233	213	253	214	169	182	187	194	197	227	205	2274
Decisions on Ensuring Legal Aid	168	150	212	183	140	142	147	154	136	161	168	1761
Refusals of Ensuring Legal Aid	24	12	35	27	22	14	19	20	18	21	23	235
Adjournment of Ensuring Legal Aid	92	46	51	67	44	53	59	53	41	37	28	571

[497] 17.03.2005. Valsts nodrošinātās juridiskās palīdzības likums. <http://likumi.lv/doc.php?id=104831>, 13 January 2014.
[498] *Information on the authority - Legal Aid Administration*. <http://www.jpa.gov.lv>, 13 January 2014.
[499] *Statistics of the Legal Aid Administration*. <http://www.jpa.gov.lv/statistika-eng>, 13 January 2014.

To other possibilities to get free legal aid belong the following establishments which are indicated on the webpage of the Ministry of the Welfare:

The office of the ombudsman

The ombudsman deals with cases where tenancy law dispute is connected with possible infringement of human rights (Article 11 of the Ombudsman Law).

The Centre for Legal Aid of the Law Faculty of the University of Latvia

Under supervision and guidance of lectors and attorneys at law students help with labour, tenancy and child maintenance law issues.

The Centre for Legal Aid of the private university "Turiba"

Students in cooperation with lectors and practitioners provide consultations on different issues[500].

As indicated before, the Rental Council of the Riga city is also entitled to provide consultations on different issues of residential rental contracts.

One of the problems is that all institutions or centres providing free legal aid are situated in Riga, although the Legal Aid Administration provides free consultations per phone when persons shall not pay neither for a consultation, nor for phone services.

The court fees depend on an amount of the claim, it has be paid before the submission of the claim statement to a court, unless the person has the right to ask for release from this payment (Article 43 of the Civil Procedure Law)[501]. Upon the request of a party, the court considering the material situation of a natural person, may exempt it partly or fully from the payment of court fees, as well as to postpone or divide the payment (Article 43 Paragraph 4 of the Civil Procedure Law)[502].

The court fee for the claim with the amount

- Up to EUR 2134 is 15 % of the claimed amount, but not less than EUR 71.14,
- From EUR 2135 up to EUR 7114 — EUR 320,10 plus 4 % from the claimed amount, which exceeds EUR 2134;
- From EUR 7115 up to EUR 28 457 — EUR 519,30 plus 3,2 % from the claimed amount, which exceeds EUR 7114 etc. (Article 34 of the Civil Procedure Law).

If the claim is not monetary, for example, recognition of the existence of an unwritten rental contract, the court fee amounts to EUR 71.14 (Article 34 of the Civil Procedure Law).

The official webpage of the Latvian courts has the calculator of court fees which can be very useful for potential litigators while calculating court fees: http://www.tiesas.lv/e-pakalpojumi/nodevu_kalkulators/ (in Latvian).

If the parties are not release from the duty to pay court fees, the party in whose favour a judgment is made repays all court costs to another party. If a claim has been satisfied in part, the recovery of court costs to the plaintiff is determined proportionally to the amount the claim accepted by the court, whereas the defendant shall be reimbursed in proportion to the part of the claims dismissed. If the plaintiff waives the claim, he shall reimburse court costs incurred by the defendant, however, if a plaintiff waives a claim because the defendant has voluntarily satisfied the claim after initiation

[500] *Bezmaksas juridiskās palīdzības saņemšanas iespējas*. <http://www.lm.gov.lv/text/1259>, 13 January 2014.
[501] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā SKC-495/2007
[502] *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa)*. Sagatavojis autoru kolektīvs. Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2011, 130-139

of court proceedings, pursuant to the request of the plaintiff, the court adjudge recovery of the court costs paid by the plaintiff against the defendant (Article 41 of the Civil Procedure Law)[503].

- ***How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)***

Unfortunately the level of legal certainty is relatively low, the legal provisions of the Law on Residential Tenancy do not always conform to provisions of the Civil Law. As a result it is very difficult to determine the mutual relations and applicability of articles of the Civil Law, when the Law on Residential Tenancy does not regulate a particular issue in part. One of the problems is that the contemporary legislator does not always adapt new laws to the Civil Law, accordingly diverse terminology or sometimes contradictory approaches are found in different tenancy laws.

There is almost no actual legal literature on tenancy law, except articles on single issues, the present books concentrate on the general issues or are out of date. The latest judgments or jurisprudence of the Supreme Court, as well as court practise of the lower court instances is available in a very limited way. In addition, sometimes the Latvian judges apply law according to their subjective ideas of fairness and justice, therefore an outcome of a dispute is not certain, although there is the jurisprudence of the Supreme court in similar cases.

The problems mentioned above lead to uncertainty while the courts applying legal provisions.

- ***Are there "swindler problems" on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?***

Newspapers and Internet portals informed that there are swindler problems[504]. One of the swindlers methods is to provide "services of an estate agent", when the tenant concludes a contract and has to make an advance payment, later the potential tenant receives a list with the objects which are not rented at all or with fake telephone numbers, moreover, it appears that under the contract "the estate agent" bears no liability. Another method is to copy web pages of well-known companies – real estate agencies with several minor changes to mislead potential tenants; the aim is not to find dwellings for the potential tenant, but to receive money[505]. One more method is to offer living premises for rent which is 3-4 times lower than the average rent in the market, after the potential tenant contacts the person indicated in the advertisement, the swindler explains that he is a non-resident of Latvia, but can send a key by courier after the tenant has transferred money on a skrill (moneybookers) account. Eventually, an owner whose disposal rights of the property have been restricted by entering of the prohibition mark (Latvian: *aizlieguma zīme*) in the Land Book or representatives without right to represent can conclude a rental contract which will be invalid[506]. It is recommendable to examine, if the landlord has the right to dispose property. Knowing an address of the living dwelling, which the tenant would like to rent, the tenant may receive an extract about this particular property from the Land Book, including the information about disposal restrictions (seizures, prohibition marks because of civil proceedings etc.) and hypothecs. If the tenant does not examines these data, the contract concluded with him may be invalid, if the landlord appears to be a swindler, that is, is not an owner or his right to dispose has been restricted. Additionally, to secure self against possible swindlers, it is advisable not to make advance payments or other payments (especially in cash) without a rental contract concluded by

[503] Ibid.
[504] <http://www.apollo.lv/zinas/krapnieki-izdomajusi-jaunu-shemu-ka-uzrunat-potencialos-majoklu-irniekus/620082>, 14 March 2014.
[505] For more information, see the question about the mandatory provisions in rental contracts.
[506] <http://www.apollo.lv/zinas/krapnieki-izdomajusi-jaunu-shemu-ka-uzrunat-potencialos-majoklu-irniekus/620082>, 14 March 2014.

all parties concerned in writing or at least a note which specifies the aim of a payment and is signed by a recipient of the money.

- ***Are the areas of "non-enforcement" of tenancy law (such as legal provisions having become obsolete in practice)?***

In view of the fact that the Law on Residential Tenancy is relatively short, no areas became obsolete.

- ***What are the 10-20 most serious problems in tenancy law and its enforcement?***

  Restriction of an amount of maintenance expenses of a house or living building.

  The landlord may only ask to compensate such management expenses that have already occurred, but is not allowed to include the future, outstanding expenses and investments into rental payments.

  Responsibility for unfulfilled contractual obligations, if the tenant has concluded an agreement with the service provider

  The tenant has the right to independently conclude agreements with service providers. At the same time, if the tenant does not pay for the service, it is not clear, if and under what conditions the landlord (owner) is liable for the tenant's personal debts related to use of the landlord's dwellings.

  Compulsory rental relations

  This problem has been described in the first part of the report. Compulsory lease payments constitute an additional financial burden and many inhabitants of apartments consider these relations unfair.

  Lack of the written rental contract

  Different researches show that because of different reasons (ignorance, lack of knowledge, tax evasion, etc.) landlords and tenants do not conclude the rental agreement in writing. Even if the court recognises that so called factual unwritten rental relations exist, it does not eliminate future disputes because the Law on Residential Law is relatively short, besides it provides that many issues of rental relations shall be regulated by a mutual agreement what can result into new court disputes.

  Tax evasion and rental payments in cash

  Some landlords ask to pay rental and other payments in cash to hide their income from state authorities. If the tenant agrees, later he can face the situation that the landlord terminates the contract, if the tenant cannot prove that he has made payments for four months. The landlord can be confronted by the tenant's blackmailing to disclose all information to the State Revenue Service.

  Ordinary termination of the (open-ended) rental contract

  If the landlord may not terminate the open-ended contract when he needs the residential premises, for example, for living, it can result into and has already led to law evasion.

  Change of an owner of premises

  The fact that third persons are not always able to identify that there is a rental contract concluded in relation to immovable property, can cause the misuse of the legal provision –

Article 8 of the Law on Residential Tenancy according to which the rental contracts entered into by the previous owner is binding to the new owner, if a residential house or apartment has been alienated (with some execeptions).

Registration of the rental contract

Different solutions, where rental contracts could be registered, have been discussed for many years. However, it seems that the legislator is not interested in solving this problem.

Contradictory and discrepant rules of the Civil Law and Law on Residential Tenancy

Under Article 1 of the Law on Residential Tenancy the Civil Law and other legal enactments are applicable to the legal relations of rent in so far as the Law on Residential Tenancy does not regulate such relations. Nevertheless, court practise limits application of different legal provision of the Civil Law without well-grounded reasoning, it causes uncertainty because the parties cannot prepare their agreement so that it complies with law. The matter concerns the issue which are not established by the Law on Residential Tenancy in an explicit way.

Eviction proceedings

If the landlord wishes to evict the tenant due to justified reasons, but the tenant objects, the landlord must initiate court proceedings. If the tenant is in bad faith, he can appeal a court judgement on eviction and afterwards to submit the cassation claim in order to prolong his stay in the living dwellings. Even the judgement entered into force, when a court bailiff comes to start compulsory eviction, the latter can discover that there is another person claiming to be a new tenant, as a result, the landlord must re-start court proceedings despite the fact that another tenant has never had any legal ground to occupy the property in question.

What kind of tenancy-related issues are currently debated in public and/or in politics?

The most debated issue is the new draft law prepared by the Ministry of Economics at the end of 2013[507] . The draft consists of 35 articles, as to the contents, please find below the selected rules of the new tenancy law:

Article 6 of the draft law states that the rental contract can be only time–limited, at the same time parties are entitled to prolong the contract by a mutual agreement after the time period expired. Article 8 and 16 stipulate that all rental contracts shall be registered in the Land Book, as well as in a new special register of a local government; the Land Book registration shall ensure that the rental contract concluded by the previous owner is binding for a new acquirer of the property (Article 26 of the new tenancy law). Only a registered spouse and underage child who are considered to be the tenant's family members may move in without the consent of the landlord (Article 10). The section about sub-lease (subletting) is completely disappeared without any reasoning, as well as the rules which the present Law on Residential Tenancy contains regarding the temporary absence of the tenant and/or his family members. Article 28-29 of the new project law determines that the tenant may be evicted on basis of a court judgment or termination notice of the landlord (without judgment). The notice will be sufficient in the following cases: a contract is registered in the Land Book and is expired; a contract is registered in the Land Book and provides the unilateral right to terminate the contract; change of an owner. Eviction without judgment will be also possible where the tenant occupies premises without any contract. In the cases which have not been mentioned before the landlord will be obliged to initiate court proceedings to evict the tenant.

[507] 19.12.2013. *Ekonomikas Ministrija. Likumprojekts "Dzīvojamo telpu īres likums"*. <http://mk.gov.lv/lv/mk/tap/?pid=40309801>,13 January 2014.

Some authors are of opinion that the existing law is out of the date, stressing the following positive developments of the new draft: the introduction of the register for rental contracts; the simplified procedure of eviction of persons unlawfully residing in the dwellings[508]. Others disagree, for example, the chief of the Rental Board of the city Riga points out that the idea of the register for rental contracts has not been properly worked out in the draft law because the duty to register the rental contract will be imposed on the landlord, nonetheless the draft law determinates no legal sanctions for not doing so. Furthermore, the project law does not accurately distinguishes the cases when eviction may be performed on basis of a court judgement and when – without it[509]. In general, the society considers that the Ministry of Economics offers to abolish the protection of the tenant[510]. In consequence, the minister of the Ministry of Economics requested subordinates to provide explanations about the necessity of the new tenancy law, substantiation of the proposed legal rules, the information about tenants, in particular tenants of denationalised (restituted) residential houses who may be concerned by the new law, as well as other information[511].

[508] Lapsa J. Dzīvojamo telpu īres tiesiskās attiecības noteikti gaida pārmaiņas. *Jurista Vārds*, 18.02.2014., Nr. 7 (809); Matule S. Ažiotāža ap dzīvojamo telpu īres likumprojektu. *Jurista Vārds*, 18.02.2014., Nr. 7 (809), 14-17
[509] Abagjana N. Izmaiņas nav lietderīgas un nekalpos izvirzītajam mērķim. Jurista Vārds, 18.02.2014., Nr. 7 (809), 17-18;
[510] Matule S. Ažiotāža ap dzīvojamo telpu īres likumprojektu. *Jurista Vārds*, 18.02.2014., Nr. 7 (809), 14-17; *Jauns īres likums: atveriet, policija!* <http://www.apollo.lv/zinas/jauns-ires-likums-atveriet-policija/634178>, 14 March 2014.
[511] 05.02.2014. *Ekonomikas ministrs uzdevis sniegt skaidrojumu par Dzīvojamo telpu īres likuma likumprojektu*. <http://em.gov.lv/em/2nd/?lang=lv&id=33820&cat=621>, 14 March 2014.

Part 3: Analysing the effects of EU law and policies on national tenancy policies and law

After the conclusion of the Europe Agreement between the EU and Latvia (Association Agreement), the approximation of Latvia's laws started (Article 69 of the Association Agreement). Article 70 Association Agreement stipulates that the approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxation, intellectual property, financial services, rules on competition, protection of health and life of humans, animals and plants, protection of workers including health and safety at work, consumer protection, indirect taxation, technical rules and standards, nuclear law and regulation, transport, telecommunications, environment, public procurement, statistics, product liability, labour law and entrepreneurial law; within these areas rapid progress in the approximation of laws should in particular be made in the fields of the internal market, competition, protection of workers, environmental protection and consumer protection[512].

After the Association Agreement entered into force, but before Latvia's accession to the European Union on May 1, 2004 opinions have been expressed that Articles 69 and 70 of Association Agreement does not only impose the duty to harmonize Latvian laws, but their additional aim is to adopt of the Western European legal doctrine and values in Latvia[513].

"*Moreover, upon ratification of the Treaty on Accession of Latvia to the European Union, the European Union law has become integral part of the Latvian legal system. Therefore, legal acts of the European Union and interpretation provided by case-law of the European Court of Justice should be taken into account when applying national law.*"[514]

a) EU policies and legislation affecting national housing policies

When defining and implementing its policies and activities, the EU shall take into account the requirements associated with ensuring an adequate level of social protection and combating social exclusion (..) The purport and the most important goal of efforts by the Member States is "continuous improvement of the living and working conditions of their people". Decision-making authorities should be without prejudice to the application of horizontal social clause either in the terms of scope or the choice of methods (..) on the contrary, it should be applied in the widest sense and in all the EU policy areas (..). The horizontal social clause should be reflected in the legal instruments ensuring attainment of the objectives of the new treaties both in the European Union and the Member States."[515]

In Latvia, there is an evident trend that social rights and freedoms are being increasingly reduced, more and more explicit public segregation is perceptible. Under the conditions of economic crisis, there is a growing trend to adopt strict "economic management" measures of a purely financial nature, by defining a strict budgetary discipline, but at the same time disregarding the social

[512] EUROPE AGREEMENT establishing an association between the European Communities and their Member States, of the one part,and the Republic of Latvia, of the other part.
<http://www.mfa.gov.lv/data/file/e/01_Eiropas_Ligums_txt_en.pdf>, 14 March 2014.
[513] Satversmes tiesas tiesnešu Aivara Endziņa, Jura Jelāgina un Anitas Ušackasatsevišķās domas lietā nr.2000 – 03 – 01"Par Saeimas vēlēšanu likuma 5. panta 5. un 6.punkta un Pilsētas domes un pagasta padomes vēlēšanu likuma 9.panta 5. un 6.punkta atbilstību Latvijas Republikas Satversmes 89. un 101.pantam, Eiropas Cilvēka tiesību un pamatbrīvību aizsardzības konvencijas 14.pantam un Starptautiskā pakta par pilsoņu un politiskajām tiesībām 25.pantam". <www.satv.tiesa.gov.lv>, 2 September 2013.
[514] Judgement of the Constitutional Court of the Republic of Latvia of 17 January 2008, Case No. 2007-11-03. <www.satv.tiesa.gov.lv>, 2 September 2013
[515] *The annual report on the year 2012 of the Ombudsman of the Republic of Latvia*, 88. <http://www.tiesibsargs.lv>, 14 March 2014.

dimension[516]. However, the impact of economic crisis on the population welfare during the period from 2008 to 2010, the reduction of poverty and social exclusion, as well as the promotion of social security and welfare is one of the priorities of the Latvian government[517].

b) EU policies and legislation affecting national tenancy laws

- ***consumer law and policy, as well as anti-discrimination legislation***

Latvian consumer law has been considerably influenced by EU law, as well as the Latvian State policy is closely related to EU policy in the field. Latvia's accession to the European Union on May 1, 2004 affected legislation and politics in following areas: consumer rights protection, market surveillance, product and service safety, etc.[518]

The Consumer Rights Protection Law was passed on March 18, 1999 and goes back to the Association Agreement since the Civil Law of 1937, i.e., its fourth Book - Law of Obligations - does not contain legal rules about the consumer protection or the standard business terms.

Article 91 of the Constitution contains the general prohibition of discrimination, according to which human rights shall be realised without discrimination. The Constitution sets the standard of application of laws, including the Law on Residential Tenancy that should be applied without any discrimination[519]. Still in contrast to public laws, Latvian private laws do not contain the general discrimination prohibition; the Latvian legislator mainly concentrates on the following four areas:

- Employment and professional training;
- Social Security;
- Education;
- Provision of services and selling of goods[520].

Regarding the last position of the list, in 2008 the amendments to the Consumer Rights Protection Law were adopted necessary to transfer two directives of the EU into national law:

- The Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- The Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

Subsequently, Article 3.1 of the Consumer Rights Protection Law was passed. This article forbids discrimination based on sex, race, ethnic belonging or disability of the consumer, when offering goods or a service, selling goods or providing a service. To stress, the Consumer Rights Protection Law is applicable in rental relations, if the landlord is an entrepreneur (a service provider or a trader, or a manufacturer).

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[516] *The annual report on the year 2012 of the Ombudsman of the Republic of Latvia*, 83. <http://www.tiesibsargs.lv>, 14 March 2014.
[517] Ibid.
[518] *The Consumer Rights Protection Centre. History*. < http://www.ptac.gov.lv/page/251 >, 2 September 2013.
[519] Levits, E. *Par līdztiesību likuma un tiesas priekšā, un diskriminācijas aizliegumu. Par Satversmes 91.pantu*. <http://www.politika.lv/temas/cilvektiesibas/5061;/>, 2 September 2013.; Balodis, R. (ed.) *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Rīga: Latvijas Vēstnesis, 2011, 89
[520] Jomas, uz kurām attiecas diskriminācijas aizliegums. <http://cilvektiesibas.org.lv/lv/database/jomas-uz-kuram-attiecas-diskriminacijas-aizliegums/>, 2 September 2013.; See also the

- ***competition and state aid law***

Latvia has aligned its competition law with the principles of the EU competition law. The Latvian Law on Competition of October 4, 2001 (Latvian: *Konkurences likums*) contains provisions on agreements among undertakings which restrict competition (Article 11 of the Law on Competition), on abuse of dominant position (Article 13 of the Law on Competition) and merger control (Article 15 of the Law on Competition) which in their wording, scope and contents correspond to the respective provisions of the EU primary and secondary law. When applying provisions of the Latvian Law on Competition, the Latvian Competition Council (Latvian: *Konkurences padome*) (*www.kp.gov.lv)* and the courts regularly refer to the practice of the European Commission and the case law of the Court of Justice of the European Union (previously - the European Court of Justice) in applying and interpreting the respective norms of the Treaty on the Functioning of the European Union (previously – the Treaty establishing the European Community)[521]. They justify this approach by emphasising the equivalency of the respective provisions of the Latvian and EU law and the need to ensure coherence of the Latvian competition law and its enforcement with that of the European Union[522].

State aid is any financial assistance provided or mediated from the State, municipal or European Union resources to an undertaking which causes or may cause restrictions of competition. For a measure facilitating a commercial activity to be classified as a State aid it has to correspond to the following four criteria simultaneously:

- Aid provided from public resources (state, municipal or European Union resources).To determine whether a particular measure is the State aid or not attention should be mainly paid to the sources of financing, rather than the institution providing the financing. If financial resources of the European Union, state or a municipality should be involved in a way of budget appropriation or decrease in budget revenue, for example, tax relieves;
- An undertaking receives an economic advantage that it would not receive in the normal course of business. For example, an undertaking buys publicly owned land at less than the market price or sells land to the state at higher than the market price, an undertaking pays less taxes comparing to general requirements etc.;
- The implemented measure is selective by its nature. An aid is considered “selective” if it can be received by certain undertakings, undertakings operating in separate economic sectors or territories etc. Selective State aid measures should be differentiated from “general measures”, namely measures which apply automatically to all undertakings in a Member State irrespective of the sector, location, size etc.
- State aid effects competition and trade in Latvia’s domestic market, as well as trade between EU Member States. Aid measures are considered as aid in terms of Article 107 of the Treaty of the Functioning of the European Union only if they refer to a sector in which there is trade between Member States. Namely, pursuant to the established case law of the Court of Justice and First Instance Courts, the criterion of trade being affected is met if the recipient undertaking carries out an economic activity involving trade between Member States. It should be noted that small amount of aid (so called “de minimis” aid) does not have considerable effect on competition between Member States[523].

- **tax law**

[521] 21.10.2011. Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departamenta spriedums lietā Nr. A43005009

[522] 01.06.2006. Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departamenta spriedums lietā nr. SKA-149; 09.01.2008. Konkurences padomes lēmums Nr. E02-3; 08.06.2012. Konkurences padomes lēmums Nr. E02-45

[523] Notion of the State aid. < http://www.fm.gov.lv/en/s/state_aid/notion_of_state_aid/>, 14 March 2014.

Taxes and fees system in Latvia consists of:

- State taxes, object and rate of which shall be set by the Saeima;
- State fees which are applicable according to Law "On Taxes and Fees" (LV) specific other laws and regulations of the Cabinet of Ministers;
- Local municipality fees which are applicable according to Law "On Taxes and Fees" and binding regulations issued by the council of local municipality;
- Directly applicable taxes and other obligatory payments set in the European Union regulatory enactments[524].

The current Strategy of Tax Policy was developed considering the following principles:

- Necessity to guarantee tax policy stability and predictability;
- Necessity to improve the competiveness of the National economy of Latvia;
- Introduction of euro in 2014[525].

EU tax law influences national tenancy law indirectly.

- **energy saving rules**

The main approaches to the energy policy are directed at increasing security of energy supply of the country by encouraging diversification of supplies of the primary energy resources and by creating conditions for increasing subsistence of electric energy generation, as well as by preventing isolation of the regional electric energy market through new interconnections. Creation of competition conditions for promoting the use of renewable and local energy resources and environmental protection also plays a substantial role. On June 27, 2006, the Cabinet of Ministers approved the Energy Development Guidelines for 2007-2016. The Guidelines contain the government policy, development objectives, and priorities in the sphere of energy both within the medium-term and long-term period. At the moment, taking into consideration that economic development of Latvia is experiencing significant changes and deviations from forecasts used in developing the Energy Development Guidelines for 2007-2016, as well as to ensure security of energy supply of Latvia and efficient long-term operation of the energy market, broader use of smart technologies, acceptable price for energy users in future, and to foster investment-favourable environment for entrepreneurship in the energy sector, as well as to utilize efficiently the European Union financial aid for innovative solutions in the energy sector, a long-term planning document of energy sector development – Energy Strategy 2030 is being developed in addition to the medium-term planning document of energy sector development – Energy Development Guidelines for 2007-2016. The Energy Development Guidelines are going to be defined based on the aims and tasks set in the Strategy 2030[526].

As regards tenancy, the Construction Law (Latvian: *Būvniecības likums*) amendments of 30 July 2013[527] and the Law on the Energy Performance of Buildings (Latvian: *Ēku energoefektivitātes likums*)[528] implement the Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings. These laws shall help to create a building that would provide for present and future generations of high-quality living environment, as well as provide the facilities necessary for the functioning of energy availability, not only in the construction of new buildings, but also by promoting the use and adaptation of buildings to ensure environmental compliance.

[524] *Tax System in Latvia*.< http://www.fm.gov.lv/en/s/taxes/>, 14 March 2014.
[525] *Strategy of Tax Policy*. <http://www.fm.gov.lv/en/s/taxes/strategy_of_tax_policy_/>,
[526] Ministry of Economics. Energy Policy. <http://www.em.gov.lv/em/2nd/?cat=30169>, 14 March 2014
[527] **30.06.2013.** Grozījumi Būvniecības likumā http://likumi.lv/doc.php?id=257901
[528] : 06.12.2012. Ēku energoefektivitātes likums. http://likumi.lv/doc.php?id=253635

- **private international law including international procedural law**

The Introductory part (Latvian: *Ievads*) contains general provisions and provisions of international private law. In addition, the Consumer Rights Protection Law, the Labour Law, the Law on Insurance contract etc. contain international private law provisions, partly these rules have been replaced by EU law. In 2006, the Cabinet of Ministers issued the decree No. 859 according to which the rules of private international law shall be modernized because some rules are out of date, while others are found in different laws containing substantial rules as well. It was concluded that the rules on international private law have to be adjusted with each other and summarized in one law, where it is reasonable[529]. However, in 2010 the decree No. 859 was revoked[530], one of the reasons was that many issues are determined by EU law, thus, for example, the information provided on the website of the Ministry of Justice mainly focuses on the EU law in the area[531]. Naturally, private international law questions relating to tenancy law are not investigated by the legal doctrine because the doctrine started developing recently. Practically, the ordinary courts have difficulties to apply private international law because of the lack of experience and vague regulation of the Latvian Civil Procedure Law[532].

The same can be said about international procedural law, that is, some areas were significantly influenced by EU law, for example, the legal norms on jurisdiction in cross-border cases[533]. If respective EU legal provisions, in particular of the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters**,** are not applicable, Article 31.1 of the Civil Procedure Law, passed November 29, 2012, states that the general rules of the Civil Procedure Law shall apply, i.e., the plaintiff has to bring a court action according to the domicile of the defendant (Article 26 of the Civil Procedure Law) or according to the last known residence of the tenant (Article 27 of the Civil Procedure Law) etc.

- ***constitutional law affecting the EU and European Convention of Human Rights***

The Constitution of Latvia (*Satversme*) does not contain the right to housing, notwithstanding this, Latvian tenancy law is connected with the principle of a socially responsible state (welfare state) following from Article 1 of the Constitution, the right to inviolability of the home determined in Article 98 and the right to property as stated in Article 105. Latvia not only observes binding legal provisions of EU law and European Convention of Human Rights (the convention entered in force on June 27, 1997[534]), but additionally uses international instruments, including EU the ECHR, for interpretation the fundamental rights enshrined in *Satversme*[535]. In this respect, Article 89 of the

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[529] 03.11.2006. Ministru kabineta rīkojums Nr.859. *Koncepcija par starptautisko privāttiesību nacionālo regulējumu.* <http://likumi.lv/doc.php?id=147281>, 2 September 2013.

[530] 14.04.2010. Ministru kabineta rīkojums Nr. 209. *Par aktualitāti zaudējušajiem attīstības plānošanas dokumentiem un Ministru kabineta rīkojumiem.* <http://likumi.lv/doc.php?id=208173>, 2 September 2013.

[531] Nacionālais regulējums. <http://www.tm.gov.lv/lv/cits/nacionalais-regulejums->, 2 September 2013.

[532] Kolomijceva J. *Ārvalsts likuma piemērošana civilprocesā*. <www.juristavards.lv>, 2 September 2013.; Kolomijceva J. *Ārvalsts likuma piemērošana.* Aktuālas tiesību realizācijas problēmas. Latvijas Universitātes 69.konferences rakstu krājums. LU Akadēmiskais apgāds, 2011

[533] *Civilprocesa komentāri. Trešais papildinātais izdevums*. Autoru kolektīvs. Prof. K. Torgāna vispārīgā zinātniskā redakcijā. Rīgā: Tiesu namu aģentūra, 2006, 83

[534] *Eiropas Cilvēka tiesību un pamatbrīvību aizsardzības konvencija*. <http://likumi.lv/doc.php?id=43859>, 2 September 2013.

[535] Judgement of the Constitutional Court of the Republic of Latvia of 17 January 2002, Case No. 2001-08-01. <www.satv.tiesa.gov.lv>, 2 September 2013; Judgement of the Constitutional Court of the Republic of Latvia of 17 October 2002, Case No. 2002-04-03. <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 6 November 2003, Case No. 2003-10-01. <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 5 November 2004, Case No. 2004-04-01. <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 13 May 2005, Case No. 2004-18-0106. <www.satv.tiesa.gov.lv>, 2 September 2013.; Judgement of the Constitutional Court of the Republic of Latvia of 17 January 2008, Case No. 2007-11-03. <www.satv.tiesa.gov.lv>, 2 September 2013.

Constitution of Latvia states that the Latvian State recognizes and protects fundamental human rights in accordance with the Constitution, laws and international agreements binding for Latvia, i.e., while interpreting *Satversme* and international liabilities of Latvia, one should look for the interpretation, which ensures harmony, but not confronting[536]. However, Article 89 of the Constitution does not impose the duty to guarantee implementation of such international norms, which are not binding for Latvia, if in particular they are not included in *Satversme*[537].

- ***harmonization and unification of general contract law (sources such as the Common European Sales Law, the Common Frame of Reference or the Principles of European Contract Law)***

Currently, development of private law in Latvia is mainly proceeding through implementation of EU directives. However, this does not mean that the Civil Law of 1937 and other private laws have been forgotten. DCFR, PECL and similar documents are of a considerable value and are used to amend, supplement and improve private laws, for example, the Civil Law[538] since the recent researches on a possible modernization of the Civil Law[539] showed that many legal provisions of the Civil Law do not correspond to today's requirements from the standpoint of their wording, as well as precision of a proposed solution[540]. In relation to the draft tenancy law these documents have not been taken into consideration[541].

Summary

Table: Transposition of European Directives Affecting Residential Tenancies in Latvia

SUBJECT	EUROPEAN DIRECTIVES	LATVIAN TRANSPOSITION
PUBLIC PROCUREMENT		

[536] Judgement of the Constitutional Court of the Republic of Latvia of 13 May 2005, Case No. 2004-18-0106. <www.satv.tiesa.gov.lv>, 2 September 2013.
[537] Judgement of the Constitutional Court of the Republic of Latvia of 22 October 2002, Case No. 2002-04-03 . <www.satv.tiesa.gov.lv>, 2 September 2013.
[538] Balodis K. *The Latvian Law of Obligations: The Current Situation and Perspectives.* <http://www.juridicainternational.eu/public/pdf/ji_2013_1_69.pdf>, 13 March 2014.; Jarkina V. *Vai sabiedrība ir gatava grozījumiem Civillikumā*. <www.juristavards.lv>, 2 September 2013.; 6.11.2007. Kārkliņš, J. *Latvijas līgumtiesību modernizācijas galvenie virzieni.*105-108, <https://luis.lu.lv/pls/pub/wct.doktd?l=1>, 2 September 2013. ; Kārkliņš, J. *Vienotu Eiropas līgumtiesību veidošanās un ietekme uz Latvijas tiesībām*. 6.12.2011. <www.juristavards.lv>, 2 September 2013.; Torgāns K. *Civiltiesību, komerctiesību un civilprocesa aktualitātes. Raksti 1999.-2008. K. Torgans Current Topics on Civil, Commercial Law and Civil Procedure. Selected articles 1999-2008*. Rīga: Tiesu namu aģentūra, 2011, 270-288
[539] .Kalniņš E. Pētījums *par Civillikuma lietu tiesību daļas pirmās, otrās un trešās daļas modernizācijas nepieciešamību.* <www.at.gov.lv> ,2 September 2013.; Rozenfelds, J. *Pētījums par Civillikuma Lietu tiesību daļas (ceturtās, piektās, sestās un septītās nodaļas) modernizācijas nepieciešamību*. 6. <http://at.gov.lv/lv/resursi/petijumi/>, 2 September 2013. ; Torgāns K. Zvērinātu advokātu birojs „Lejiņš, Torgāns un Partneri". *Zinātnisks pētījums „Civillikuma Saistību tiesību daļas modernizācijas nepieciešamība un aktuālo privāttiesiskā regulējuma tendenču (UNIDROIT, ELTP) iespējamā ietekme uz Civillikuma Saistību tiesību daļas modernizāciju". Rīga, 2007. g. aprīlis – decembris*, 31 < www.tm.gov.lv>, 2 September 2013
[540] Torgāns K. *Civiltiesību, komerctiesību un civilprocesa aktualitātes. Raksti 1999.-2008. Torgans K. Current Topics on Civil, Commercial Law and Civil Procedure. Selected articles 1999-2008*. Rīga: Tiesu namu aģentūra, 2011, 270-288
[541] For more information, see the question about tenancy-related issues currently debated in public and in politics

Public procurement	Directive 2004/18/EC of 31.05. 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 L 134/114) (Previous legislation repealed).	Law on the Procurement in the of Defence and Security of 13.10.2011 (Latvian: *Aizsardzības un drošības jomas iepirkumu likums*); Law on the Procurement of Public Service Providers of 25.08.2010. (Latvian: *Sabiedrisko pakalpojumu sniedzēju iepirkumu likums*); Law on Public–Private Partnership of 18.06.2009 (Latvian: *Publiskās un privātās partnerības likums*); Public Procurement Law of 6.04.2006 (Latvian: *Publisko iepirkumu likums*); Numerous Cabinet Regulations.
CONSTRUCTION		
Construction materials: free movement and certification	Now replaced by Regulation (EU) 305/2011 (OJEU 4.4.2011/ L88/5) (Replaces Directive 89/106/EEC, OJEC 11.02.1989 Nº L40/12)	Directly applicable as from 1.07.2013 (Replaces Cabinet Regulation No. 128 of 4.04.2000; Cabinet Regulation No.181 of 30.04.2001, Cabinet Regulation No. 457 of 3.07.2007; Cabinet Regulation No. 416 of 22.04.2004, Cabinet Regulation No. 180 of 07.03.2006 and Cabinet Regulation No. 701 of 27.08.2013 are still in force).
Hazardous substances	Directive 2011/65/EU of 8.06.2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEU 01.07.2011 Nº 174/88). (Replaces Directive 2002/95/EC from 2.01.2013, OJEU 13.2.2003 Nº 139/19).	Chemical Substances and Chemical Products Law of 1.04.1998 (Latvian: *Ķīmisko vielu likums*); Cabinet Regulation No. 84 of 5.02.2013.
Lifts	Directive 2006/42/EC on Machinery of 17.05.2006 (OJEC 9.6.2006 L157/24) (replacing Directive 95/16/EC on lifts, OJEC 07.09.1995 Nº L 213/1).	Cabinet Regulation No. 195 of 25.03.2008; Cabinet Regulation No. 157 25.04.2000.
ENERGY EFFICIENCY - BUILDINGS		
Energy saving targets/ large buildings	Directive 2012/27/EU of 25.10.2012 on energy efficiency (OJEU 14.11.2012 Nº L315/1). This amended Directives 2009/125/EC and 2010/30/EU and repealed Directives 2004/8/EC and 2006/32/EC.	Cabinet Regulation No. 50 21.01.2014. (is in force from 1.04.2014)
Energy efficiency of new and existing buildings	Directive 2010/31/EU of 19.05.2010 on the energy performance of buildings (OJEU 18.06.2010 Nº L153/13). (The previous directive was 2002/91/EC).	Law on the Energy Performance of Buildings of 6.12.2012 (Latvian: *Ēku energoefektivitātes likums*); Cabinet Regulation No. 348 of 25.06.2013; Cabinet Regulation No. 382 of 9.07.2013; Cabinet Regulation No. 383 of 9.07.2013.

Renewable energy use in buildings	Directive 2009/28/EC of 23.04.2009 on the promotion of the use of energy from renewable sources (OJEU 5.6.2009 Nº L140/16) Replaces Directives 2001/77/EC and 2003/30/EC	Electricity Market Law of 5.05.2005 (Latvian: *Elektroenerģijas tirgus likums*); Energy Law of 3.09.1998 (Latvian: *Enerģētikas likums*); Numerous Cabinett Regulations.
UTILITIES		
Electricity	Directive 2009/72/EC of 13.07.2009 concerning common rules for the internal market in electricity. (OJEU 14.8.2009 Nº L211/55)	Electricity Market Law of 5.05.2005 (Latvian: *Elektroenerģijas tirgus* likums); Law on Regulators of Public Utilities of 19.10.2000 (Latvian: *Likums "Par sabiedrisko pakalpojumu regulatoriem");* Cabinet Regulation No. 1/28 of 23.11.2011; Cabinet Regulation No. 1/29 of 23.11.2011; Cabinet Regulation No. 914 of 29.11.2011; Cabinet Regulation No. 1/2 of 8.02.2012 etc.
Natural gas	Directive 2009/73/EC of 13.07.2009 concerning common rules for the internal market in natural gas (OJEU 14.8.2009 Nº L 211/94).	Energy Law of 3.09.1998 (Latvian: *Enerģētikas likums*); Law on Regulators of Public Utilities of 19.10.2000 (Latvian: *Likums "Par sabiedrisko pakalpojumu regulatoriem").*
Procurement of communication services	Directive 2009/136/EC on consumer protection in the procurement of communication services (OJEU 18.12.2009 Nº L337/11). Amending Directives 2002/22/EC and 2002/58/EC and Regulation (EC) Nº 2006/2004	Electronic Communications Law of 28.10.2004 (Latvian: *Elektronisko sakaru likums*); Law on Electronical Mass Media of 12.07.2010 (Latvian: *Elektronisko plašsaziņas līdzekļu likums*); Law on Information Society Services of 4.11.2004 (Latvian: *Informācijas sabiedrības pakalpojumu likums);* Law on Regulators of Public Utilities of 19.10.2000 (Latvian: *Likums "Par sabiedrisko pakalpojumu regulatoriem");* Cabinet Regulation No. 1/31 of 4.12.2013 etc.
ENERGY EFFICIENCY – FITTINGS IN BUILDINGS		
Lighting	Delegated Regulation (EU) Nº 874/2012 of 12.07.2012 supplementing Directive 2010/30/EU with regard to energy labelling of electrical lamps and luminaires (OJEU 26.9.2012 Nº L 258/1).	Cabinet Regulation No. 480 of 21.06.2011; Cabinet Regulation No. 803 of 19.10.2011; Cabinet Regulation No. 50 of 21.01.2014 (is in force from 1.04.2014).

Heating and hot water	Directive 82/885/EEC of 10.12.1982 on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 Nº L 378/19). Amending Directive 78/170/EEC	Cabinet Regulation No. 416 of 22.04.2004.
Boilers	Directive 92/42/EEC of 21.05.1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, Nº L 167). (Amended by Directive 93/68/EEC of 22.07.1993, BOE 27.03.1995 Nº 73).	Cabinet Regulation No. 416 of 22.04.2004; Cabinet Regulation No. 692 of 09.10.2007.
ENERGY EFFICIENCY – APPLIANCES		
Energy labelling	Directive 2010/30/EU of 19.05.2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 Nº L 153/1)	Advertising Law of 20.12.1999 (Latvian: *Reklāmas likums*); Consumer Right Protection Law of 18.03.1999 (Latvian: *Patērētāju tiesību aizsardzības likums*"); Law on Conformity Assessment of 08.08.1996 (Latvian: *Likums "Par atbilstības novērtēšanu*"); Cabinet Regulation No. 480 of 21.06.2011; Cabinet Regulation No. 50 of 21.01.2014. (is in force from 1.04.2014).
Air conditioners	Delegated Regulation (EU) Nº 626/2011 (OJEU 6.7.2011 Nº L178/1).	As above
Dishwashers	Commission Directive 97/17/EC (OJEC 07.05.1997 Nº L118/1) Delegated Regulation (EU) Nº 1059/2010 (OJEU 30.11.2010 Nº L314/1).	Cabinet Regulation No. 212 of 7.06.2011.
Electric ovens	Commission Directive 2002/40/EC (OJEC 15.05.2012 Nº L 128/45).	Cabinet Regulation No. 119 of 2.03.2004.
Lamps	Commission Directive 98/11/EC (OJEC 10.3.1998 Nº L 71/1).	No information.
Refrigerators and freezers	Commission Directive 94/2/EC (OJEC 17.2.1994, No L45/1). Delegated Regulation (EU) Nº 1060/2010 (OJEU 30.11.2010 Nº L314).	Cabinet Regulation No. 428 of 7.06.2011.
Televisions	Delegated Regulation (EU) Nº 1062/2010 (OJEU 30.11.2010 Nº L314/64).	As above
Tumble driers	Delegated Regulation (EU) Nº 392/2012 (OJEU 9.5.2012 Nº L123/1).	As above
Washing machines	Commission Directive 95/12/EEC (OJEC 21.06.1955 No. L136/1). Delegated Regulation (EU) Nº 1061/2010 (OJEU 30.10.2010 Nº L314/47).	Cabinet Regulation No. 803 of 19.10.2011.
CONSUMER PROTECTION		

Information and consumer rights.	Directive 2011/83/EU on consumer rights (OJEU 22.11.2011 Nº L 304/64). Repeals Directives 85/577/EEC (contracting away from business premises) and 97/7/EC (distance contracting).	Advertising Law of 20.12.1999 (Latvian: *Reklāmas likums*); Consumer Right Protection Law of 18.03.1999 (Latvian: *Patērētāju tiesību aizsardzības likums*"); Law on Credit Institutions of 5.10.1995 (Latvian: *Kredītiestāžu likums*); Law on Post of 4.06.2009 (Latvian: *Pasta likums*); Unfair Commercial Practice Prohibition Law of 22.11.2007 (Latvian: *Negodīgas komercprakses aizlieguma likums*); Cabinet Regulation No. 207 of 28.05.2002; Cabinet Regulation No. 320 of 25.04.2006.
Unfair commercial practices	Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and (OJEU 01.6.2005 Nº L 149/22) Amending Directives 84/450/EEC, 97/7/EC, 98/27/EC and 2002/65/EC and Regulation (EC) Nº 2006/2004.	Advertising Law of 20.12.1999 (Latvian: *Reklāmas likums*); Unfair Commercial Practice Prohibition Law of 22.11.2007 (Latvian: *Negodīgas komercprakses aizlieguma likums*).
Unfair terms	Council Directive 93/13/EEC of 5.04.1993 on unfair terms in consumer contracts (OJEC 21.04.1993 Nº L 095). Amended by the Consumer Rights Directive 2011/83/EU (above)	Civil Law of 28.01.1937 (Latvian: *Civillikums*); Consumer Right Protection Law of 18.03.1999 (Latvian: *Patērētāju tiesību aizsardzības likums*").
HOUSING LAW		
Choice of law	Regulation (EC) Nº 593/2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 Nº L 177/6).	As above
Jurisdiction	Regulation (EC) Nº 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC 16.01.2001 Nº L 12/1).	As above
DISCRIMINATION		

Sex	Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 Nº L 373/37).	Associations and Foundations Law of 30.10.2003 (Latvian: *Biedrību un nodibinājumu likums*); Consumer Right Protection Law of 18.03.1999 (Latvian: *Patērētāju tiesību aizsardzības likums*"); Labour Law of 20.06.2001 (Latvian: *Darba likums*); Law on Insurance Companies and Supervision Thereof of 10.06.1998 (Latvian: *Apdrošināšanas sabiedrību un to uzraudzības likums*); Law on the Discrimination Prohibition of Natural Self Employed Persons of 29.11.2012 (Latvian: *Fizisko personu — saimnieciskās darbības veicēju — diskriminācijas aizlieguma likums);* Law on Social Security of 7.09.1995 (Latvian: Likums "Par sociālo drošību"); Ombudsman Law of 6.04.2006 (Latvian: *Tiesībsarga likums*").

Racial or ethnic origin	Council Directive 2000/43/EC of 29.06.2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 Nº L 180/22).	Administrative Violations Code of 7.12.1984 (Latvian: *Latvijas Administratīvo pārkāpumu kodekss*); Associations and Foundations Law of 30.10.2003 (Latvian: *Biedrību un nodibinājumu likums*); Consumer Right Protection Law of 18.03.1999 (Latvian: *Patērētāju tiesību aizsardzības likums*"); Criminal Law of 17.06.1998 (Latvian: *Krimināllikums*); Education Law of 29.10.1998 (Latvian: *Izglītības likums*); Labour Law of 20.06.2001 (Latvian: *Darba likums*); Law on Insurance Companies and Supervision Thereof of 10.06.1998 (Latvian: *Apdrošināšanas sabiedrību un to uzraudzības likums*); Law on the Discrimination Prohibition of Natural Self Employed Persons of 29.11.2012 (Latvian: *Fizisko personu — saimnieciskās darbības veicēju — diskriminācijas aizlieguma likums);* Law on Social Security of 7.09.1995 (Latvian: Likums "*Par sociālo drošību*"); Law on Support of Unemployed Persons and Persons Seeking Employment of 9.05.2002 (Latvian: *Bezdarbnieku un darba meklētāju atbalsta likums*); Ombudsman Law of 6.04.2006 (Latvian: *Tiesībsarga likums*"); Patient Law of 15.11.2012 (Latvian: *Pacientu likums);* State Civil Service Law of 7.09.2000 (Latvian: *Valsts civildienesta likums*).
EEA NATIONALS		
Free movement for workers	Regulation (EEC) Nº 1612/68 on free movement for workers within the Community (OJEC 17.04.1964 Nº L 257/2).	As above
Equality in granting housing, aids, subsidies, premiums or tax advantages to workers moving within the EU.	Recommendation 65/379/EEC by the Commission to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 Nº L 137/27).	No information.

Free movement for European citizens and their families	Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJEU 30.04.2004 Nº L 158/77) amending Regulation (EEC) Nº 1612/68 (free movement of workers) and repealing numerous earlier Directives	Immigration Law of 31.10.2002 (Latvian: *Imigrācijas likums*); Medical Treatment Law of 12.06.1997 (Latvian: *Ārstniecības likums*); Law On Institutions of Higher Education of 2.11.1995 (Latvian*: Augstskolu likums);* Social Services and Social Assistance Law of 31.10.2002 (Latvian: *Sociālo pakalpojumu un sociālās palīdzības likums*); Law on Support of Unemployed Persons and Persons Seeking Employment of 9.05.2002 (Latvian: *Bezdarbnieku un darba meklētāju atbalsta likums*); Cabinet Regulation No. 675 of 30.08.2011 etc.
Family reunification	Directive 2003/86/EC on the right to family reunification (OJEU 03.10.2003, Nº L 251/12).	Asylum Law of 15.06.2009 (Latvian: *Patvēruma likums);* Immigration Law of 31.10.2002 (Latvian: *Imigrācijas likums*); Cabinet Regulation No. 74 of 26.01.2010.
Third country nationals	Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (OJEU 23.01.2004 Nº L 16/44).	Asylum Law of 15.06.2009 (Latvian: *Patvēruma likums);* Immigration Law of 31.10.2002 (Latvian: *Imigrācijas likums*); Law On Institutions of Higher Education of 2.11.1995 (Latvian*: Augstskolu likums);* Law on the Status of a Long-term Resident of the European Community in the Republic of Latvia of 22.06.2006 (Latvian: *Likums "Par Eiropas Savienības pastāvīgā iedzīvotāja statusu Latvijas Republikā"*); Law on Support of Unemployed Persons and Persons Seeking Employment of 9.05.2002 (Latvian: *Bezdarbnieku un darba meklētāju atbalsta likums*); Social Services and Social Assistance Law of 31.10.2002 (Latvian: *Sociālo pakalpojumu un sociālās palīdzības likums*).

Third country nationals	Directive 2009/50/EC of 25.05.2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJEU 18.06.2009 Nº L 155/17).	Law on the Status of a Long-term Resident of the European Community in the Republic of Latvia of 22.06.2006 (Latvian: *Likums "Par Eiropas Savienības pastāvīgā iedzīvotāja statusu Latvijas Republikā"*); Immigration Law of 31.10.2002 (Latvian: *Imigrācijas likums*); Law on Support of Unemployed Persons and Persons Seeking Employment of 9.05.2002 (Latvian: *Bezdarbnieku un darba meklētāju atbalsta likums*); Cabinet Regulation No. 550 of 21.06.2010. Cabinet Regulation No. 55 of 28.01.2014.

Annex - Cases

Case No.1 – "Anti-discrimination issues"
Young parents with a small child were looking for a new place to rent. When the landlord have asked whether the young couple have children and received the positive answer, he refused to continue negotiations adding that children can destroy his apartment for this reason the young couple should look for another place.

Solution

[1.1] The civil legal remedy could be claiming losses and moral compensation in accordance with the general provisions of the Civil Law about torts (Article 1635, 1640-1646, 1770-1792 of the Civil Law). Thus Article 1635 of the Civil Law states that every wrongful act *per se,* as a result of which harm has been caused (also moral injury), gives the person who suffered the harm therefrom the right to claim satisfaction from the infringer, insofar as he or she may be held at fault for such act. The treatment of the potential landlord is contrary to Article 91 of the Constitution (*Satversme*) (the prohibition of discrimination) in connection with the third sentence of Article 92 of *Satversme ("Everyone, where his or her rights are violated without basis, has a right to commensurate compensation*.").

The Constitutional Court indicated that, if the ordinary court establish the violation of the rights of a person provided in the Constitution, the lack of a law, which could determine the obligation to compensate losses, may not restrict or endanger the constitutional right[542]. However, in court practise and the doctrine it is disputable whether the constitutional rights have effect in relations of individuals (horizontal effect)[543].

If we analyze the Consumer Rights Protection Law which contains the prohibition of discrimination based on sex, race, ethnic belonging or disability, the party suffered may only claim losses and moral compensation, if the contract has not been concluded, i.e., the defendant not be forced to enter the contract by legal means if he does not wishes to(Article 3.1 of the Consumer Law). However, applying the rule of Article 3.1 of the Consumer Law by analogy, we might conclude that, if the potential landlord discriminated the young couple because of their small child, they are still to claim losses and moral compensation (Article 3.1. Paragraph 11 of the Consumer Law.

[1.2] Latvian private law does not contain rules on ancillary duties of both parties in the phase of contract preparation and negotiation in this particular case.

[1.3] Considering the legitimate interest of the landlord and valid law provisions, the landlord is entitled to ask about persons who will move in together with a potential tenant and their relation to the tenant, solvency of the tenant and his family member (-s) (for instance, a spouse, parents, children etc.) who will also occupy a residential space, the residence permit, if the tenant is a foreigner. Although there is no explicit permission to lie, but practically the tenant may lie because no rights of the landlord may arise out of asking the prohibited questions. If the young couple informed the landlord after they concluded the contract that their small child will live together with them (Article 9 of the Law on Residential Tenancy), then most likely could request the landlord to fulfill the rental contract and would be more protected than in the phase of contract preparation and negotiation.

[542] Judgement of the Constitutional Court of the Republic of Latvia of 5 December 2001, Case No. 2001-07-0103. <www.satv.tiesa.gov.lv>, 2 September 2013.
[543]. Mits. M *Latvijas Republikas Augstākā tiesas Pētījums. Eiropas Cilvēktiesību tiesas judikatūra Latvijas Republikas Augstākās tiesas nolēmumos.* < www.at.gov.lv>, 2 September 2013.; Neimanis J. *Tiesību tālākveidošana*. Rīga: Latvijas Vēstnesis, 2006, 84 - 88

[2] Furthermore, the young couple is entitled to submit an application to the Latvian ombudsman and ask to determine, if discrimination prohibited under Article 91 of the Constitution took place. Article 91 of the Constitution contains the general prohibition of discrimination, according to which human rights shall be realised without discrimination. The Constitution sets the standard of application of laws, including the Law on Residential Tenancy that should be applied without any discrimination. In this case the ombudsman may try to settle the dispute connected with the constitutional right issues in an amicable way; give a recommendation to private persons which, however, is not binding for them; bring a court action (Article 11, 12, 13 Section 10 of Law on the Ombudsman).

[3] The civil liability does not exclude the administrative and criminal liability for violation of the prohibition of discrimination. The Administrative Violation Code states that in these cases a fine from EUR 140 up to EUR 700, when harm is not essential, can be imposed. It is a criminal offence, if violating of the prohibition caused substantial harm (five minimal salary wages (in 2014 the minimal salary wage amounts to EUR 320) plus essential injury of other legal interests)) or was performed using a computer; or it was connected with violence, fraud or threat; a group of persons (at least two natural persons), a state or municipality's authority or a director of a legal person violated the discrimination prohibition. The person shall be punished the deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine [544].

Case No.2 "Factual rental relations'

Andris moved from Madona to Riga. Andris agreed with Janis that he will live in the apartment of Janis and pay for it LVL 200 (ca. EUR 290) each month. However, Janis had no time to draw up the rental contract and promised Andris to do it as soon as possible. Andris punctually transferred the agreed sum to the bank account of Andris every month, but after five months received a claim statement and discovered that Janis brought an action against him on eviction because of unlawful, i.e., without any rental contract occupation of dwelling. In addition, Janis pointed out in the claim statement since the Law on Residential Tenancy stipulates that the contract has to be concluded in writing (Article 5), the lack of it proves that Andris has no rights to use the apartment of Janis.

Solution

[1.1] Article 5 Paragraph 1 of the Law on Residential Tenancy stipulates that the landlord and tenant shall enter into a rental contract in writing. The Law on Residential Tenancy is *lex specialis* in relation to the Civil Law, but if a specific question is not regulated in the Law on Residential Tenancy, the Civil Law provisions are applicable. Article 1484 of the Civil Law states, if law - Article 5 Paragraph 1 of the Law on Residential Tenancy - requests the written form, then the transaction does not enter into force until the relevant contract has been drawn up and signed by all parties concerned. Under the Latvian law the rental contract must be concluded in writing, if an oral contract has been concluded, the tenant may face any arbitrariness, including, but not limited to, unlawful eviction. Nevertheless, under Article 1488 Paragraph 1 of the Civil Law a transaction which both parties have performed have the same consequences as if it were in written form. It follows from the jurisprudence of the Supreme Court that if the both parties have fulfilled their obligations for a longer period of time: the landlord has granted use of the living dwelling, as well as collected payments, but the tenant has paid at least in part for rent, then such rent contract is in force, even though it does not comply with the form requirements. This, however, means that the tenant has the duty to prove the respective positive actions of the landlord which indicates that he collected payments for rent. In the case described above, it would be more or less easy to prove the specific fact, especially if the tenant has indicated explicitly that a payment is supposed to be

[544] Krastiņš U., Liholaja V., Niedre A. *Krimināltiesības :Sevišķā daļa*. Rīga : Tiesu namu aģentūra, 2009, 232

rent. At the same time, if the tenant has paid in cash, practically it would be difficult to prove factual rental relations since generally the Latvian court prefer written evidence over witnesses.

[1.2] The solution, adopted by the Latvian courts, has been criticized. An opinion has been expressed that this approach contradicts Article 1484 of the Civil Law, as a result the Latvian courts ignore this Article in order to protect tenants. For this reason the best solution, according to the opinion mentioned, would be to amend the Civil Law or/and the Law on Residential Tenancy[545]. This criticism is unjustified in part. Article 1488 of the Civil Law provides an exception from the rule of Article 5 Paragraph 6 of the Law on Residential Tenancy. Article 1488 Paragraph 1 of the Civil Law stipulates that performance may not be reclaimed, if despite the lack of the written deed both parties have performed the transaction in question; at the same time the article does not say anything about the validity of the contract, i.e., does not provide that a contract becomes valid, therefore the recognition of the validity by the ordinary courts is doubtful considering the wording of Article 1488 of the Civil Law. The Supreme Court has also pointed out that it shall be determined in these cases whether the landlord transferred the right to use a residential space to the tenant for a charge. For instance, when the tenant can prove that the landlord has issued invoices for rent payment and services, then factual rental relations shall be recognized.

[2] Andris could also submitted an application to the State Police because the action of Janis may be theoretically qualified as arbitrariness under Article 279 of the Criminal Law[546]. If Janis is found guilty within the criminal proceeding, Andris can claim the compensation.

According to Paragraph 1 of the Article 279, a person who commits arbitrary acts, circumventing procedures prescribed by law (in broad sense), if the lawfulness of such acts are disputed by the State or a local municipality, public institution or a private person, if such acts caused substantial harm (five minimal salary wages (in 2014 the minimal salary wage amounts to EUR 320) plus essential injury of other legal interests) shall be punished with temporary deprivation of liberty or community service, or a fine. According to Paragraph 2 of the Article, a person who commits the same acts in a group of persons pursuant to prior arrangement, the person shall be punished the deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine. Finally Paragraph 3 of the Article states that a person is criminally punishable, if it commits arbitrary acts connected with violence or threat of violence or essential loss (fifty minimal salary wages (in 2014 the minimal salary wage amounts to EUR 320).

Unfortunately, criminal proceedings are not always effective since there are cases when the State Police does not initiate criminal proceedings, pointing out that it is a civil dispute, i.e., has to be resolved by the ordinary court within the course of civil proceedings[547], although the criminal proceeding is an independent proceeding based on other principles in comparison with the civil court proceedings, besides criminal and civil liability is not one and the same.

Case No.3 "Disruption of water supply due to debts"

Aldis, being a tenant of Daina, has not paid for water supply for two months, therefore Daina decided to cut off water until Aldis pays off his debts.

Solution

[545] Torgāns K. *Zinātnisks pētījums. Civillikuma Saistību tiesību daļas modernizācijas nepieciešamība un aktuālo privāttiesiskā regulējuma tendenču (UNIDROIT, ELTP) iespējamā ietekme uz Civillikuma Saistību tiesību daļas modernizāciju*. Rīga, 2007. g. aprīlis – decembris. <www.at.gov.lv> ,2 September 2013.
[546] Krastiņš U., Liholaja V., Niedre A. *Krimināltiesības :Sevišķā daļa*. Rīga : Tiesu namu aģentūra, 2009, 693
[547] *Tiesībsarga 2012.gada ziņojums*.
<http://www.tiesibsargs.lv/files/content/Tiesibsarga%20gada%20zinojums_2012.%20gads.pdf >, 2 September 2013.

[1.1] If a private - natural or legal – person would like to rent out the living dwelling, the latter should have at least heating, cold water, sewerage (Article 11.3 of Law on Residential Tenancy) and be suitable for living purposes in the course of the whole year. Parties can agree on the auxiliary services which are hot water, gas, electricity, garage, parking place, etc. Thus cold water is one of the basic services, hot water – the auxiliary services.

The landlord who is a service provider in this case at the same time is not entitled to interrupt the provision of the basic service - *cold* water if the tenant has unpaid debts for this service. If Daina was willing to recover debts she should require Aldis to pay debts and if he does not agree to submit a claim statement in the court on the debt recovery.

According to Article 28.2 of the Law on Residential Tenancy the landlord may terminate the rental contract, evicting the tenant, if the tenant does not pay for the basic services for at least four months, although he used or could use cold water.

Thus Daina was not entitled to cut off cold water supply

[1.2] Hot water belongs to the auxiliary services, the landlord or a service provider may not provide the auxiliary services, if:

1) The tenant does not agree with the payment specified for the relevant auxiliary service;

2) The tenant has not paid for the relevant auxiliary service for three months, unless the rental contract specifies another time period and if the tenant has been warned in writing that the auxiliary service shall not be provided henceforth at least two weeks in advance;

3) Other cases have been provided for by law or in the rental contract.

Unfortunately, we cannot evaluated if one of the condition mentioned is relevant, for this reason the question about hot water may remain open.

[2] Moreover, the Cabinet Regulation No. 298 of July 3, 2001 is binding for Daina since she became a service provider. This Regulation states that if the consumer acted unlawfully or has overdue payments which should be paid according to a contract, supply of water and sewerage services may be interrupted after a service provider has warned the consumer 30 days in advance and then once more 3 days before cutting off of the services. Nevertheless, in case of disruption of supply the service provider must provide 25 l of water per person within the time period of 24 hours. Moreover, disruption of water supply and sewerage services in full is possible, only if it does not disturb other consumers. Within 3 days after the payment of debts, a service provider renews the provision of water and sewerage[548].

[3] Furthermore, upon the application Administrative commission of the local government, on the basis of provisions of Article 210 the Latvian Administrative Violations Code is entitled to initiate an administrative violation procedure and to apply the administrative penalty prescribed by Section 150.3 of the Code (Failure to Provide the Basic Services to Tenants).

In addition, Article 21 of the Law on Maintenance of Residential Houses prescribes for the local municipality the right or the duty to appoint an assigned manager, in cases where the residential house owner does not perform the mandatory administrative activities (to which in accordance with Paragraph 6 of the Law on Maintenance of Residential Houses belongs the provision of heating, cold water and sewerage, as well as removal of household waste) and it has resulted/may result in threats to human life, health, safety, property or the environment, and/or

[548] 03.07.2001. Ministru kabineta noteikumi Nr. 298 „Kārtība, kādā pārtraucama sabiedrisko pakalpojumu sniegšana", <http://likumi.lv/doc.php?id=26043>, 2 September 2013.

the residential house management is performed in such a way that causes/may cause threats. The Law on Maintenance of Residential Houses regardless of the possession of a residential house provides the right to turn to the local municipality for any person whose rights have been infringed in relation to this Law or other regulatory enactments related to the fulfilment of maintenance of residential houses in such a way that endangers or might endanger their life, health, safety, property or the environment[549].

[4] Besides Aldis may turn to the Rental Board (*Īres valde*), if Aldis lives in Riga. The Rental Board is not a court though. The competence of the Rental Boards is set by local municipalities. The Rental Board is entitled to provide consultations and recommendations, become acquainted with necessary documents. Its functions are to prevent administrative violation matters, to consult landlords and tenants, to act as mediators.

[5] Eventually, Aldis could submit and application to the State Police, if the actions of Daina correspond to a crime or several crimes.

Case No.4 "Garage as a basic utility"

Madara has found an apartment which she decided to rent, her potential landlord Lelde informed Madara that she rents out this apartment together with the garage situated in the same apartment house. The garage is supposed to be a basic service and Madara shall pay for it even if she does not have a car.

Solution

[1] Article 11.3 of the Law on Residential Tenancy provides which services are considered to be basic and auxiliary:

1) The basic services are heating, cold water, sewerage and removal of municipal waste; and

2) The auxiliary services are hot water, gas, electricity, garage, parking place, etc.

[2] To mention, if Lelde wishes to rent out the apartment with the garage, Madara has no legal means at her disposal to make Lelde to rent the apartment without the garage. Although the separation of the two kinds of the services: the basic and auxiliary utilities - aims to reduce financial burden of the tenant because the landlord is not entitled to expand the list of the basic services, practically the aim is not always reached. However, the general principle of civil law is that parties can freely decide if they are wiling to conclude a contract, they are also free to choose with whom to conclude the contract and what conditions to include into this contract[550].

Accordingly Madara can try to negotiate with Lelde the conditions of the rent contract. The garage is not the basic services, but the decision to include or not the respective condition about the garage depends on a mutual agreement of all the parties concerned (Article 1472 of the Civil Law).

Case No. 5 "Pre-term termination notice of the tenant"

Arturs as a tenant concluded the rental contract with Janis for five years. After expiration of two years he decided to move to Ireland where he has found a good job. Arturs informed the landlord

[549] *The annual report on the year 2012 of the Ombudsman of the Republic of Latvia*, 102-103. <http://www.tiesibsargs.lv>, 14 March 2014.
[550] Kaspars Balodis *Ievads civiltiesībās* (Rīga: Zvaigzne ABC, 2007), p. 176-180

about his intent, but Janis answered that Arturs cannot terminate the contract before the five years term has expired, but if he does, then Arturs shall cover losses amounting to rental payments and payments for utilities for three remained years.

Solution

[1] The Latvian tenancy law does not distinguish between termination of time-limited or open-ended rental contracts by the tenant, i.e., the Latvian Law on Residential Tenancy sets the general regulation for all cases. The right of the tenant to terminate the rental contract follows from Article 27 of the Law on Residential Tenancy, considering the wording of the legal provision, this right is not unrestricted. The obligation to pay outstanding rental and other payments or compensate losses, if the tenant terminates the contract before the end of the agreed term, if a time-limited contract has been concluded, is not established.

Considering the newest jurisprudence of the Supreme court in the similar questions, the tenant is obliged to make rental payments and payments for utilities only for the time period when the rental contract was valid[551], unless the contract does not contain further contractual terms on the legal consequences of the termination. If the rental contract does not comprise the obligation to cover losses in cases of pre-term termination, the answer if losses may be claimed is disputable.

[2] Regarding damage or loss compensation the following two points of view have been expressed. One author thinks that the tenant is obliged to pay rent payments for actual use of the rent dwelling[552]. Another author indicates that the tenant has to pay rent payments for the whole period of time on which parties have agreed[553]. Nevertheless, the second opinion does not specify if it relates to residential tenancy which is regulated by the Law on Residential Tenancy.

Most likely, Arturs may terminate the contract after one-month indicated in his written notice sent to Janis has expired and does not have to compensate any losses.

Case No. 6 "New owner and his sudden need to use the residential space"

Maris who was renting his apartment to Dace faced financial problems and decided to sell his it. Maris showed the apartment to Kaspars, when Dace was at work. Eventually Kaspars bought the apartment from Maris. After conclusion of the purchase agreement Maris informed that Dace is a tenant and has right to use this apartment for at least two years from now on. Kaspars was not satisfied and asked the court bailiff to assist him in obtaining of possession of the apartment purchased since he may not live in it because Dace resides in the apartment. One day when Dace came home the lock has been changed, but Kaspars explained that he is a new owner of the apartment and will live in the apartment because has no other place to stay.

Solution

[1] Situations when a person acquires a living house or an apartment for its own residential use, but after acquisition of the property rights discovers that there are tenants using this living dwelling happen quite often.

[551] Compare: 30.01.2013. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-644/2013. <www.at.gov.lv>, 14 March 2014.
[552] R. Krauze *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, p. 127-128
[553] *Latvijas Republikas Civillikuma komentāri. Saistību tiesības*. Autoru kolektīvs. Torgāns K. (zin. red.) Rīga 2000, 484

[2] The Law on Residential Tenancy contains a number of provisions aiming to protect tenants, one of this provisions is Article 8 of the Law on Residential Tenancy stipulating that rental contracts entered by a former owner (landlord) are binding for new acquirers and cannot be amended in a unilateral way by the new owner.

The lack of publicity of such rental contracts[554], since there is no duty to register them in a public register, results into the problem that a new owner is not always aware of the rental contracts concluded by the previous owner. If the living dwelling rented has been alienated, a new owner becomes a successor of the former owner (landlord) to the rental contract, the succession takes place because of Article 8 of the Law on Residential Tenancy.

[3] Similar to the notice of the tenant, Latvian tenancy law neither formally distinguishes among ordinary and extra-ordinary termination nor provides specific rules for open-ended and time-limited contracts in case of the landlord's notice. Besides, Article 28 of the Law on Residential Tenancy stipulates that the rental contract may be terminated at the initiative of the landlord only in the cases set by the Law on Residential Tenancy.

If we regard the termination grounds of the Law on Residential Tenancy in essence, we, however, can divide them into the two groups:

3) The ordinary termination:

- Time expiration (Article 6);

4) The extraordinary termination:

- Breach of the rental contract
    - Damage to or demolition of dwellings transferred into the use of the tenant (termination notice without prior warning) (Article 28.1);
    - Damage to or demolition of dwellings in the common use, which the tenant uses together with other inhabitants or users of the building, for example, stairs (termination notice without prior warning) (Article 28.1);
    - Disturbance of other persons living with the tenant in one common apartment or one house impossible for other persons (termination notice without prior warning) (Article 28.1);
    - Not agreed use of dwellings (termination notice one month in advance) (Article 28.1);
    - Unlawful use of dwelling by third persons allowed by the tenant without consent of the landlord (termination notice one month in advance) (Article 28.6);
    - Overdue rental payment or/and basic services for more than three months (termination notice one month in advance) (Article 28.2);
- Necessity of capital repairs of dwellings (termination notice three months in advance) (Article 28.4)
- Demolition of a house, apartment, etc. (termination notice three months in advance) (Article 28.3)

[554] *See, for example*, Lapsa, J. „Dzīvojamas telpas īres līguma attiecības īpašnieka maiņas gadījumā". *Jurista Vārds* Nr. 1 (454), <www.juristavards.lv>, 2 September 2013.

- Necessity of personal use of dwellings for living purposes by the landlord who regained his immovable property in the course of denationalisation (termination notice six months in advance) (Article 28.4).

Thus Kaspars may not terminate the contract with Dace who is in good faith, but is entitled to use different legal remedies arising from the purchase contract which shall be, however, directed against Maris.

[4] Nevertheless, Kaspars has chosen another, unfortunately, unlawful way. To get rid of the tenant, Kaspars asked the court bailiff to assist so that Kaspars could take over possession of the residential space. To point out, Maris as an owner remained a legal possessor (Article 875, 909 of the Civil Law), afterwards Maris has transferred legal possession to Kaspars, but Dace became a holder of his property. For this reason it was not necessary to assist to obtain possession because the lawful tenancy contract does not hinder a person to gain possession (Article 882 of the Civil Law).

[5] The actions of the court bailiff are quite similar to the eviction proceedings, but obtaining of possession is regulated by Articles 620.5 – 620.8 of the Civil Procedure Law and is directed against the former owner who, for instance, locked in the property bought by the acquirer and does not allow to enter[555]. On the other hand, if the new owner uses "help" of the court bailiff to obtain possession, evicting the tenant, he violates Article 8 of the Law on Residential Tenancy unless Article 601 of the Civil Procedure Law is relevant, as a result the tenant's contract is null. The tenant residing in the dwelling on basis of the valid residential contract is not an obstacle to enter the residential space, besides the contract of the tenant is binding for the new owner according to Article 8 of the Law on Residential Tenancy. Nevertheless, there are numerous cases when the new acquirer uses Articles 620.5 – 620.8 of the Civil Procedure Law to evict the tenant without any court judgement[556]. To mention, court bailiffs tend to approach the issue on obtaining of possession of immovable by the new owner in a formal way, to put it differently, if it is written to help to obtain possession by the court, they will do it under Articles 620.5 – 620.8 of the Civil Procedure Law not taking into consideration any additional factors[557] such as the rental contract.

[6] To sum up Dace is entitled to move back into the apartment, ask for compensation of damages and harm. Dace may submit an application to the police regarding unlawful eviction[558].

[7] Moreover, Dace could also submit an application to the police (Article 143 (Illegal entering of the residential dwelling) or 279 (arbitrariness) of the Criminal Law[559]), if the new owner tries to circumvent Article 8 and other legal rules of the Law on Residential Tenancy.

Case No. 7 "Civil partner as a party to the rental contract"

Renars and Mara decided not to register their marriage. Mara concluded the rental contract as a tenant, however, the landlord agreed that Renars moves in as well. Unfortunately Mara died after 15 years, but Renars wanted to enter the rental contract instead of his former unregistered spouse, but the landlord refused it.

Solution

[555] *Civilprocesa likuma komentāri. I daļa (1.-28.nodaļa)*. Sagatavojis autoru kolektīvs. Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2011, 897; Grūtups A., Kalniņš E. *Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums*. 2.izdevums. Rīga: Tiesu namu aģentūra, 2002, 132-133; Višņakova G., Balodis K. *Latvijas Republikas Civillikuma komentāri. Lietas. Valdījums. Tiesības uz svešu lietu*. Rīga: Mans īpašums, 1998, 38 etc.

[556] Rone, D. *Pētījums „Ieviešana valdījumā problemātikas izpēte un analīze*", Rīga, 2012, 41– 42. <www.tiesibsargs.lv>, 2 September 2013.

[557] Makurina J., Grīvnieks J. *Piespiedu izpildes līdzekļa samērīgums*. www.juristavards.lv, 14 January 2014

[558] Latvijas Republikas tiesībsarga 1.02.2013. atzinums pārbaudes lietā Nr. 2012-315-18BC

[559] For more information, see the question about the origin of national tenancy law and its legal sources

[1] Non-married couples or same sex couples are not legally recognized in Latvia, though these persons may lawfully reside together with the tenant if the landlord has consented to it (Article 9 of the Law on Residential Tenancy). A registered spouse, parents (also adoptive parents), brothers and sisters incapable of working, adult children without their own family, underage children are family members of the tenant are entitled to move in without additional conditions. Adult members of the tenant's family have the same rights and duties as the tenant does, even though only the tenant has formally entered the rental contract.

[2] At the same time, other persons like Renars do not have the rights and the obligations of the tenant as adult family members do. When the right of use of the tenant terminates, for example, because the tenant died, other persons are not entitled to ask to continue rental relations with them and shall vacate the residential space (Article 29.1 of the Law on Residential Tenancy). To compare, the family members may become a party to an existing rental contract instead of the tenant (Article 14 of the Law on Residential Tenancy).

[3] According to the newest jurisprudence of the Supreme Court, the recognition of the rights of a non-married spouse would be an unjustified interference in legislating competences[560]. For this reason criteria which are additional to those mentioned in Article 9 Paragraph 1 and 2 of the Law on Residential Tenancy, such as common household or character of relations, are legally of no importance, unless the Law on Residential Tenancy considers this person to be a family member.

Case No.8 "Payment as consent to rent increase"

Gunta rented the apartment to Dzintra. When the global financial crisis started Gunta decided to increase rental payments and orally informed Dzintra on increase. Dzintra has paid the increased payment for three months, then Dzintra discovered that since her landlord - Gunta has not informed her in accordance with law, therefore this increase is unlawful. Dzintra has informed Gunta that she will pay the former rent and asked to return overpaid rent.

Solution

[1] Article 13 of the Law on Residential Tenancy determines that the provisions of a rental contract may be amended on the basis of a written agreement between the tenant and the landlord. If an option to increase rent payment for the residential space during the operation of a rental contract is provided for in such agreement, the landlord shall notify the tenant in writing regarding such increase at least six months in advance, unless the rental agreement states otherwise. The reason and the financial justification of the rental payment increase shall be specified in the notification.

Thus rent increase may take place, if a rental contract contains the respective clause, which shall be examined in order to tell whether increase is allowed; how many times rent may be increased; after what time the next increase may follow. If the parties have not agreed on the latter issue, i.e., after what time ordinary rent increase may happen, the next increase may take place in six months after the previous increase.

[2] Gunta has not informed Dzintra about increase in the proper manner. However it is recognized in the legal theory and jurisprudence of the Supreme Court that if the tenant starts to pay an increased rent without any objections as Dzintra did, according to Article 1488 of the Civil Law that rent increase which both sides have performed shall have the same consequences as if it were in written form.

[560] 01.02.2012. Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedums lietā nr.SKC-4/2012, <www.at.tiesa.gov.lv>, 2 September 2013.

Case No.9 "Unlawful occupation of the dwelling"

Anda was visiting her brother Martins in Riga when suddenly found a job and therefore decided to stay in Riga for some time. Anda stayed together with Martins. Suddenly Laura – the landlord of Martins found out that Anda is living together with Martins. Since Laura did not know about this fact she informed Martins in writing that terminates the rental contract.

Solution

[1] As indicated before, Article 9 of the Law on Residential Tenancy stipulates that Martins has the right to lodge in his sister incapable of working without asking for Laura's permission, even though he has not done it, the rental contract cannot be terminated. Considering the facts on these case, the consent of the landlord – Laura was required because Anda is "other persons" under the Law on Residential Tenancy.

[2] If Anda resides in residential dwellings without the consent of the landlord, the landlord may terminate the rental contract, evicting her and her brother without providing them with other residential space. Article 28.6 of the Law on Residential Tenancy states that the landlord may terminate the rental contract, if the tenant has lodged other person in a residential space without the consent of the landlord. Martins shall be notified in writing at least one month in advance about termination.

[3] Since Laura has notified Martins in accordance with law, no consent to lodge in the sister of Martins has been given by Martins. After receipt of written notification of Laura, Martins and Anda can voluntary vacate the living dwelling. If Martins and Anda do not vacate the premises after expiration of one month term, Anda shall submit a claim in the ordinary court asking for eviction the state court to settle the dispute.

Case No.10 "Un-allowed construction works"

Eriks who was tenant of the single-family residential house built a sauna, fireplace room, swimming pool and garage without informing Aldis - an owner of the house. Aldis has intitated eviction court proceeding stating that Eriks caused damages because since and electricity consume has increased.

Solution

[1] Article 28.1 of the Law of Residential Law states that the landlord may terminate the rental contract, evicting if the latter damage or destroy the residential space (also furnishings), other buildings and premises that have been transferred for use to the tenant in accordance with the rental contract, or also the common premises, the communications system and installations of the residential space. The grounds provided in the Law on Residential Tenancy when the landlord may ask for eviction of tenants are exhaustive[561].

It follows from the court such construction works increase the value of the property, therefore is not damaging or destroying of the residential space, for this reason the claim of the landlord in the similar case has been rejected[562].

[561] R. Krauze *Latvijas Republikas likums par dzīvojamo telpu īri. Likums ar komentāriem*. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, p. 129, 167

[562] Latvijas Republikas Augstākās tiesas. Senāta Civillietu departaments. Tiesu prakse, piemērojot likumu "Par dzīvojamo telpu īri", 2004, www.at.gov.lv

[2] A holder can ask for reimbursement of useful expenditures only if a landlord has given his or her consent before to such expenditures. Thus Aldis may not ask to evict Eriks, at the same time Eriks may not ask to reimburse his expenses which are connected with building of the sauna, fireplace room, swimming pool and garage.

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