

AUSTRIA

Organisation: Mietervereinigung Österreichs (MVÖ), Austrian Tenants Association

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Tenure structure, figures from Housing Europe 2015

1. Owner occupied housing: 49%

2. Rental housing: 41%

(i) private rental: 41%

(ii) municipal rental housing: 20%

(iii) limited profit rental housing: 39%

3. Other: 10% (subleases, loans, etc.)

Tenancy law = Mietrechtsgesetz (MRG)

Three kinds of rent control

Three different systems of rent control are relevant for contracts to which the MRG fully applies and if the rent agreement has been concluded since 31 December 1981:

1. The adequate rent (*Angemessener Hauptmietzins*) limits free market rents depending on size, type, location, maintenance condition and furniture of a dwelling.

In general, the adequate rent is relevant in leased property in houses built after 8 May 1945; in flats above 130 m²; in tenancy contracts unlimited in time with rent agreements in written form where the transfer of the rented dwelling has taken place more than one year ago (TenLaw).

2. Category rent (*Kategoriemietzins*) limits free market rents through classification of dwellings according to their equipment level (standard). Rent agreements which were concluded between 1982 and 1994, and rent agreements which have been concluded since 1 March 1994.

For each category a maximum monthly rent is fixed per m².

3. Standard value rent (*Richtwertmietzins*): Rent agreements which have been concluded since 1 March 1994.

Initial rent – is it regulated, or not unregulated?

No rent regulation exists in the unregulated private rental market, which includes mostly new buildings, built after 1953.

Rents are regulated in the private sector for leases in old buildings, built before 1954.

How often can the landlord increase the rent, for sitting tenants?

The increase based on law is mostly relevant for the Category rent and the Standard value rent. Usually, rent increases occur every 2-3 years, linked to inflation.

There are two exceptional cases, § 45 MRG and § 18 MRG, in which the landlord can increase the rent without an agreement on the indexation.

1. The first regulates the minimum of rent the landlord should get, and the landlord can claim the increased rent, regardless of an agreement.

2. The second exception regulates the landlord's possibility to claim a higher rent, if there are necessary repair works to be done and the rent reserve of the past and the future 10 years is insufficient to cover the costs.

How and when can a sitting tenant challenge rent increases?

The Austrian authority that deals with rent challenges is called “*Schlichtungsstelle*”, a kind of arbitration board.

For a rent-controlled dwelling: If the rent is suspected to be too high, according to MRG, a tenant can challenge the rent, via arbitration or court.

For a not rent-controlled dwelling: it is possible to challenge the rent for usury and *laesio enormis*. Furthermore, it is possible to reduce the rent, if there are impairments, like construction noise, damage in the apartment etc.

In the regulated sector it is possible to challenge the initial rent within 3 years, from the date the lease was signed.

If the initial rent is part of a fixed-term lease agreement, the tenant can furthermore challenge it within 6 months from the date of the termination (this could also be after eg. 5 years).

For what reasons can a tenant challenge a new rent?

It is possible if the new rent is higher than what is allowed by the tenancy law. An increase can also be challenged within 3 years.

If the increase is not based on an agreement, it can also be challenged, but there is no time limit to do so. Also increases for dwellings without rent control can be challenged, if they are not based on an agreement in the lease.

Duration of leases

Both parties can agree on an indefinite or a fixed-term lease, in the regulated, as well as in the non-regulated sector.

The fixed-term in the regulated sector has to be at least 3 years. If the parties agree on a shorter period, it would be an unlawful fixed term and the lease would, most often, be indefinite by law.

Notice periods

Fixed term lease: The landlord is bound to the fixed term. The tenant can terminate the lease after 1 year with 3 months' notice.

Indefinite lease: If the parties have not agreed on anything else in the lease agreement, they are both bound to a notice period of 1 month.

Security deposit

3 months' rent is most common. But 6 months is possible.

The Mietervereinigung Österreichs has dealt with many cases regarding the refund of deposits. Landlords quite often try to renovate dwellings for future tenants with the money from the deposit, so they don't have to make an investment themselves.