

Housing The Lease

Law 431 of 1998, which regulates the rental housing sector, allows for only four types of leases:

1. four-year lease, renewable for four more years, with the option for the landlord and the tenant to agree to a rent according to market rates;
2. three-year lease, with a rent below the market rate, defined by applying union agreements made at the city government level;
3. short-term lease, no longer than 18 months in length, regulated by city government agreements between tenants' associations and those of the landlords;
4. lease for university students, based on standard leases determined, in those cities or towns with universities, in agreements between students' rights groups, student associations, tenants' associations and those of the landlords.

The Validity of the Written Contract

Leases are only valid if they are written.

If the owner of the apartment asks you to agree to a verbal contract to avoid paying taxes, the law allows you to apply to the court to determine and enforce a lease with a rent (normally lower than what you were paying) in accordance with area rental agreements. Once obtained the conviction, the court will oblige the landlord to reimburse you the sums of money you paid above the new rent established.

The Validity of Registration

By law, all leases must be registered. The registration tax is equal to two per cent of the annual rent, and will be split between the tenant and the landlord.

If the lease is not registered:

- a) neither you nor the landlord will be able to obtain the tax deductions or exemptions consented by the law (registration tax and income tax deductions, etc.)
- b) in eventual eviction proceedings, you can not be removed from the apartment you are occupying;
- c) the landlord may not ask you for increases in a rent based on a private unwritten agreement.

Agreements not recognized by the law

The law allows for many aspects of the rental lease to be agreed to by the two parties, but it establishes regulations the violation of which annuls the contract:

- a) for free market leases (type 1), anything less than a four-year lease is void; for leases dictated by union and city agreements (type 2), anything less than a three-year lease is void;
- b) any written or verbal agreement that obliges you to pay a higher rent than that indicated in your lease is void;
- c) any clause that determines a higher rent than that agreed to in union agreements for type 2, or for temporary leases in metropolitan areas (type 3), or leases to students (type 4), is void;
- d) any clause that leads to an increase in your economic commitment, such as maintenance or legal expenses, or a deposit for more than three months rent, is void.

In all these cases as well as in other lease violations, you have the possibility to go to court for a decision that will annul the contract and oblige the landlord to return the excess expenditure incurred.

1) The 4-year + 4-year lease

This lease, called free-market, has the advantage of being for a longer period (4 years + 4); however, it does not guarantee a lower rent, assuming that the rent will be freely agreed to by a contract between the tenant and the landlord.

It means the amount of the rent to pay and all conditions established in the clauses of the lease will incur no change for eight years, unless the landlord, after the first four years, needs to use the apartment for him or herself or family, or has to sell the property or do extensive renovation work.

On the basis of this lease, the landlord may not request, unless expressly stipulated, either the ISTAT increase or the percentage of additional expenses for possible urgent maintenance work carried out

during the term of the lease.

This type of lease does not allow the landlord to benefit from tax deductions that the law allows for rent-controlled apartments.

2) The rent-controlled lease

This is a three-year contract whose advantage lies in the fact that the rent itself and the conditions of the lease may not be established freely between you and the landlord; they must conform to union agreements that apply to the urban area.

This lease allows for tax deductions and lower rents than the market average.

If at the end of the first three years you fail to reach an agreement with the landlord to renew your lease, the lease continues automatically for the next two years at the same conditions, giving you time to search for another residence.

How rent control is established

For densely-populated cities, the rent is determined in collective bargaining by the associations in the housing field. Every city is divided into areas, and the negotiations set the range for rentals in each area. The actual rent for an apartment thus can be easily calculated by means of a series of features in the agreements (type of dwelling, maintenance conditions, services, facilities, etc.), considered in light of the building's location. The rent that results from these considerations is legal in every respect; any agreement requiring you to pay extra rent is thus void, and you have the right to seek repayment of the money you have paid over the rent-controlled amount. The lease must be written and must follow a format that can be found in the ministerial decree of 5/3/99, according to area agreements.

Where you can find the amount of rent you must pay

The tables with the rent figures determined by the collective bargaining, and the relative parameters for calculating the actual rent to pay, can be found at the offices of the city governments or at those of the unions' tenants and landlords associations.

The most important features of this lease

- a) tacit renewal if the lease is not terminated;
- b) option for the tenant to terminate the lease before term;
- c) ISTAT not above 75%
- d) option for the tenant to appeal to a commission to mediate disagreements;
- e) legal interest rates on deposit presently at 3.5%;
- f) agreements regulating building expenses;
- g) detailed description of the physical condition and features of the apartment.

3) The short-term lease

Short-term leases have often served as ways for landlords to avoid taxes and get around regulations, while periodically raising the rent on their tenants, who have no security or protection under the law. The new law regulates this kind of lease much more effectively; they are now limited to **eighteen months** and must reflect expressly defined temporary needs on the part of the landlord or the tenant.

In urban areas and in all provincial seats the rent to pay may not exceed that which has been determined in regional agreements between related associations.

Leases of this kind must be written and must follow a format that may be found in the ministerial decree of 5/3/99, in accordance with regional agreements. One guarantee against falsifications and deceptions in the lease is the requirement that the landlord reconfirm the reasons for the short-term lease at its expiration.

If he or she fails to do so, the lease converts to a normal 4 + 4 contract with, however, a regulated rent. The lease has the same features as that of the so-called free-market lease.

4) The lease for non-resident students

This kind of lease may last for no more than 36 months. After that it may be automatically renewed to the student tenant's advantage, in the sense that after the first three years the landlord can not break the lease.

The amount of rent is determined by city-level agreements between students' rights groups, student associations, and tenant and landlord unions, which have to bear in mind the length of the lease, whether the apartment is furnished or unfurnished, the presence of special clauses or other matters.

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The lease must be written and must follow a standard format that may be found in the ministerial decree of 5/3/99, according to area agreements. The lease has the same features as the so-called free-market lease.

Subletting and Free Let

Subletting the entire apartment and turning over the lease to third parties, so that they become de facto tenants, is not allowed. It constitutes a justification for eviction proceedings and puts the tenant who has sublet to another party in breach of contract. Partial subletting, however, which allows other persons the use of part of the apartment, while the rest is still occupied by the main tenant, is allowed, except in the presence of a specific clause in the lease prohibiting it.

In the case of a partial sublet, the tenant is obliged to inform the landlord of the name of the sub-tenant, the length of the lease and the number of rooms to be occupied.

The free let, by contrast, is a lease that allows the use of an apartment rent-free.

When a landlord tries to set up a free-let lease to evade taxes, while you are paying him or her rent anyway, if you can prove that you pay rent regularly you can go to court to ask that your status as a rentor be ascertained, and to oblige the landlord to repay all sums of money you have paid over the rent due according to local agreements.

Rules for Leases Signed before 30/12/98

Law 431/98 has established that for the time being the old rules apply to all leases signed before 30 December 1998, for the entire length of the leases, in accordance with court decisions valid on the date of 30 December 1998.

Therefore, it will be possible to request that rent control be applied and that any sums of money be returned that were paid illegitimately, on the basis of fraudulent temporary leases, non-existing special uses of the residence, fake guest quarters, rentals per bed occupant or sublet of rooms with none of the features of a hotel.

Heating, Condominial Expenses, and Repairs for which the Landlord is Responsible

You are responsible for expenses for the cleaning of the building, the running of the elevator, water, electricity for the building's common areas, heating, and 90% of the cost of the porter.

In any case, you have the right to request a printed breakdown of all expenses and may examine all papers regarding the accounting for expenses. You may also take part in assemblies on heating expenses, with the right to vote.

It may be possible to appeal to collective agreements between tenants' and landlords' associations in order to recalculate the division of expenses.

All necessary repairs, except minor and routine ones, are to be paid by the landlord, who is responsible for any flaws or failures in the building and its facilities (Civil Code, articles 1576, 1577, 1578, 1579, 1580, and 1581).

Rent Negotiations and Real Estate Agencies

The stages of negotiation to stipulate or renew a residential lease are of critical importance, considering that various kinds of leases are available, not only under the law, but also in accordance with a series of regulations which involve the role of the trade unions' tenants' associations, national conventions, government decrees that acknowledge the conventions, and agreements at regional and local levels.

It is also essential to be thoroughly well-formed as to the tax benefits and other advantages of one lease compared to another.

For all of these reasons, Law 431/98 offers you the opportunity to seek trade union assistance when you stipulate a lease. This assistance is not mandatory, but it is certainly to your advantage as you try to make sense of rental legislation and the various agreements regarding leases.

Often you have to deal with a real estate agent when seeking an apartment. In these cases it is necessary to:

- a) make sure that the agent is a member of the Chamber of Commerce as a realtor;
- b) require a real written contract with the realtor; c) verify that none of the twenty clauses permitted under Law 52/96 are present in your contract with the agent;
- d) clearly define percentage, payment forms and payment schedule of the fee (which you needn't pay if the agent is not a member of the real estate association);

e) clearly define the costs of any extra services (i.e. measurement of square footage, verification of apartment features, cadastral survey).

Eviction and Termination of the Lease

Eviction is the measure by means of which the court orders the tenant to vacate and return the apartment to the owner. There are currently four different kinds of eviction proceedings:

1. Eviction for end of occupancy, at the expiration of the lease (after eight years for free-market leases, five years for collective bargaining leases, relevant expiration dates determined in local agreements for short-term and student leases);
2. Eviction for necessity, in the case that the landlord needs to use the apartment for personal needs recognized by the law, or to do urgent construction work (after the first four years for free-market contracts, after three years for collective bargaining leases, while there is no such option for short-term leases);
3. Eviction for non-payment of rent. If you do not pay your rent, twenty days after the deadline for the last payment you may receive notice of eviction proceedings and you may be ordered to appear before the court. If you are having financial problems, you can ask the court for a payment schedule for the rent owed, with a deadline that the court will set at no more than ninety days.
4. Resolution of the contract for default, which concerns a series of conditions due to which, if the court verifies serious default on your part of your contractual obligations (for example, abandoning the residence, illegal subletting, conversion of dwelling for a use which is not allowed, etc.), the court may initiate eviction proceedings.

Extension of the Eviction Deadline

In the eviction proceedings the court determines the date when the apartment must be vacated. This deadline can not be postponed in cases of landlord's necessities, your non-payment of rent or failure to respect your obligations as a tenant. It may be extended, however, in the case of end-of-lease evictions in densely-populated urban areas or in provincial seats. In this case, you can appeal to the court to set a new deadline for evicting the apartment, conceding a deadline that normally can not exceed six months, although in certain cases of so-called social requirements (tenants who are over 65, handicapped, unemployed or laid off, etc.), this extension may be stretched to eighteen months. Your application for one of these must include, apart from proof of income and composition of your family, any relevant document that will aid in the evaluation of your difficulties and the justification for the extension.

Terminating the Lease

For the landlord to terminate your lease, he or she must wait until the relative expiration dates and notify you of the end of the lease for personal necessity or expiration, within the deadlines established for each kind of lease.

You, on the other hand, may terminate your lease in advance in two cases:

1. if a clause in your lease specifically gives you this option;
2. irrespective of the lease conditions, there is always the option for the tenant to terminate the lease and withdraw from its obligations when there are serious motivations, such as a job transfer or urgent family problems, etc.

In both cases, you must give advance notice to the landlord, normally six months, although your lease may indicate a shorter notice period.

Enforcement of Eviction

When all extensions obtained after the eviction date set by the court have expired, if the tenant does not vacate the apartment the landlord reserves the right to enforce the eviction with the help of the bailiff and the police. In any case, only landlords who can prove to have carried out all of their fiscal obligations during the course of the lease may take this step.

Before legally enforcing the eviction order, the law requires that the landlord send an injunction to the tenant; the injunction must include the following information:

- a) the terms of the registration of the lease;
- b) the terms of the ICI statement;
- c) the terms of the landlord's income tax return containing the income earned from the property;

d) the terms of the ICI payment.

If these data, which constitute the conditions for enforcing an eviction, are incomplete or missing altogether, the eviction cannot be carried out. This holds true not only if the eviction is justified by the expiration of the lease, but also in the cases of the landlord's personal need of the apartment, non-payment of rent or other default on the lease conditions.

A tenant who can prove that the injunction is not in order, or has any doubts that it is, may oppose the eviction, effectively stopping the eviction from being carried out.

The Right to Shelter and Public Housing

Shelters

Shelters are residential facilities that provide, free of charge, a place to stay and hot meals, as well as, when possible, opportunities to learn the Italian language and to benefit from job training and cultural exchanges with Italians, and lastly, social and health care for those immigrants who cannot obtain it on their own.

Guests in the shelters may stay only for the period of time they need to become independent, and provide for their own food and lodgings in the area they are living in.

Shelters are provided by the regional governments, in collaboration with the provinces and the cities themselves, as well as volunteer organizations. They are intended for foreign nationals with regular permits of stay, other than tourists, who are temporarily unable to provide for their own housing needs. In the case of emergency situations, the mayor of a city may permit access to shelters to foreigners who do not have permits of stay, in accordance with the laws on the expulsion of immigrants in such conditions from the country.

Hostels

Foreigners with valid permits of stay or work permits have access to forms of public housing that are private or collective, according to regional guidelines. The housing is managed by those cities with the greatest number of immigrants, as well as by associations, foundations and volunteer organizations, or other public or private institutions. They are mainly hostels and are open to Italians and foreigners alike, and offer a dignified solution to a temporary housing problem, at a low cost, until the person is able to move into an ordinary apartment.

Public Housing

Foreigners with permits of stay, those who are registered as unemployed, as well as those who have a regular salary or are self-employed, have a right to public housing, just as Italian citizens do. They also have the right to turn to the regional and local agencies which provide social assistance to help find housing, and facilitate obtaining credit for building, restoring, purchasing or renting a primary residence.