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1 **FIX THE RENT**

As a Landlord, you are free to choose any amount. There are no thresholds, except the hypothesis of an investment in a tax-reducing scheme (« Scellier », Borloo »...) and the hypothesis where a tenant would already lawfully occupy the apartment/villa.

In my opinion, the best option to take for the purpose of finding and keeping your tenants is to adopt a realistic approach in terms of tariffs.

Make your own estimates in realizing a neighbourhood investigation, look in the local newspaper's classified ads and in the Internet sites for rents ratings, check the numerous property adverts you will find quite everywhere in streets, shops...



2 FIND A TENANT

You have two possibilities : seek yourself your tenant or give a mandate to a realtor. For the safety of your future landlord / tenant relationship, I recommend that you use a professional assistance. Your realtor will organize the visits and sort the applications, and their fees are at least shared with the tenant.

2.1 YOU ARE LOOKING YOURSELF FOR YOUR TENANT

First thing to check : make sure to determine what is your future tenant's solvency. Here is a list of documents to ask him :

- Income tax notification for the previous year
- Certificates of income for the last three months (payslips, pensions, employment contract)
- Receipts of rent from its previous lease.
- Receipts of electricity or telephone.
- Declaration of income tax for the on-going year
- Details of the previous landlord and of the employer (it should also appear on payslips)
- If applicable, the income details of the guarantor
- Non-resident landlords are allowed to request a bank guarantee for an amount equivalent to one year's rent.

CAUTION ! The law forbids you to ask for the following documents : photos ID, social security card ("*carte vitale*") copy of bank statements of any kind except the account's number, medical and criminal records, (Law n° 89-462 of July 6th 1989, Art. 22-2). However you can require a third party to pay the deposit and/or intervene as a guarantor. You can also subscribe an insurance covering the risks of unpaid rents, degradations and vacancies.

2.2 IF YOU WANT TO HIRE A REALTOR

This is a highly regulated profession. Their professional licence must be made available to the public within the agency, displaying their authorization to practice in the related field (*“Transactions sur immeubles et fonds de commerce”*).

Then, proceed to checking the name and address of the mandatory mutual insurance, which guarantees the realtor’s professional liability (this info must be stated on all documents of the agency).

If the realtor complies with these requirements, you can give him/her a written mandate (see the relevant section for an example of how it should be drafted).

This mandate will define the realtor’s tasks and it’s clearly the moment to have a close look to the obligations and costs attached to each of them.

TO BE NOTED : The payment of the realtor’s fees is to be shared equally with the tenant.

IMPORTANT ! The realtor’s fees are often named commissions and, even if their amount is not subjected to being consensually fixed between the two parties, the full board of their tariffs still has to be displayed to the public within the agency. For instance, this board must inform you of all the extra-costs charged for drafting the lease contract, or for proceeding to the inventory (*“état des lieux”*).

3 SIGNATURE OF THE CONTRACT

3.1 THE CONTRACT : « LE BAIL »

The contract is signed by the two parties, in two originals. I advise to initial each page as well. Landlords can theoretically draft the contract on a plain letter with all legal mentions required, though it's highly preferable to refer to a model which applies to the specifics of your situation.

You can find these models in book shops and from tenants or landlords associations.

You can also refer to my own models on download :

- Model of lease for an empty property (Download)
- Model of lease for a furnished property (Download)
- Model of lease for a garage or a parking (Download)

3.2 LIST OF ATTACHED DOCUMENTS

The mandatory documents to be attached to the contract are as follow :

- Insurance certificate covering the rental risks
- Deed of the guarantor (if applicable)
- Inventory of fixtures signed by both parties (download)
- Property diagnosis
- Inventory of the furnitures if applicable (download)

If the property is submitted to the co-ownership statute, landlords have to provide with :

- Form / destination of the premises (commercial, private or mixed)
- Use of communal and private areas
- Exact portion of the building's expenses attached to the property



IMPORTANT ! In case of dispute, you may have to prove that the guarantor received a copy of the lease contract. The most efficient way to prevent it is to have the guarantor sign the contract itself.

3.3 THE INVENTORY OF FIXTURES : « L'ETAT DES LIEUX »

The inventory enables to compare the state of the property at the beginning and the end of the rental. It is only after the exit that the landlord must give the deposit back to the tenant. Deductions from its amount of the costs paid for causes of repairs, damages and wrongful doings are possible, though regulated by law.

Two inventories are required :

- **First one** : at the entry of the tenant, when the keys are delivered
- **Second one** : at the departure of the tenant, after the property is being emptied

IMPORTANT ! At the entrance, and at any renewal, the landlord must provide with the property's technical file, consisting in several diagnoses :

- Diagnosis of natural and technological risks
- Diagnosis of energy performance
- Diagnoses of risks to lead exposure

I recommend to use the same pre-printed type of documents for both of the inventories, which will make them easier to compare. Nevertheless, nothing prohibits you from drafting it over a simple piece of paper.

It must be dated, and signed by all parties involve, and in as many copies as parties involved. I recommend to have all pages initialed as well.

It must be as detailed as possible and describe the property in precise and unequivocal terms. The inventories can be drawn either by yourself or by the realtor



3.4 THE SAFETY DEPOSIT : « LE DEPOT DE GARANTIE »

The deposit is of a maximum amount equivalent to one month's rent, charges excluded, paid at the moment of the signature. It guarantees landlords against any housing damages and unpaid rents and charges. It cannot be modified or indexed by any means in the course of the lease.

Landlords must repay the deposit at the exit of the tenant, with a two months deadline after the keys are returned. Deductions from its amount of the costs paid for causes of repairs, damages and wrongful doings are possible, though regulated by law.

TO BE NOTED : Landlords do not have to declare the safety deposit to the tax administration unless it is used to rehabilitate the property or to cover unpaid rents.

3.5 THE GUARANTOR : « LA CAUTION »

You can request a guarantor from your tenant, which will be held personally and financially liable in the event where the tenant fails to pay the rent or fails more generally to comply with its contractual obligations.

Landlords can also require to be provided with a bank guarantee, generally for a pre-determined amount (most of the time 12 months of rent).

The simple guarantee and the joint guarantee :

- **The simple guarantee :** the liability is limited and the guarantor pays only after all the claims raised against the tenant have failed , or after the tenant has been proven insolvent. However, if the guarantor has agreed to waive his right to « *benefit from the discussion* » (litteraly « *renoncer au droit de discussion* »), he cannot oppose these arguments.
- **The joint guarantee :** the guarantor agrees to pay the rent in place of the defaulting tenant. Landlords have a right to collect their claim directly in the hands of the guarantor independantly of hs right to sue the tenant. In most of the cases, both will be sued in the same time.



Duration of the guarantee :

- Guarantee granted for a specific period : a date is already set in the contract.
- Guarantee granted for an indefinite period : the obligation ceases when the contract is terminated

3.6 INSURANCES

Here is the list of the compulsory insurances to be purchased :

- The landlord must take out a non-occupant insurance policy
- The tenant must take out a home protection insurance policy. Landlords must request a copy as soon as the contract is signed.

IMPORTANT ! Landlords can take out an insurance policy covering the risks for unpaid rents. Nevertheless, this prevents them from asking the tenant to also provide for a guarantor, with two exceptions though (Law n° 89-462 of July 6th 1989, Art. 22-1) :

- if the tenant is a student
- if the tenant is an apprentice



4 DURING THE LEASE

4.1. RENT RECEIPTS

Rent receipts are not mandatory, but must be provided if asked for by the tenant (Law n° 89-462 of July 6th 1989, Art. 21). Receipts books are available in bookshops.

4.2 RENT REVIEWS

The initial basic rent value is subjected to an annual revision at the date set in the contract, otherwise at the contract's anniversary date. The revision must be calculated according to the index set in Law n° 2008-111 of February 8th 2008.

4.3 ANCILLARY COSTS

The tenant must pay the ancillary costs, most commonly designated as « *charges locatives* » falling into three categories :

- Costs for services related to the use of the property : costs for operating the elevator, for the central heating, water supply and electricity within the communal areas...
- Maintenance costs for cleaning the communal areas, keeper, gardener...
- Taxes for garbage removal

The precise list of these costs is to be found under Decree n° 87-712 of August 26th 1987 (Download). Those not listed in this text cannot be charged to the tenant. All the other ones, as major repairs or complete repainting, remain under the sole responsibility of the landlords.



As per the tax for purpose of covering the cost of garbage removal service, landlords will find their annual amount on their so-called « *taxe foncière* ».

If the ancillary costs are paid by provision monthly, an annual adjustment is required to comply with the actual costs.

This annual adjustment will be sent to the tenant and the supporting documentation made available to consultation for a month.

4.4. REPAIR & IMPROVEMENT WORKS

Landlords' first obligation is to provide the tenant a property in a good state of use and repair. Repairs which are not listed are to be taken charge of by landlords. This is not really an issue as those repairs are covered under the non-occupant insurance policies landlords are compulsory required to subscribe to.

5 THE END OF THE CONTRACT

The inventory of fixtures is established commonly by tenant and landlord (see 3.3.). Well-drawn inventories shall preview to include to note the meter readings (water, gas, electricity).

I advise to take pictures and compare them to those taken at the time of the entry inventory.

See under paragraph 3.4 for the safety deposit.

5.1. NOTICE TO LEAVE BY LANDLORD

Notice to quit for the contract's term can only be served only on grounds of :

- Repossession of the property as principal residence : applies to the landlord or its close family.
- Sale of the property.
- Legitimate and serious reason.

The notice must be sent under a delivered letter with acknowledgment of receipt ("*lettre r.a.r.*") at least 6 months before the end of the contract. This period starts from the date of receipt. If the letter is returned, the best option is to hire a bailiff for a cost around 80 €. The bailiff will serve the notice in its quality of public officer, therfrom though to contest in case of litigation.

The notice must compulsory state the ground for leaving opted for by the landlord :

- **Repossession** : it must mention the names and addresses of the beneficiary.



- **Sale** : either the new owner merely replace the former landlord and have the tenant informed by any means and the lease is not affected, either the tenant is notified the seller's price. The tenant's preference right to buy first must respond to a precise set of formalities.
- **For cause** : it would be necessary to read the caselaw to determine what causes might, or might not, be considered as lawfully justify the notice.

The notice must be served to each of the party, but the landlord cannot be held responsible for not having notified an unknown tenant (mostly for family-related issues).

If the notice does not fully complies with any of the provision of the law, the notice is void and the contract renewed.

IMPORTANT ! Remember to inform the tax administration of the entries and departures of your tenants, otherwise you will be asked to pay the residential tax ("taxe d'habitation").

5.2. NOTICE TO LEAVE BY TENANT

A tenant who wants to leave the property can do so at any time, in accordance with the formal requirements and timing required by law.

The contents of the tenant's leave is not provided by any text or statute apart from the simple indication of his wish to leave for a specific date, under a registered letter with acknowledgement of receipt.

The letter must be sent at least 3 months before the term (1 month for furnished properties).

This 3 months notice can be reduced to 1 month on grounds of :

- **Work transfer** : regardless of whether the change was imposed or has been asked for, since the final decision is subjected to the will of the employer.



- **Loss of employment** : termination or end by any means of the labour contract. Retirement, resignation and change of occupation are not falling under this category.
- **New employment** : only if following a loss of employment.
- **Obtention of a first employment** : mostly for students.
- **Tenant aged over 60 years** : whose health justifies a change of residence.

TO BE NOTED : Regardless of the ground for leave, landlords must provide another property to any tenant aged of more than 70 years and whose annual income is less than 1½ times the annual amount of the minimum wage. This new property must match with the tenant's financial means, with its needs (accessibility, elevator ...) and near its current home. Resources are assessed at the date of notification to leave and the age assessed at the date of the term. Landlords aged over 60 years, or landlords (whatever their age) whose annual income is less than 1½ times the annual amount of the minimum wage, are exempted.

5.3. THE DEPARTURE'S INVENTORY

Upon arrival, the inventory of fixtures has been established between the landlord and the tenant (see 3.3).

In case of litigation, the inventory is drawn up by a bailiff, for a cost approximately 250 €

If a safety deposit has been paid upon signing of the contract, it must be returned within two months after the keys were themselves returned by the tenant.



6 IN CASE OF LITIGATION

Providing the complexity of law itself and the of the legal system in general, it may frequently happen to encounter disputes. Some of them may lead to legal actions. Well-balanced settlements are often an efficient solution and avoid court's congestion.

Most of the cases that may result in litigation are grounded on :

- the interpretation of the termination clauses of the contract
- the modifications of the conditions of the current contract
- one or more unfair terms of the contract
- abusive or unlawful termination of the contract

6.1. DISPUTE RESOLUTION

If the dispute has not been settled amicably, litigators must appear in front of the District Court ("*Tribunal d'Instance*") of the district where the property is located.

In case of unpaid rent and ancillary costs, and only after seeking an amicable solution with the tenant, landlords may request the termination of the lease and granted the right to evict his tenant.

IMPORTANT ! Landlords cannot under any circumstances take the initiative to penetrate the property prior to the intervention of a bailiff duly enforcing a judicial order, under penalty of criminal prosecution for breach of home.

Here are the differents steps to follow if this happens.

Step 1 : Formal notice

The landlord send his tenant a letter of formal notice to pay the arrears. This proves to be sufficient only in the hypothesis where the arrear still concern a minimum amount, from 1 to 3 unpaid months, consecutively or not.



If this is your case, landlords shall proceed directly, and as soon as possible, to step 2.

Step 2 : A bailiff serves a commandment to pay the arrears

Tenant is granted by law a two month period to comply with the commandment. He may prefer to directly refer the case to the District Court and ask for additional time for payment (for a period of 24 months maximum). He may also try to challenge the validity of the commandment.

If no payment is made within this period, the lease is automatically terminated and a summon to appear in front of the District Court must be immediately served to the tenant.

This is a good moment for the purpose of trying to settle the case.

If the tenant doesn't return the keys of the property, it is permitted for landlords to ask for a speedy trial, which will result with an order to leave and pay ruled within 2 to 4 months.

TO BE NOTED : The winter break does not prevent landlords to bring an eviction lawsuit before the District Court, it only suspends the enforcement until it ends.

It is absolutely indispensable to mandate an attorney which will represent the landlord at each step of the procedure.

Step 3 : The hearing

Technically, landlords are fully authorized to appear personally in front of the District Court, with a passport, an id card and, if applicable, a recent stamped certificate ("*extrait Kbis*") of the company if the property is owned under an SCI vehicle.

Providing that the District Court has not granted the tenant any delays (for either the payment of the arrears and/or the motion to leave), the lease is now judicially terminated and the order ready to be enforced.



IMPORTANT ! At this point, costs are important to bear in mind, as the total expense paid for to the bailiff, who will be asked to serve the tenant each piece of procedure, is likely to go from 500 € to 1.500 €.

Expect 15 days to 1½ months for the District Court to hand the ruling.

The tenancy being terminated, the former tenant is now referred to as an occupant with neither right nor title ("*occupant sans droit ni titre*"). He is not exempted from paying an occupancy allowance each month

TO BE NOTED : The winter break does not prevent landlords to bring an eviction lawsuit before the District Court, it only suspends the enforcement until the break ends.

Step 4 : A bailiff serves a commandment to quit the property

Following the court order which terminates the lease and grants the right to evict the occupant, the bailiff must serve him a commandment to quit the property. The occupant then has two months from the receipt of this act to depart, and 15 days to challenge the judicial order.

It rarely happens as the remedies made available to the occupant are, most of the time, not likely to suspend the enforcement of the order by the landlord.

Step 5 : Eviction of the occupant

The bailiff may pre-announce his visit, but it is not mandatory, and intervene to proceed to the eviction of the tenant only during week days and working times(monday to Friday between 6:00 and 21 o'clock).

Several scenarios are possible :

- **The occupant is present and makes no protest :** the bailiff proceeds to the inventory of fixtures, indicates where the furnitures will be stored and retrieve the keys of the property.



- **The occupant is present and refuse to open the door** : the bailiff draws up an official record of his attempt to proceed to the eviction, and asks the police authority for enforcement.
- **The occupant is absent** : the bailiff cannot enter the property unless he is accompanied by the police authority and a locksmith. A record of the eviction is drawn up and the bailiff leaves notice to the occupant, on the main door, that he can no longer enter the property.

