

Principles of Civil Law

Lecture Title: Lease

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Diploma in Law (Malta)



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Lease

Special laws in the rent law have been numerous. Originally, before the enactment of these special laws, many of which are Ordinances (old laws), the law of letting and hiring was found exclusively in the Civil Code. For social reasons, the need was felt for special laws to be enacted and these special laws were intended to derogate i.e. Make exclusions from the otherwise general provision of the Civil Code.

Our Civil Code is based on the will theory. Parties can agree on whatever they wish so far as that agreement is not illegal, and therefore under the general law of lease as set in the Civil Code, the lessor could impose whatever conditions he wish insofar as the market allowed him to find a lessee who accepted those conditions; and also could enforce his right to stipulate the rent he wished and take back possession of the premises as soon as the term of the lease was open. This was the situation under the Civil Code prior to the enactment of the special laws.



Following WWI ie. A time when Malta was still a colony, the need was felt to introduce special legislation, which would afford some protection to the lessees of immovable property. Thus we ended up with a situation where the provisions of lease in the Civil Code remained in force and applicable to contracts of lease but subject to the controls of the special laws. Thus there was the general law of lease in the Civil Code but subject to very severe controls to the otherwise free will of the parties in the special laws.



The first in the series of special laws controlling the rights of the parties in contracts of lease was originally enacted in 1931. This is Chapter 69 Reletting of Urban Property Regulation Ordinance. The general purposes behind this law were:

- To make sure that lessees enjoy total security of tenure in virtue of a right which this Ordinance introduces and which entitles the lessee to the reletting of the premises after the expiration of the original term.
- It secured the lessee the right to continue reletting at the same rent. It was not only a question of his continuing in the lease beyond the original term, but also to continue reletting at the same rent that the parties would have agreed on in the original contract.
- The lessee was also afforded the protection that this continuous reletting would be on the same conditions as would have been agreed between the parties in the original contract of lease.



Thus the control that this Ordinance introduced on the contracts of lease was extensive. Irrespective of what the parties would have agreed after the lapse of the term of the lease, the parties would automatically be subject to these rules and the lessor could not refuse to renew the lease, increase the rent or change the conditions, save as provided in the Ordinance.

Following the enactment of this Ordinance, other special laws were enacted. There was the Rent Restriction (Dwelling Houses) Ordinance, currently Chapter 116 of the Laws of Malta, which determined what is known as the Fair Rent for dwelling houses. Thus the law introduced a further control on the rent which could be agreed in regard to dwelling houses.



Then in 1958 there was enacted another special law, the Housing Decontrol Ordinance, Chapter 158, which was enacted in order to reduce some of the control which had been introduced by the Reletting of Urban Property Regulation Ordinance and the Rent Restriction (Dwelling Houses) Ordinance. When enacted this was conceived of as starting the liberalization of the market of letting and hiring.

In 1979, an act was enacted (Act XXIII of 1979), which introduced new controls to those leases which had been liberalized (decontrolled). Thus this was a step backward. There was always a social reason why these laws were enacted, principally the need for housing and security of tenure, especially in the case of residential tenements.



After 1979 we have gradually progressed to a complete reversion to the freedom of will theory in the Civil Code. The 1995 amendments said that all leases entered into after 1st June 1995 will be regulated only and exclusively by the provisions of the Civil Code.

Act X of 2009, which is the last amending law in this area, confused the whole picture:

this act revisited the leases which were entered into before 1995 and regulated by the special laws, introduced very important amendments but these amendments were not included in the special laws themselves but were inserted in the Civil Code. Act X of 2009 shifted the jurisdiction in this area to the Rent Regulation Board, which prior to Act X of 2009 had its competence restricted to leases to which Chapter 69 applies (i.e. leases which started before 1st June 1995). The Rent Regulation Board is now competent to hear all judicial actions having to do with the letting of urban property. This extension of jurisdiction is not found in the Civil Code but was inserted in Chapter 69 and therefore, we can no longer say that Chapter 69 has to do only with leases which started before 1st June 1995, as much as we cannot say that the Civil Code has nothing to do with the content of the special laws.



Chapter 69 - Reletting of Urban Property Regulation Ordinance

Article 15(1):

- **15. (1)** Any clause or condition excluding the tenant from any benefit conferred by this Ordinance whether such clause or condition has been stipulated prior to the commencement of this Ordinance or after such commencement, shall be considered as null and void.
- Any obligation which the lessee would have undertaken in favour of the lessor, even in a written contract, which in practice would have meant that the lessee was renouncing to some right or protection which this Ordinance affords him, is expressly deemed to be null and void. This shows the very important outreach of this law in regard to those leases which fall within its scope, even if the lessee had freely renounced to some right which this Ordinance affords him, that obligation would be deemed null and void, would be unenforceable and the lessee could still claim the protection which this law affords him.



Applicability of Chapter 69

- Only leases entered into before 1st June 1995 may be subject to the substantive provisions of Chapter 69.
- Not all leases entered into before 1st June 1995 are necessarily or automatically subject to Chapter 69. First of all we must look at the term for which that lease was concluded in order to see whether the lease is still in its original term or whether the original term has expired. Chapter 69 is only applicable, as the name indicates, at the reletting stage. Thus in order to see whether Chapter 69 is applicable to a particular lease at a particular moment in time, we have to decide whether the lease is still in its original term or whether the original period has expired. Thus it has to do not with the original letting but with the reletting.



Leases which satisfy the requirements of the definition section in Article 2 fall within the scope of Chapter 69. In particular this refers to the definition of *premises* in Article 2, the definition of *tenant* in Article 2 as well as the definition of *letting* in Article 44. Only those leases which satisfy the definition of letting in Article 44, the definition of premises in Article 2 and the lessee at the expiration of the original term of the lease satisfies the definition of tenant, fall within the ambit of Chapter 69 i.e. are subject to the obligation of reletting at the same rent and with the same conditions.

Furthermore:

If you formally have a public deed of emphyteusis for a term of less than 17 years, under Chapter 69, if all the requirements are satisfied, that emphyteusis is deemed to be a lease for the purpose of Chapter 69.



The crucial rule of Chapter 69, which affords the lessee this additional protection which we have been mentioning is found in Article 3:

3. It shall not be lawful for the lessor of any premises, at the expiration of the period of tenancy (whether such period be conventional, legal, customary or consequential on the provisions of this Ordinance), to refuse the renewal of the lease or to raise the rent or impose new conditions for the renewal of the lease without the permission of the Board.



What Article 3 is saying is that once the original term of the lease has expired, in regard to those leases which fall within the scope of this law, the lessor may not take back the property but is bound to renew the lease, at the same rate of rent and on the same conditions, unless the lessor is authorized not to renew by the Rent Regulation Board. Thus for the leases which fall under Chapter 69, when the original term lapses and subsequently, when each renewed term lapses, must renew the lease at the same rent and on the same conditions.

If the lessor does not want to renew the lease, wants an increase in the rent or wants a change in the conditions of the lease, he must first file an application before the Rent Regulation Board, obtain the permission of the Board and only then he can actually take back the property, change the rent or change the conditions.



- Who is a tenant for the purposes of the reletting obligation which we find in Article 3 of Chapter 69?
- Chapter 69, Article gives a definition of tenant with 4 paragraphs. Paragraph a is general and says that the term tenant includes also the widow or widower of the tenant, who were not legally or de factor separated at the time of death of the original tenant. A tenant is:
 - i. A person who is recognised as tenant
 - ii. The widow/widower of the tenant (Provided that the widow or the widower shall not have the right to be considered a tenant if he did not inhabit the dwelling-house for four (4) out of the last five (5) years prior to the 1st June, 2008
 - iii. the siblings of the tenant who have continued the lease in solidum together with him



Provided that the siblings shall not have the right to be considered as tenants if they did not inhabit the dwelling-house for four (4) out of the last five (5) years prior to the 1st June, 2008, and, in the case of this subparagraph did not continue living with the tenant until the date of his death

Provided further that persons who do not qualify under sub-paragraphs (i), (ii) and (iii) and have lived in the dwelling-house for four (4) out of the last five (5) years before the 1st June, 2008 and have continued to live with the tenant until the date of the demise of the tenant shall continue occupying the dwelling-house for a period of five (5) years from the date of death of the tenant, at the end of which period they shall vacate said dwelling-house. The compensation for the occupation of the dwelling-house that shall be payable to the lessor during the aforementioned period shall be equal to the highest rent amount that may have been payable by the tenant



Grounds of Non-Renewal

9. The Board shall grant the permission referred to in the last preceding article in the following cases:

(a) if the tenant has in the course of the previous lease failed to pay punctually the rent due by him, or has caused considerable damage to the premises, or otherwise failed to comply with the conditions of the lease, or has used the premises for any purpose other than that for which the premises were leased, or has sublet the premises or made over the lease without the express consent of the lessor.



Non-Payment of Rent

Owner needs to prove that in regard to two different terms of the lease, he has called upon the tenant to pay the rent and notwithstanding such request, the tenant has failed to pay the rent due within 15 days from when the lessor has called upon him to pay.

This ground is the simplest because we have a definition of the law.

We have several judgments of the ground, and in several of which, the Board and then the Court of Appeal dealing with a very common excuse of tenant.

The tenant would argue that he had failed to pay the rent at all or on time because of some misdeed or failure on the part of the landlord. The judgments do not accept these excuses as proper justification for failure to pay the rent. The judicial stand is that unless the law provides otherwise the rent should be paid, possibly paid under protest or deposited in court, and in the meanwhile, the tenant files any necessary proceedings to assert this pretended right.



Considerable damage to the premises let

In the Maltese version considerable damage is expressed as *hsara hafna*.

The question which arises is what kind of damage in the premises let must the lessor prove for the Board to authorize him not to renew the lease. At face value considerable damage leaves no doubt that not every minimal damage or shortfall in the premises would suffice to satisfy this ground.

Whilst in any particular case the appreciation of facts will fall within the exclusive ambit of the Rent Regulation Board, our Courts have laid down in their judgments general guidelines which should be stratified for the board to give this authorization. First of all the landlord must prove very often by means of a technical report that the premises have suffered and actually show substantial damage and further the landlord must prove that such substantial damage was caused as a result of the tenants' failure to abide by his obligation to take care of the premises as a *bonus paterfamilias*.



Structural Alterations

Another obligation of the lessee which is laid down in the Civil Code and which is often pleaded as a ground for non-renewal is the obligation of the lessee not to carry out any structural alterations to the premises let. This obligation is laid down in Article 1564(1) of the Civil Code. Thus while the tenant is entitled to the full enjoyment of the premises let, he is barred from carrying out structural alterations.



What changes can the tenant carry out, therefore?

Old judgments have listed the requirements for changes not to fall foul of this obligation. These changes should be:

- Bidliet mhux ta' importanza kbira.
- Bidliet li jbidlux id-destinazzjoni tal-fond.
- Bidliet li ma jippregudikawx id-drittijiet at' propjeta tas-sid.
- Bidliet li jistghu jigu rimessi flokhom fit-tmiem tal-lokazzjoni.
- Bidliet li jkunu necessarji u utli ghat-tgawdija tal-fond.



Change of Use

The fourth ground is that the tenant has used the premises for some other purpose other than the reason for which the premises were let. Prior to the 2009 amendments, the contract of letting and hiring could be concluded even verbally and further more, the parties need not have stipulated the specific purpose for which the tenant was let. After Act X of 2009, a contract of lease which does not establish in writing the purpose for which the tenement is being let is null and void.

Thus, the use for which the premises were let could even be presumed prior to the amendments. The use of the premises would also constitute the presumed use, even if the original contract of lease did not specifically contemplate that use because that use would have clearly been the purpose for which the tenant had let the premises in the first place and would have been accepted by the landlord.



In this regard our Courts have established some important guidelines:

- A minimal or incidental change in use would normally not suffice for the Board to authorize non-renewal. In essence the purpose for which the tenement was let is still respected but there is some accessory change in the use.
- An actual change in use would not entitle the tenant to take back possession of the premises if the landlord has given express or tacit approval for this change.



Non-Use

Another principal that the Court has established is that the failure of the tenant to use the premises let i.e. non-use, in itself constitutes a change in the use of the premises. If the tenant is no longer using the premises, that non-use constitutes a change of use which would justify the landlord's demand for the permission not to renew the lease.



Sub-letting

The fifth ground is where the tenant has made over the lease to someone else without the express consent of the lessor. When the lease is at its reletting stage, the tenant may not sublet the premises or assign the lease to a third party without the express consent of the landlord. The express consent can be verbal or written; for sure it must be unequivocal. Subletting and assignment of the lease are not the same but are 2 different ways in which the tenant may make over the lease to a third party.



Need of the premises for owner's occupation or for a member of his family

The sixth ground for non-renewal is when the lessor requires the premises (other than a shop) for his own occupation or for a member of his family. The bracket is very important. Not all premises fall under this ground for non-renewal. Shops, which are defined in Chapter 69, are excluded. After Axt X of 2009, garages and summer residences are no longer subject to the obligation of renewal under Article 3. Thus following the amendments, shops, garages and summer residences are excluded and so that leaves us with only dwelling houses ie residential tenements.



The lessor needs to prove two issues for this ground to be successful:

1. The landlord must prove that he requires the premises let for his own occupation or for the occupation of any of his ascendants or descendants by consanguinity or affinity or for the occupation of his brother or sister. This reasonable need has been expressed by the court as *grad ragjonevoli ta' bzonn*.
1. The landlord must also prove, to the satisfaction of the Board, that the tenant has alternative accommodation which is reasonably suitable for his means and condition. This must be proved after proving that he needs that particular premises.

This alternative accommodation, in many instances, could be offered by the landlord himself. If the landlord, after proving that he requires the premises, is not in a position to prove this alternative accommodation requisite, he can prove that he would suffer greater hardship if the Board refuses him the permission not to renew the lease. What we have here is a comparison of hardships.





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Competence of the Rent Regulation Board

Act X of 2009, insofar as the Board is concerned, greatly extended the Board's competence. One should keep in mind that despite the fact that it is presided over by a magistrate, the Board forms part of the Superior Courts of Malta.

This means that prior to Act X of 2009, the Board had its competence limited to leases which were entered into prior to 1st June 1995, while the ordinary courts were competent to hear and determine disputes involving leases entered into after 1st June 1995.

The Rent Regulation Board is now competent to decide all matters affecting the leases of urban property including residential as well as commercial property



Giljottina

Article 16A of Chapter 69, which was added by Act X of 2009, introduces before the Rent Regulation Board, what in general civil procedure are known as special summary proceedings (proceduri bil-giljottina).

In practice, the defendant has no automatic right to reply and defend himself against the demand of plaintiff but he must appear during the first sitting and convince the Board that he has good grounds in law or in fact to be allowed to make his defence.

If the Board is satisfied that these grounds exist, it will allow the defendant to present a reply (risposta); if the Board is not satisfied that the tenant has a good ground of defence, it will immediately move on to deliver judgment.



Can this special summary proceeding be availed of in any case?

No.

This abridged procedure can only be availed of where plaintiffs demand is for the payment of a debt which is certain, liquid and due and/or for the eviction (żgumbrament) of defendant from the premises let.



Act XXIV of 2021

Possibility to increase the rent to a maximum of 2 per cent

The lessor shall be entitled to file an application before the Board requesting that the rent be reviewed to an amount not exceeding two percent (2%) per annum of the free and open market value of the dwelling-house on 1st January of the year in which the application is filed and in order to establish new conditions regarding the lease.

Who establishes the value of the Property? Two Architects members of the Rent Regulation Board.



Test tal-Mezzi (Means Test)

At the initial stages of the proceedings, the Board shall conduct a means test of the tenant, which shall be based on the means test provided for in the Continuation of Tenancies (Means Testing Criteria) Regulations issued under article 1622A of the Civil Code and any regulations that may from time to time replace them. The means test shall be based on the income of the tenant between the 1st January and the 31st December of the year preceding the year in which the proceedings are commenced and the capital of the tenant on the 31st December of the said year.



The means test will determine the fate of the tenancy:

Where the tenant does not meet the income and capital criteria of the means test the Board shall, after hearing any evidence and submissions produced by the parties, give judgement allowing the tenant a period of two (2) years to vacate the dwelling-house. The compensation for occupation of the dwelling-house payable to the lessor during the said period shall be determined by the Board as the case may be.

Where the tenant meets the income and capital criteria of the means test the Board shall proceed according to the following sub-articles



The Means Test is both with respect to:

1. Earnings and
2. Capital

Spouses have to exhibit proof with respect to both of them, even if only one of them is the tenant.

The tenant has to satisfy both criteria to remain in the property.

Five years examination



erbghin (45) sena tkun tista' tissodisfa l-kriterju tad-dhul tat-test tal-mezzi, id-dhul ta' dik il-persuna matul il-perjodu relevanti m'ghandux jeccedi t-tmienja u tletin elf euro (€38,000).

(4) Sabiex persuna li jkollha bejn sitta u erbghin (46) sa hamsa u hamsin (55) sena tkun tista' tissodisfa l-kriterju tad-dhul tat-test tal-mezzi, id-dhul ta' dik il-persuna matul il-perjodu relevanti m'ghandux jeccedi t-tnejn u erbghin elf euro (€42,000).

(5) Sabiex persuna li jkollha bejn sitta u hamsin (56) sa hamsa u sittin (65) sena tkun tista' tissodisfa l-kriterju tad-dhul tat-test tal-mezzi, id-dhul ta' dik il-persuna matul il-perjodu relevanti m'ghandux jeccedi l-erbgha u erbghin elf u hames mitt euro (€44,500).

(6) Sabiex persuna li jkollha bejn sitta u sittin (66) sa hamsa u sebghin (75) sena tkun tista' tissodisfa l-kriterju tad-dhul tat-test tal-mezzi, id-dhul ta' dik il-persuna matul il-perjodu relevanti m'ghandux jeccedi s-sitta u erbghin elf u hames mitt euro (€46,500).

(7) Sabiex persuna li jkollha hamsa u sebghin (75) sena jew aktar tkun tista' tissodisfa l-kriterju tad-dhul tat-test tal-mezzi, id-dhul ta' dik il-persuna m'ghandux jeccedi l-hamsin elf euro (€50,000).

(8) Il-Bord li jirregola l-Kera ghandu jkollu l-jedd li jiffissa livell ta' dhul oghla minn dawk imsemmija taht dan ir-regolament meta l-persuna li tippretendi t-tkomplija tal-kirja hija persuna b'dizabilita' registrata mal-Kummissjoni ghad-Drittijiet ta' Persuni b'Dizabilita' u t-tip ta' dizabilita' titqies bhala wahda ta' xorta serja.

(9) Ghall-finijiet sabiex tigi stabbilita l-gravita' tad-dizabilita' ta' dik il-persuna u sussegwentement jigi ffissat livell ta' dhul xieraq, kif mitlub fis-subregolament (8), dik l-evalwazzjoni ghandha titwettaq bl-istess mod hekk kif japplika fil-każ ta' talbiet ghal pensjoni ghal invalidita' taht il-paragrafi (e) u (f) tal-ewwel proviso li jinsab mal-artikolu 106 tal-Att dwar is-Sigurtà Soċjali, bl-involvement tal-Kummissjoni ghad-Drittijiet ta' Persuni b'Dizabilita'.

Threshold for income

Threshold for Capital

6. (1) Sabiex persuna li jkollha inqas minn sitta u tletin (36) sena tkun tista' tissodisfa l-kriterju tal-kapital tat-test tal-mezzi, il-kapital ta' dik il-persuna m'għandux jeċċedi s-sittin elf euro (€60,000).

(2) Sabiex persuna li jkollha bejn sitta u tletin (36) sa ħamsa u erbgħin (45) sena tkun tista' tissodisfa l-kriterju tal-kapital tat-test tal-mezzi, il-kapital ta' dik il-persuna m'għandux jeċċedi d-disgħin elf euro (€90,000).

(3) Sabiex persuna li jkollha bejn sitta u erbgħin (46) sa ħamsa u ħamsin (55) sena tkun tista' tissodisfa l-kriterju tal-kapital tat-test tal-mezzi, il-kapital ta' dik il-persuna m'għandux jeċċedi l-mija u ħamsa u tmenin elf euro (€185 000)

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(5) Sabiex persuna li jkollha bejn sitta u sittin (66) sa ħamsa u sebghin (75) sena tkun tista' tissodisfa l-kriterju tal-kapital tat-test tal-mezzi, il-kapital ta' dik il-persuna m'għandux jeċċedi l-mitejn u ħamsa u erbghin elf euro (€245,000).

(6) Sabiex persuna li jkollha ħamsa u sebghin (75) sena jew aktar tkun tista' tissodisfa l-kriterju tal-kapital tat-test tal-mezzi, il-kapital ta' dik il-persuna m'għandux jeċċedi s-sitt mitt elf euro (€600,000).

(7) Il-Bord li jirregola l-Kera għandu jkollu l-jedd li jiffissa livell ta' kapital oghla minn dawk imsemmija taht dan ir-regolament meta l-persuna li tippretendi t-tkomplija tal-kirja hija persuna b'diżabilità registrata mal-Kummissjoni għad-Drittijiet ta' Persuni b'Diżabilità u t-tip ta' diżabilità titqies bhala waħda ta' xorta serja.

(8) Għall-finijiet sabiex tiġi stabbilita l-gravità tad-diżabilità ta' dik il-persuna u sussegwentement jiġi ffissat livell ta' dħul xieraq, kif mitlub fis-subregolament (7), dik l-evalwazzjoni għandha titwettaq bl-istess mod hekk kif japplika fil-każ ta' talbiet għal pensjoni għal invalidità taht il-paragrafi (e) u (f) tal-ewwel proviso li jinsab mal-artikolu 106 tal-Att dwar is-Sigurtà Soċjali, bl-involviment tal-Kummissjoni għad-Drittijiet ta' Persuni b'Diżabilità.

What does the means test incorporate?

Examples:

ILLI huwa jikkonferma illi huwa għandu garaxx, u l-valutazzjoni relattiva tinsab hawn annessa u mmarkata Dok EC1

L-esponenti qieghed jipreżenta wkoll is-segwenti dokumenti in konnessjoni mat-test tal-mezzi

- *DOK A – Ċertifikat tat-twelid tal-esponenti.*
- *DOK B - Rendikont tat-Taxxa tas-snin 2017 - 2021 tal-esponenti.*
- *DOK C – Dikjarazzjoni tal-ħlasijiet maħruġa mis-Sigurta' Soċjali għas-sena 2020.*
- *DOK D1 – D10 – Rendikont bankarju ta' 10 kontijiet intestati f'isem l-esponenti mal-bank Bank of Valletta plc.*

- **ILLI permezz tagħha huma jiddikjaraw:**
- Illi kemm huwa kif ukoll martu m'għandhom l-ebda fondi depożitati taħt l-awtorita' tal-Qorti.
- Illi huma m'għandhom l-ebda propjeta' immobbli.

- ILLI l-esponenti qegħdin ukoll jesebixxu s-segweni dokumenti in konnessjoni mat-test tal-mezzi:
- **Dok A** – Ċertifikat tat-twelid tal-esponenti XX.
- **Dok B** – Ċertifikat tat-twelid tal-esponenti XX.
- **Dok C** – Rendikont bankarju ta' kont intestat f'isem XX mal-bank Bank of Valletta plc.
- **Dok D** – Rendikont bankarju ta' kont kongunt f'isem l-esponenti mal-bank Bank of Valletta plc.
- **Dok E** – Rendikont bankarju ta' kont intestat f'isem XX mal-bank HSBC Bank Malta plc.
- **Dok F** – Rendikont bankarju ta' kont intestat f'isem XX mal-bank HSBC Bank Malta plc.
- **Dok G** – Rendikont rilaxxat mil-Malta Stock Exchange plc rigward Statement of Holdings f'isem XX għas-snin 2016 sa 2021.
- **Dok H** – Rendikont rilaxxat mil-Malta Stock Exchange plc rigward Statement of Holding f'isem XX għas-snin 2016 sa 2021.
- **Dok I** – Dokument rilaxxat mill-Mapfre MSV Life dwar Secure Growth Policy f'isem iż-żewġ intimati.
- **Dok J** – Dokument rilaxxat mill-bank HSBC Bank Malta plc rigward Consolidated Customer Position Sheet ta' XX.
- **Dok K** – Dokument rilaxxat mis-Sezzjoni Salarji u Pensjonijiet illi jikonferma d-dħul ta' XX.
- **Dok L** – Rendikont tat-taxxa għas-snin 2016 – 2021 taż-żewġ intimati XX.
- **Dok M** - #lasijiet magħmula lill-esponenti, għas-snin 2016 – 2021.

Lease under the Civil Code

Leases after 1st June 1995

A contract of letting and hiring, whether of things or of work and labour, may be made either verbally or in writing, provided that a contract of letting and hiring of urban property and of a residence and of a commercial tenement entered into after the 1st January, 2010 shall be in **writing**



With regard to the letting of an urban property, are sidence and a commercial tenement made after the 1st January,2010, the contract of lease shall be made in writing and shall stipulate:

- (a) the property to be leased;
- (b) the agreed use of the property let;
- (c) the period for which that property will be let;
- (d) whether such lease may be extended and in what manner;
- (e) and also the amount of rent to be paid and the manner in which such payment is to be made

In the absence of one or more of these essential requirements, the contract shall be null



Rights and Obligations of Lessor

The lessor is bound, by the nature of the contract, and without the necessity of any special agreement –

- (a) to deliver to the lessee the thing let;
- (b) to maintain the thing in a fit condition for the use for which it has been let;
- (c) to secure the lessee in the quiet enjoyment of the thing during the continuance of the lease

The lessor is bound to deliver the thing in a good state of repair in every respect.

Structural Repairs always the responsibility of the Lessor.



Right to access Property

During the running of the lease of an urban, residential or commercial tenement, the lessor has right of access to the tenement in such times and in such manner agreed upon with the tenant in order that the lessor may fulfil his duties or to verify whether the tenant is performing his obligations, as well as to show the tenement to prospective buyers.

Provided that in the absence of an agreement between the parties, the Rent Regulation Board may, if need be, after hearing the parties summarily, fix days, times and conditions, after an application filed by the lessor for that purpose.



Obligations of the Lessee

The lessee is bound –

- (a) to make use of the thing let to him as a bonus paterfamilias, and for the purpose stated in the contract, or, in the absence of any agreement to that effect, for such purpose as may be presumed according to circumstances;
- (b) to pay the rent agreed upon, or fixed in accordance with the provisions established by law.

The lessee of an urban tenement is responsible for all repairs other than structural repairs.



The lessee shall in no case be responsible for the repair of damages caused by force majeure and without any fault of his own.

The cleansing of cisterns and sinks, of cesspits and of chimneys shall be at the charge of the lessee.

The lessee is liable for any deterioration or damage which occurs during his enjoyment, unless he proves that such deterioration or damage has occurred without any fault on his part.

The lessee shall be liable for any damage caused by fire, unless he proves that it occurred without any fault on his part, or on the part of any of the persons mentioned in the next following article, or through a fortuitous event, or an irresistible force, or through a faulty construction, or that the fire was communicated from a neighbouring tenement.

The lessee is liable for any deterioration or damage caused by any act or default of the members of his family, or of his servants, guests, or sub-lessee



Private Residential Leases – Chapter 604 of the Laws of Malta

This was enacted in 2020, and covers:

long or short private residential lease, including the letting of shared residential space, which is entered into after 1st January, 2020, and any lease for a residential purpose entered into before the 1st January, 2020, which would still be in its original or renewed period on the 1st January, 2021.

The provisions of this Chapter supersede any other provision.

Disputes to be heard in front of the Adjudicating Panel, at the Housing Authority.



Registration of leases

Private residential lease contracts entered into after the entry into force of the Act, including their renewal, whether express or tacit, shall be registered.

Provided that contracts of private residential leases which are not registered in accordance with the provisions of the Act shall be null and void.

It shall be the duty of the lessor to register, within ten (10) days of the commencement of the lease, the private residential lease contract with the Authority.

If the lessor fails to comply with the obligation stipulated above, the lessee may proceed to register the lease contract himself, at the expense of the lessor.



All private residential lease contracts made after the entry into force of the Act shall be made in writing and shall include the following requirements:

- a) the tenement to be leased;
- b) the agreed use of the tenement let;
- c) the period for which that tenement shall be let;
- d) whether such lease may be extended and in what manner;
- e) the amount of rent that shall be paid and the manner in which such payment shall be made;
- f) any amount deposited by the lessee by way of security for the performance of his obligations; and
- g) an inventory, in the form of documentary evidence, attesting the condition of the tenement as well as the state of any furniture and domestic appliances supplied by the lessor



Minimum Duration of Leases

A long private residential lease cannot have a duration of less than one (1) year.

Any agreement stipulating a shorter duration shall be deemed to have been agreed for a period of at least one (1) year:

This does not apply to short private residential leases or the letting of shared residential space.



Termination or Automatic Renewal

A private residential lease shall cease to have effect upon the expiration of its term, whether such term is conventional, legal or judicial, provided that the lessor gives notice to the lessee at least three (3) months before by registered letter:

It shall be sufficient for the lessor to provide evidence that the registered letter has been sent within the stipulated time, and to the correct address.

If the lessor does not serve the lessee with a notice of termination within the specified time, the private residential lease shall be deemed to have been renewed for a further period of one (1) year and in the absence of a notice of termination by the lessor, the lease shall continue to be renewed.



The lessee may not withdraw from a long private residential lease before the lapse of:

- (a) six (6) months in the case where the lease is for a period of less than two (2) years;
- (b) nine (9) months in the case where the lease is for a period of two (2) years or more but less than three (3) years; or
- (c) twelve (12) months in the case where the lease is for a period of three (3) years or more.

If the lessee withdraws from a long private residential lease before the periods stipulated above, the lessor may retain an amount not exceeding one (1) month's rent from the deposit left by the lessee by way of security, so however, that the lessor may still proceed against the lessee to collect any other amount due by him



Letting of Shared Residential Space

A shared residential space is: any separate space in an apartment or building, with shared amenities, such as kitchen and bathroom facilities

Any contract entered into for the lease of a shared residential space shall have a duration of six (6) months.

The lessee may withdraw from the lease, at any time, by giving one (1) week prior notice to the lessor by a registered letter.

No penalty may be imposed on the lessee for exercising his rights of withdraw





Diploma in Law (Malta)



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