May 2017

Residential Tenancies

Danish Residential Tenancies and Contract Practice

Gorrissen Federspiel

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This memorandum was prepared as a service to clients and friends of Gorrissen Federspiel. The scope of the memorandum is to describe the Danish residential tenancy law and contract practice on a general level and to serve as general guidance to the Danish residential tenancy market from an investor/landlord perspective.

Contents

1 Background and scope

1.1 The memorandum solely concerns leases concluded under the current Danish residential tenancy law. The law governing tenancy agreements concluded earlier may on some points differ substantially from the current law.

1.2 The memorandum serves solely as general information and should not be considered or relied on as legal advice.

2 Danish residential tenancy law

2.1 The Danish legislation on residential tenancies is comprehensive and quite complex. Residential tenancies are strictly regulated and a large part of the provisions are mandatory. The legislation is from a general perspective tenant-friendly.

2.2 Residential tenancies are subject to a number of different acts depending on the type and nature of the tenancy. However, the rules governing residential tenancies that are mainly important for private landlords and real estate investors are set forth in two different, quite comprehensive, acts:

– The Danish Rent Act (Consolidated Act No. 227 2016-03-09) ("the Rent Act"), and

– The Danish Act on Temporary Regulation of Housing Conditions (Consolidated Act No. 810 2015-07-01) ("the Housing Regulation Act").

2.3 The two acts apply to agreements regarding *letting of accommodation*, including sub-letting, regardless of whether the tenant is a natural person or a legal entity. The latter is of importance regarding tenancies where a legal entity sub-lets housing to natural persons. Originally, the Rent Act also applied to business leases and therefore the act contains a number of specific provisions in this regard (some provisions are still relevant for business leases entered before 2000). However, a *separate Business Lease Act* came into force on 1 January 2000. As for business leases, see Gorrissen Federspiel's corresponding memorandum on Danish business lease law.

2.4 The current *Rent Act* was adopted in 1979. The basis of the current Rent Act is to some extent still the first actual rent act in Denmark from 1937. The Rent Act serves as the basic act on residential tenancies. The act includes, inter alia, provisions on the tenancy agreement (formal and substantive requirements), defects and remedies, maintenance during the lease period, the tenant's use of the tenancy, the landlord's access to the tenancy, payment of rent, the permissible size of the rent, rent regulation, alterations of the tenancy, consumption expenditures

and accounting, payments for antenna and electronic communication services, tenant representation, notice of termination, termination by default, transfer of use, and refurbishment on vacation. Further, the act includes a mandatory obligation for the landlord to offer the property to the tenants before the property can be transferred to a third party. This obligation is of great practical importance in relation to the purchase and sale of real estate.

2.5 Despite the title of the *Act on Temporary Regulation of Housing* Conditions, the Act, which was originally adopted in 1939, has become a part of the permanent regulation of Danish tenancy agreements. The Housing Regulation Act contains some very detailed rules on the permissible size of the rent and rent adjustment, which are of significant importance in an investor's assessment of an investment in the property.

2.6 Throughout time, numerous changes to the two mentioned acts have been made, which is one of the reasons why the acts have become quite complicated to work with. The complexity of the Danish residential tenancy law is particularly characteristic for the mandatory provisions on determination of the permissible rent. In a complex system of multiple provisions, contained in both the Rent Act and the Housing Regulation Act, the permissible rent is set forth on the basis of different principles depending on, inter alia, where the property is located, when the property was built, how many tenancies the property contained on specific dates, the extent to which the individual tenancy has been improved, and the contents of the tenancy agreement. Hence, specific advice on rent levels and rent adjustment possibilities requires knowledge of the property status and the tenancy agreements. Determining the correct legal rent will in many cases also require knowledge of the rent in comparable residential tenancies in the local area of the property in question. The regulations and different principles on rent determination are described in more detail below.

3 Drafting of the tenancy agreement

3.1 In principle a tenancy does not have to be covered by a written agreement. In such case the tenancy will be deemed to have been concluded subject to the provisions of the Rent Act, unless it can be proven that it was otherwise provided in a verbal agreement. However, a tenancy agreement and any other agreements concerning the tenancy must be executed in writing if either party so demands.

3.2 If the tenancy agreement is drafted on a *preprinted form*, which is in practice very often the case, such form must be authorized by the Minister for Social Affairs. Where an unauthorized form is used, any provisions imposing more onerous obligations or conferring less extensive rights on the tenant than those provided for by the Rent Act, will be

void. A very large part of Danish residential tenancies are concluded on the authorized preprinted form; *Type Form A, 9 Edition of 1 July 2015*. This type of form may also be – and is very often – used for sub-letting.

3.3 If the tenancy agreement is drafted on an authorized, preprinted form, any provisions imposing more onerous obligations or conferring less extensive rights on the tenant than those provided for by the Rent Act, are not valid unless such provisions are emphasized (e.g. in bold or italics).

3.4 The aforementioned requirements also apply to written tenancy agreements containing identical terms for several tenants in the same property, where such agreements (despite not being preprinted forms) appear to the tenant to be standard agreements. On the other hand, if the tenancy agreement appears to be *prepared individually* for the respective tenancies, the mentioned requirements do not apply. The main reason for this rule is that the tenants are assumed to review an individual contract thoroughly while they are assumed to rely on a standardized agreement being prepared on well-balanced and customary terms.

3.5 In connection with a potential acquisition of a property it should therefore be determined whether the tenancies are entered into on (authorized) preprinted forms or as standardized agreements, and if so whether provisions are emphasized correctly in such agreements.

4 The permissible rent and rent adjustment

4.1 The rental regimes

4.1.1 The provisions regarding the permissible rent level and rent adjustment are set forth in both the Rent Act and in the Housing Regulation Act. The acts contain provisions concerning the maximum level of the permissible rent as well as mandatory formal procedures to be followed in connection with the determination and adjustment of the rent. As mentioned above, the rules are comprehensive and complex. The rules vary with, inter alia, the type, age and location of the property, the extent to which the individual tenancy has been improved, and what is agreed in the tenancy agreement. From an investor perspective, the most relevant rules on rent determination contain four different rental regimes:

- Market rent
- The value of the tenancy
- Small house rent
- Cost-related rent

4.1.2 The four different rental regimes are *listed in order of rank according to the typical rent size*, as market rent typically (always)

results in the highest rent level, while cost-related rent will typically result in the lowest rent level. The cost-related rent is in most Danish municipalities (i.e. the so-called regulated municipalities, cf. clause 4.2 below) the main rule, while the other rental regimes can be considered as exceptions hereto.

4.1.3 In each municipality a *Rent Assessment Committee* is established. The Rent Assessment Committee resolves different disputes between landlords and tenants, including disputes concerning determination of rent and rent adjustment. The tenant will only pay a fee of DKK 300 for proceedings before the Rent Assessment Committee. Most often, the tenant does not need an attorney, as the Rent Assessment Committee will at its own initiative request relevant evidence in the case. Therefore, it is fairly easy for the tenant to obtain a decision on the size of the rent from the Rent Assessment Committee. The decisions of the Rent Assessment Committee can be brought before the *Housing Tribunal* (which is the district court assisted by two lay judges with professional experience in housing and rent matters).

4.2 Regulated municipalities

4.2.1 In deciding which rental regime applies, it must first be established whether the Housing Regulation Act applies in the municipality in which the property is situated geographically. If the Danish Housing Regulation Act applies, the municipality is referred to as a "regulated municipality", and thus, the relevant rental regime is (as a main rule) the cost-related rent. It is up to each municipality to decide whether the Housing Regulation Act shall apply. In each case it must therefore be examined, e.g. by contacting the municipality in which the property is situated, whether the municipality is regulated. Whether or not a municipality is regulated usually also appears from the municipality's webpage.

4.2.2 The City of Copenhagen, Frederiksberg, and the other larger Danish cities, such as Aarhus, Odense, Aalborg and Esbjerg, are all regulated municipalities. Therefore, this memorandum solely describes the rules on permissible rent and regulation based on the rules for regulated municipalities.

4.3 Exceptions to the cost-regulated rent in regulated municipalities

4.3.1 As stated above, the main rule in the regulated municipalities is that the rent determination and adjustment is based on the rules concerning cost-related rent, cf. clause 4.5 below. However, there are a number of exceptions to this main rule, as other rules apply or as it is possible to agree on another type of rental regime for a number of different types of tenancies in the regulated municipalities. For private investors and landlords the following exceptions from the cost-related rent are primarily relevant:

(a) Market rent (free rent fixing), cf. clause 4.8 below. This includes:

(i) Properties put into use after the end of 1991;

(ii) Residential tenancies, which on 31 December 1991 (legally) were solely used for commercial purposes;

(iii) Newly furnished residential tenancies in an attic, which on 1 September 2002 were not used or registered for residential purposes; and

(iv) Residential tenancies in newly built-on storeys (i.e. storeys that are established on top of the existing property) for which building permissions were obtained after 1 July 2004.

(b) The value of the tenancy (compared to similar tenancies), cf. clause 4.7 below. This includes:

(i) Substantially improved tenancies, i.e. tenancies in which improvements have been made within a consecutive two-year period, which have substantially increased the value of the tenancy and for which the cost of improvement either exceeds DKK 2,213 per m^2 (DKK 419 for energy imporvements) or a total amount of DKK 253,064 for the tenancy in question (2017-figures); and

(ii) Residential tenancies in properties of which more than 80 % of the properties' gross floor area per 1 January 1980 were used for residential purposes, so-called 80/20-properties.

(c) Small house rent (the value of the tenancy compared to similar tenancies, however not exceeding cost-related rent in corresponding tenancies), cf. clause 4.6 below. This includes:

(i) Properties that contained 6 or less residential flats per 1 January 1995.

4.4 Establishing the correct rental regime

4.4.1 Property type

4.4.1.1 When establishing which rental regime applies for a given property in a regulated municipality (e.g. Copenhagen), it is necessary first to *establish which type of property is concerned*, i.e. whether it is a newly built property, cf. clause 4.3.1(a)(i) above, whether the property was used for other purposes than residential purposes on 1 January 1980, cf. clause 4.3.1(b)(ii) above, and/or whether the property on 1 January 1995 contained 7 or more residential flats, cf. clause 4.3.1(c)(i) above.

4.4.1.2 The assessment of the type of property requires a *definition of a real property*. As a main rule under Danish law, one piece of property is made up of one title number or one owner occupied flat. However, the Housing Regulation Act applies another concept with a wider definition

of one piece of real property. Thus, more owner occupied flats within the same owners association and owned by the same landlord, is considered as one property. Further, two or more properties (title numbers) must in relation to, inter alia, the rules on cost-related rent be treated as one piece of real property, if the properties are owned by the same owner; are built continuously as one housing estate; and have either common recreational areas or any type of joint operation.

4.4.2 This extended concept of property is in practice especially decisive for whether a property is deemed to contain 7 or more residential flats and thus is subject to the rules on cost-related rent, or whether the properties are deemed to be small properties with 6 or less residential flats, cf. clause 4.3.1(c) above. Since this must be established based on the situation per 1 January 1995, it is decisive whether the mentioned criteria for this establishment were fulfilled per this date. In order to make a correct classification of the properties in connection with a transaction, information about the properties' titles and operation per 1 January 1995 should be obtained. In practice it may be difficult to procure certain information in this respect.

4.4.3 Types of tenancies

4.4.3.1 Next, it must be established whether the property contains one or more tenancies, which are exempted from the cost-related rent. This may be the case, if a tenancy has been substantially improved, if a tenancy is part of a newly built or newly furnished storey, or because the tenants per 31 December 1991 (legally) solely used the premises for commercial purposes. Thus, it is possible – and also fairly common – that a property contains tenancies, for which the rent must be determined and regulated according to different rental regimes.

4.4.3.2 In practice especially *substantially improved tenancies are common*. As the tenants have moved out of old leases in old (Copenhagen) properties, the landlords have over a number of years typically substantially improved the tenancies with the result that the rent for the tenancies in question would no longer be limited by the low cost-related rent. Thus, in a substantially improved tenancy, the rent is limited by the value of the tenancy, which will typically imply a higher permissible rent, cf. clause 4.3.1(b)(i) above.

4.4.3.3 As for disputes before the Rent Assessment Committees and the courts regarding the permissible rent under the rules concerning substantially improved tenancies, the landlord must submit *documentation* for the cost of the improvements and for the improvements having been carried through over a period of 2 years. If such documentation cannot be procured, the rules can only apply, if it without doubt can be established that the improvements have been carried through to a sufficient extent within a period of 2 years. In relation to the acquisition of property in which the rent for (some of) the tenancies have been fixed according to the rules on substantial improvement, documentation for

the improvements made in the form of construction contracts, invoices etc. should be requested.

4.5 Cost-related rent (determination and adjustment)

4.5.1 The cost-related rent is *mathematically calculated* on the basis of the costs of the property that are incurred on the landlord and a maximised yield on the value of the property.

4.5.2 In addition to the cost-related rent, increases to the rent may be added for *improvements* made to the property or the individual tenancies (which is not the same as rent determination in substantially improved tenancies, cf. above). A rent increase due to improvements is calculated so that the size of the increase generates a suitable rate of interest on expenditure properly incurred to carry out the improvements and covers depreciation and usual costs of maintenance, administration, insurance, etc. Only the actual improvement costs can form the basis of a rent increase, as any part of the cost that is deemed to be maintenance cannot be included in the calculation. It is in each case necessary to perform an individual assessment and calculation of a rent increase due to such improvements.

4.5.3 The operating budget

4.5.3.1 As mentioned, the cost-related rent in principle covers the landlord's operating costs on the property and provides a yield on the value of the property. The cost-related rent is calculated on the basis of a so-called *operating budget*. Regardless of this fundamental basis of cost coverage, it is in detail regulated in the Housing Regulation Act and by relating case law, which costs may be included in the operating budget.

4.5.3.2 Overall, the costs must be *recurring, current, fair and necessary*. The requirement for the costs being current implies that they rather constitute "accounts" than a "budget", but this is the terminology applied in the act and in general. That the costs must be fair considering the property and the type of tenancy implies that rent tribunals and courts may reduce the operating costs in the operating budget, if they assess them to be too high, regardless of whether or not the landlord can document that costs have been incurred corresponding to the amount included in the operating budget.

4.5.3.3 Far from all costs can be included in the budget, even though such costs may be considered operating costs on the property for the landlord. The Danish Housing Regulation Act prescribes that the following costs are part of the operating budget: (a) taxes and duties; (b) cleaning; (c) insurance; (d) administration; and (e) provisions for exterior and interior maintenance.

4.5.3.4 The Housing Regulation Act must, however, also be construed in light of the comprehensive body of case law concerning which costs may be included in the budget.

(a) As for *taxes and duties* the following may, inter alia, be included in the operating budget: land tax, municipal charges, house owners' association fee, refuse disposal costs, refuse collection, rat control, chimney sweeping, reimbursement duty (in Danish: dækningsafgift), and water charges.

(b) As for *cleaning* the following may, inter alia, be included in the operating budget: janitor, cleaning of staircases, window cleaning, cleaning materials, and cleaning equipment, snow clearing, and salt application.

(c) As for *insurance* the following may, inter alia, be included in the operating budget: building insurance, glass insurance, insurance of sanitary installations, industrial injury insurance, insurance of vehicles, and working equipment.

(d) *Administration costs* are predominantly fixed according to the rent tribunals' standard figures. The standard figure for Copenhagen is DKK 2,600.00 excl. of VAT per tenancy (2013-figure). The standard figure maximises all costs of operation of an administration, including costs for on-going legal and auditors' fees.

(e) As stated below in clauses 8.4 and 8.5 it is specifically set forth in the Rent Act and the Housing Regulation Act that the landlord is obliged to set aside and (in some cases) deposit certain amounts per m2 gross floor area on a maintenance account in respect of each flat. These specified deposits may be included in the operating budget.

4.5.3.5 For certain operating costs, the *Rent Assessment Committees set out standard figures* that provide maximum amounts to be included in the budget. The landlord cannot include a cost in the budget which exceeds any given standard figure, regardless of whether or not it can be documented that the costs incurred exceed the standard figure. All rent assessment committees set out a standard figure for the administration of the property. A number of rent assessment committees also apply standard figures for the costs related to janitors and cleaning. The standard figures, that are not exactly the same in the different municipalities, can usually be found on each municipality's webpage.

4.5.4 The yield to be included in the operation budget

4.5.4.1 The yield, which the landlord may include in the calculation of the cost-related rent, is defined in the Housing Regulation Act. Calculation of the yield is based on the value of the property. It is of no relevance for the size of the yield what the landlord has actually paid for the property and how the landlord has financed its acquisition of the property. The landlord will thus typically not obtain coverage for its financing costs.

4.5.4.2 For *properties commissioned before 1 January 1964* the yield

is maximised at 7 % of the public property value in the 15th general value assessment per 1 April 1973. The property values per 1 April 1973 are significantly lower than the properties' current market values. Thus, the yield that will be included in the calculation of the cost-related rent will as a main rule be limited viewed in relation to the property's market value. Never the less, the calculation of the yield is not affected by the purchase price of the property or the market value of the property at any given time. When acquiring a property, documentation for the property's value assessment as at 1 April 1973 should, thus, be obtained if possible.

4.5.4.3 For *properties commissioned after 1963*, the landlord may instead calculate the yield as an amount that cannot exceed reasonable payments on customary long-term mortgage loans taken out to finance the construction of the property, with the addition of a fitting interest on the remaining part of the reasonable acquisition price with the deduction of rent deposits (i.e. deposits and prepaid rent). This applies regardless of whether the property was actually financed with mortgage loans or not. The rate of the fitting interest on the remaining part of the acquisition price is explicitly set out in the act. The regulations imply that the landlord can document the other criteria for calculating the yield, including what the interest on a long-term mortgage loan was at the time of the construction of the property, and what it actually cost to build the property (construction costs + land value). In practice it may especially prove difficult to document what the costs of constructing the property have been, including potentially to document what the public land value was at the time of constructing the property. To the extent possible, documentation for the mentioned issues should be obtained when acquiring real property.

4.5.5 Statutory adjustment of the cost-related rent

4.5.5.1 The landlord is entitled to give notice of adjustment of the rent in case of a net increase in the property's operating costs. No minimum time intervals apply for giving notice of adjustment and in principle this may take place several times in one year. On the other hand, the landlord is entitled to maintain the rent that was previously notified to the tenant, even though the operating costs have subsequently decreased.

4.5.5.2 A number of *formal requirements* must be complied with, when giving a tenant notice of a cost-related rent adjustment. Generally, three months' notice must be given before the rate adjustment can take effect.

4.5.5.3 If a tenant representation is established for the property, the notice procedure is more comprehensive. This includes that the representation must be convened to a meeting in order to receive information on and discuss the operating budget. If the cost-related rent increase shall take effect for several tenancies, the landlord must simultaneously notify all tenants for whom the rent increase shall apply. Further, there are detailed rules as to which information the landlord must include in

the notice and in which order and within which deadlines the various levels in the notice procedure must be executed.

4.5.5.4 If the formal requirements are not complied with, *the notice of rent increase will be invalid*. As for the assessment of the rent income in connection with the acquisition of real property, documentation should therefore be requested for any rent adjustments carried through and it should be considered whether these rent adjustments have been notified correctly.

4.6 Small house rent

4.6.1 As mentioned above, the rules governing the so-called small houses apply when a property per 1 January 1995 contained 6 or less residential flats. For this type of property, special rules apply.

4.6.2 Thus, for such properties the rent is established and adjusted according to the value of the tenancy in accordance with the Danish Rent Act. However, the rent cannot significantly exceed the rent that is paid for a corresponding tenancy in respect of location, type, size, quality, equipment and state of maintenance, for which the rent is adjusted according to the rules on cost-related rent. In practice this means that the permissible rent level is determined by a comparison with similar tenancies, which are subject to cost-related rent. This will as a main rule result in a higher rent than the cost-related rent but a lower rent than the value of the tenancy.

4.7 The value of the tenancy

4.7.1 In regulated municipalities the rent may, as an exception to the cost-related rent, be fixed at the value of the tenancy, if the property has been substantially improved or if the property is a so-called 80/20-property, cf. clause 4.3.1(b)(ii) above.

4.7.2 In such cases, the rent cannot be significantly higher than the value of the tenancy. In establishing the value of the tenancy, a comparison must be made with the normal rent in the community or district for similar tenancies, having regard to location, character, size, quality, amenities and state of repair. Rent based on the value of the leased premises will as a main rule result in a higher rent than the cost-related rent as well as the small house rent.

4.7.3 As stated in clause 4.4.3 above, the *substantially improved tenancies* are in practice a significant exception to the cost-related rent. This is due to the fact that landlords over a number of years have made substantial improvements to tenancies in old properties whenever a tenant vacated a tenancy. Conducting substantial improvements has probably been the most common way to optimise rent income of the properties. In many cases a property's potential for future development may depend on the potential for making substantial improvement to the existing tenancies.

4.7.4 It is briefly described above in clause 4.3.1(b)(i) when tenancies are considered substantially improved, including which improvement costs the landlord must have covered. It is the landlord's obligation to maintain a substantial improvement of the tenancy. If the landlord has not met its obligation to *maintain the substantial improvement*, the rent must in future be calculated according to the rules on cost-related rent. When acquiring a property it should therefore be assessed whether improvements of the premises are maintained if the rent is fixed according to the rules concerning substantial improvements.

4.7.5 Also, a number of *formal requirements* apply if the rent is to be determined according to the rules on substantial improvements: This e.g. includes that the landlord 1) upon the first lease of the premises in question, 2) *once* the tenancy agreement has been terminated, 3) and *before* a new tenancy agreement is entered into, inform the tenant representation, or the other tenants in the property, that the tenancy will be subject to substantial improvements and, consequently, change of rental regime from cost-related rent to the value of the tenancy. The landlord must in the notice also state that the tenant representatives, or the tenants, may bring a matter concerning the lack of maintenance of the property (not the individual tenancies) before the Rent Assessment Committee. If the formal requirements are not met, the terms for determining the rent on the basis of the value of the tenancies are invalid, and thus, the rent will be maximised at the cost-related rent. When acquiring real property, documentation for the *observation of this duty to inform* should therefore be requested. Otherwise, there may be a risk that the tenants of the substantially improved tenancies may demand that the rent is reduced.

4.8 Market rent

4.8.1 In clause 4.3.1(a) above, the tenancies for which the rent may be fixed at the market rent are described. As a main rule, the cost-related rent also applies for these leases, but the parties may freely agree on the size of the rent, though, subject to the general rule under Danish law, whereby an agreement may be set aside or changed if it is deemed to be unreasonable. In practice this means that the rent can be fixed to such size, which the demand in the market renders possible. This rent is – especially due to the low rent level under the rules on cost-related rent – typically much higher than the rent level in other types of tenancies.

4.8.2 As mentioned, it must be *agreed* in the tenancy agreement, if the rent is fixed according to the rules on market rent instead of the rules on cost-related rent.

4.8.2.1 For *newly built properties*, cf. clause 4.3.1(a)(i) above, there are no actual formal requirements for such agreement, but there must be an agreement between the parties concerning the fixing of the rent according to the rules on market rent. In principle a verbal agreement in this

respect is valid; however, in practice it is for documentation purposes necessary that the agreement be entered in writing, either as a term under the tenancy agreement or in an addendum to the tenancy agreement, if such agreement is entered after the commencement of the lease.

4.8.2.2 For the other types of tenancies, for which market rent may be agreed, cf. clauses 4.3.1(a)(ii)-4.3.1(a)(iv) above (i.e. tenancies in a newly built or newly furnished storey, or ltenancies that were legally solely used for commercial purposes per 31 December 1991), the tenancy agreement (or an addendum) must contain an explicit reference to the relevant provision about market rent in the Housing Regulation Act. *If this formal requirement is not met*, the rent cannot be fixed according to the market rent, but solely according to the much lower cost-related rent.

4.8.2.3 When acquiring a property, it is recommended that a legal review of the tenancy agreements is performed in order to examine and assess whether the market rent is (sufficiently) agreed upon.

5 Agreed rent adjustment

5.1 Initially, the rules concerning rent adjustment in the Rent Act and the Housing Regulation Act cannot be departed from by agreement. Consequently, the rent can solely be adjusted, if this can take place in accordance with the legislative rules.

5.2 Tenancy agreements concluded *prior* to 1 July 2015 may include terms and conditions regarding step rent where the rent is adjusted with certain amounts at certain times. However, for tenancy agreements concluded *after* 1 July 2015 it is only possible to agree on future rent adjustments in accordance with the developments in the net price index. Regardless of an agreement on rent adjustment, the rent may not substantially exceed the value of the tenancy.

6 Payment of rent, deposit, and prepaid rent

6.1 The rent is typically required to be paid on the first day of every month. The parties can freely agree on another payment term.

6.2 In residential tenancies the landlord may demand payment of a deposit corresponding to a maximum of three months' rent at the commencement of the tenancy. At the commencement of the tenancy the landlord may further demand advance payment of rent for a period of up to three months. In case of rent increases, a corresponding adjustment of deposit and advance payment of rent may be required.

6.3 The deposit must be held as security for the tenant's obligations upon vacation, cf. clause 13. The prepaid rent serves as payment for the last three months' of the tenancy.

7 Heating, water, and electricity

7.1 Heating

7.1.1 Where the landlord supplies heat and hot water, the landlord may claim *reimbursement* of costs incurred in respect of the tenant's consumption and a proportionate share of other costs. Such costs cannot be included in the rent.

7.1.2 The landlord may include in the heating and hot water accounts only the cost of fuel consumption during the heating period. Where supplies are provided from a common heat supply system, the landlord may include the total cost for the supply in the heating and hot water accounts. Also, the cost of energy labeling and the cost of monitoring, inspecting and maintaining technical installations can be included in the heating and hot water accounts. For further information regarding

energy labeling please see clause 9.2 in Gorrissen Federspiel's memorandum on Real Estate Investments in Denmark.

7.1.3 The landlord is entitled to demand *on account payments*. Where the contributions paid on account by the tenant are insufficient, the landlord may claim payment of a supplement on the following rent payment date, i.e. 1 month after the tenant's receipt of the accounts. Where the supplement exceeds 3 months' rent, the tenant may pay the amount in three equal monthly installments.

7.1.4 The *apportionment of costs between tenants* are subject to the landlord's directions based on customary calculation rules, either according to suitable heat distribution meters or according to gross floor area or volume and – concerning supply of hot water – according to the number and category of hot-water taps and the number of rooms. Where heating costs are apportioned by gross floor area or volume, the landlord or the tenant representation or a majority of tenants may require the future apportionment to be undertaken on the basis of heat distribution meters.

7.1.5 The accounts *concerning the heating and hot water* supply for the property during the heating accounting year must reach the tenants within 4 months from the end of the heating accounting year. Where supplies are provided by a common heating system, the accounts must reach the tenants within 3 months from the landlord's receipt of final payment for heating and hot water consumption from the heat-supply system. If the accounts do not meet these requirements and certain other formal requirements they will be void.

7.2 Water

7.2.1 Where the landlord supplies water, the cost of water is *as a main rule included in the rent*. If individual meters are installed in the property, the landlord may require reimbursement from the tenant for water expenses.

7.2.2 Where the landlord supplies water, the tenant representatives or a majority of tenants may claim that the apportionment of water costs should in the future be based on meters. In such case, payment for water according to meters cannot be included in the rent. The landlord may claim reimbursement of his expenses for the tenant's consumption. On account payments may be demanded.

7.2.3 In the *water accounts* the landlord may include all costs incidental to the payment for water, including water and water distribution costs. The water accounting year shall be fixed so as to correspond to the basis of settlement vis-à-vis the waterworks.

7.3 Electricity

7.3.1 In Denmark there is a general requirement that all housing flats should have separate electricity meters, which only detect electricity consumption in each flat. The tenants are almost without exception in direct contractual relationships with the utility company.

8 Maintenance during the tenancy period and defective premises

8.1 A distinction is made between interior maintenance and exterior maintenance of the premises. The interior maintenance includes papering, painting, whitewashing and plastering of the walls, ceiling and wood and metal (radiators) surfaces inside the premises. The exterior maintenance covers everything that is not subject to the interior maintenance, e.g. kitchen and bathroom fixtures, faucets, water cisterns, worktop, utility installations, drainage, stairways, attic and basement rooms etc.

8.2 If the parties fail to regulate the maintenance obligations in the tenancy agreement, all such obligations are imposed on the landlord, except that the tenant is required to replace locks and keys when necessary.

8.3 The Rent Act is non-mandatory in this respect, and thus, the parties may agree that maintenance obligations rest with the tenant. Most often the parties agree that the tenant must carry out the interior maintenance (or a part hereof).

8.3.1 For tenancies covered by the Housing Regulation Act the landlord is required to prepare a maintenance plan for a 10 year period, which is to be updated annually.

8.4 Maintenance account for interior maintenance

8.4.1 Unless all interior maintenance obligations are imposed on the tenant, the landlord must set aside (not pay in) on an interior maintenance account an amount of DKK 44 per m^2 gross floor area of the premises (2017-figure). Where the tenant has agreed to assume responsibility for interior maintenance, the landlord's obligation with respect to the maintenance account lapses.

8.4.2 Where the landlord has defrayed costs for interior maintenance, such amount may be deducted in the maintenance account. At the same time, the landlord must submit to the tenant a written statement of the amounts paid and of any balance available. The tenant may require documentation of all maintenance costs incurred.

8.4.3 Within 3 months from the end of each accounting year, the landlord must submit to the tenant a written statement of the current balance available for maintenance and repair works. If the maintenance account exceeds an amount corresponding to the total provisions over the past 3 years, the tenant may require that such exceeding amount is used to other reasonable and appropriate maintenance and repair works of the premises, provided that the premises are in good repair and condition with respect of the interior maintenance.

8.4.4 In case of re-letting, the maintenance account must be carried on, and the landlord must notify the new tenant of the balance available for maintenance and repairs at the commencement of the new tenancy.

8.4.5 If the premises are for residential purposes only and the landlord has used the total amount set aside for interior maintenance, the landlord cannot be met with any additional claim by the tenant relating to the interior maintenance.

8.5 Maintenance account for exterior maintenance

8.5.1 The landlord is further obliged to set aside (not pay in) on a maintenance account an amount for the purpose of exterior maintenance. The calculation of this amount depends on several factors, e.g. when the property was first occupied and the number of residential flats in the property.

8.5.2 If the property is occupied prior to 1970 and contains more than two residential flats, the landlord is required to pay in an additional amount for maintenance at the Houseowners' Investment Fund (in Danish: Grundejernes Investeringsfond).

8.6 When acquiring property information about the different maintenance accounts should be provided.

8.7 Defective premises and remedies

8.7.1 As of the agreed commencement of the tenancy, the landlord must make the premises available to the tenant in a reasonable state of repair and condition. This e.g. includes that as at the date of the tenant's possession, the premises must be clean, window panes must be intact and all external doors must be provided with locks in good working order and fitting keys.

8.7.2 If the premises are not in such a state of repair and condition at the time of possession or during the continuance of the tenancy agreement as the tenant is entitled to expect (cf. the above comments on maintenance), and if the landlord fails to remedy such defects upon being given notice requiring such remedy, the tenant may remedy the defects at the landlord's expense.

8.7.3 The tenant may claim a proportionate reduction of the rent for any period during which a defect reduces the value of the premises to the tenant. If the landlord fails to repair any material defects immediately, or where repair is not possible within a reasonable time, the tenant may terminate the tenancy agreement without notice. Further, the tenant may terminate the tenancy agreement without notice, if the landlord is deemed to have acted fraudulently with respect to the defects of the premises.

8.7.4 The tenant may claim damages where, at the time of possession, the premises did not contain certain qualities which must be assumed to be warranted by the landlord, or where the landlord has acted

fraudulently. The same applies where the premises are subsequently damaged due to the landlord's negligence, or where any other obstacle or impediment to the tenant's right of use arises on grounds for which the landlord is responsible.

8.7.5 Where the premises are defective at the commencement of the tenancy, the tenant must give the landlord notice within two weeks from the commencement date in order to rely on such defects. This requirement, however, does not apply if the defects are not ascertainable when exercising reasonable care or where the landlord has acted fraudulently.

9 Sub-letting

9.1 The tenant is entitled to partially sub-let up to one-half of the rooms of the tenancy for residential purposes. The total number of occupants of the tenancy, including the tenant, cannot exceed the number of rooms.

9.2 A tenant is entitled to sub-let a tenancy in whole exclusively for residential purposes for a period not exceeding 2 years where the absence of the tenant is temporary and is due to illness, business, studies, placement, etc.

The landlord may object to such sub-letting where (a) the property comprises less than 13 flats; (b) the total number of persons in the flat will exceed the number of rooms; or (c) the landlord has any other reasonable ground.

9.3 The tenant is liable for any reckless damage caused by the subtenant. Sub-letting agreements must be made in writing, and the tenant must submit a copy of the sub-letting agreement to the landlord prior to the commencement of the sub-letting period.

10 Transfer of the tenancy

10.1 Exchange of tenancies between tenants

10.1.1 The tenant of a tenancy used exclusive for residential purposes may exchange the tenancy with the tenant of another tenancy (regardless of whether it is a tenancy in another property and/or with another landlord) so that the latter tenant will take over the tenancy.

10.1.2 The landlord may object to the exchange where (a) the landlord has his residence in the property, and the property comprises less than 7 residential tenancies; (b) the outgoing tenant has not occupied his lease for 3 years; (c) the lease will be occupied by more than 1 person per room upon exchange; or (d) the landlord has any other reasonable ground.

10.2 Death and nursing home

10.2.1 On the death of a tenant, the surviving spouse is entitled to continue the tenancy. Where the tenant dies without leaving a spouse, any other person with whom the deceased tenant had cohabited for a period of not less than 2 years preceding the death may continue the tenancy. The same applies if the tenant moves to a nursing home, sheltered housing or the like due to old age or illness.

11 Termination of the tenancy agreement

11.1 As a main rule a tenancy agreement is entered into for an indefinite period of time and cannot be terminated by the landlord. However, this main rule is subject to some important exceptions as described below. It should be noted that the Rent Act exhaustively regulates the landlord's right to terminate the tenancy agreement. Hence, any provisions in the tenancy agreement entitling the landlord to terminate the tenancy for other reasons than those found in the Rent Act would be void.

11.2 Fixed-term tenancies

11.2.1 The most immediate exception to the tenancy agreement being indefinite is that the parties may agree to a fixed-term. In such case, the tenancy agreement expires without further notice at the end of the agreed term. A fixed-term tenancy agreement cannot be terminated by notice during the fixed term, unless this is agreed (or in case of breach by the other party). The parties can agree to extend a fixed term; however, repeated extensions may be considered circumvention of the Danish Rent Act, and thus, the term of the tenancy will be infinite.

11.2.2 Even though the tenancy agreement is entered into for a fixed term, the Housing Tribunal may set aside any provision for a fixed term, if such provision is not found to be reasonably warranted by the landlord's own situation.

11.2.3 In case the tenant remains in occupation of the premises for more than 1 month after expiry of the term – and the term has not been extended – without the landlord requiring the tenant to vacate the premises, the tenancy will continue for an indefinite term. Hence, if the landlord wishes to rely on the fixed term, it is important to be aware when the term expires and enforce it.

11.3 The landlord's own use of the premises

11.3.1 If the landlord intends to use the premises for the landlord's own purposes, the tenancy may be terminated by giving one year's notice.

11.3.2 Where the tenancy relates to a flat, it is a condition that the landlord intends to occupy the flat. In case of an owner-occupied flat not

previously occupied by the landlord, it is additionally a condition that the tenancy agreement was entered into prior to 1 July 1986.

11.3.3 Further, a termination under these provisions must be reasonable in view of the circumstances of both the tenant and the landlord, e.g. with regard to the duration of the landlord's ownership of the property and the tenant's possibilities of finding suitable alternative accommodation.

11.3.4 If possible, the landlord must without undue delay offer the tenant a tenancy in another flat in the property, if any such flat becomes available for occupation within 3 months from the date on which the tenant has been given notice to vacate his former flat.

11.4 Demolishment of the premises

11.4.1 If the landlord shows that the property is to be demolished, the tenancy may be terminated by giving three months' notice.

11.4.2 In case of reconstruction or rebuilding, the landlord must at the time of the notice of termination offer the tenant a tenancy in a flat of the same category as those to be vacated if flats or premises are to be re-let following the reconstruction or rebuilding. Further, the landlord must – if possible – offer the tenant a tenancy in another flat in the property, if any such flat becomes available for occupation within 3 months from the date on which the tenant has been given notice to vacate the flat.

11.5 The tenant's non-compliance with the rules of proper conduct

11.5.1 If the tenant has failed to comply with the rules of proper conduct and the non-compliance is such that the tenant must vacate the premises, the tenancy may be terminated by giving 3 months' notice.

11.5.2 Pursuant to the Rent Act, the following circumstances may, inter alia, be considered non-compliance with the rules of proper conduct: (a) if a tenant resorts to violence or threatens to use physical violence against the landlord, the landlord's employees, other tenants of the property or others having lawful business in the property; (b) the tenant makes unacceptable noise that inconveniences the landlord, other tenants of the property etc; (c) the tenant destroys the property or goods of the property or common areas; or (d) the tenant fails to keep the premises in good and tenantable repair.

11.5.3 If such non-compliance takes place in spite of a reminder from the landlord, the tenancy may be made conditional upon the tenant complying with specific conditions in respect of the tenant's behavior in the property. Further, the tenant may be warned that if such disregard of the rules of proper conduct continuous, the landlord may terminate the tenancy with or without notice.

11.5.4 In severe cases of non-compliance with the rules of proper conduct, this may amount to a material breach of the tenancy agreement, and consequently, the tenancy agreement may be terminated without further notice, cf. clause 11.7 immediately below.

11.6 Termination due to the type of premises

11.6.1 Specific (and less strict) regulations apply in relation to certain types of tenancies/premises, allowing the landlord to terminate the tenancies. Such tenancies are, among others: (a) Tenancy agreements regarding separate rooms for residential purposes where the room forms part of the landlord's flat or of a single- or double-occupancy house occupied by the landlord. Such tenancies may be terminated by giving one month's notice; (b) tenancies in buildings containing only two flats at the time the tenancy agreement was entered into and where the landlord occupies one of such flats. Such tenancies may be terminated by giving one year's notice; and (c) tenancy agreements concerning garages, stables, etc. Such tenancies may be terminated by giving one month's notice.

11.7 Form and content of the termination notice and the tenants objections

11.7.1 The Rent Act sets out some requirements as to the form and content of the landlord's termination of the tenancy agreement. In relation to residential tenancies, the termination must be in writing and specify the grounds for the termination. If the notice does not state these particulars, it is *considered void*.

11.7.2 If the tenant refuses to accept the termination, an objection must be filed in writing within 6 weeks from the date of receipt of the termination notice. If the landlord insists on the termination, *legal proceedings must be commenced before the Housing Tribunal* within 6 weeks from the expiry of the time limit applicable to the tenant. During the proceedings the tenant can stay in the premises.

11.8 Termination by the tenant

11.8.1 1Where the tenancy agreement is not entered into for a fixed term, or where the duration of any such term cannot be established, the tenant may terminate the tenancy agreement by giving 3 months' notice. Regarding tenancies for separate rooms or garages etc., the notice period is, however, 1 month.

11.9 Obligations of re-letting

11.9.1 As a main rule the tenant must pay rent until the end of the notice period. However, where the tenant vacates the tenancy before the end of the notice period, the landlord must seek to re-let the tenancy. Any amount recouped by the landlord, or any amount which the landlord ought to have recouped by such re-letting must be deducted from his claim against the tenant.

12 The landlord's immediate termination of the tenancy agreement due to breach

12.1 Certain violations of the tenancy agreement are considered so severe that the landlord is entitled to terminate the tenancy agreement with immediate effect. Such violations include situations where:

(a) the tenant defaults in the punctual payment of rent or other money liability and has not paid the arrears within 14 days after receiving written notice requiring such pay-ment. The landlord's notice must be given after the last due date for payment and must state explicitly that the tenancy may be terminated if the back rent is not paid within the time limit;

(b) the tenancy is being used otherwise than agreed and the tenant fails to discontinue such use despite the landlord's objection;

(c) the tenant objects to allowing the landlord or any third party to enter the tenancy, in cases where they are entitled thereto under the Rent Act;

(d) the tenant has vacated the tenancy untimely without any agreement with the land-lord;

(e) the tenant neglects the tenancy and fails to repair the tenancy without delay upon notice by the landlord requiring the tenant to do so;

(f) the tenant transfers the use of the tenancy to a third party without being entitled to do so and fails to terminate such transfer despite the landlord's objections;

(g) the tenant has failed to comply with certain rules of proper conduct, and the non-compliance is such that the tenant must vacate the tenancy;

(h) the tenant has failed to fulfill the conditions of a conditional tenancy due to non-compliance with the rules of proper conduct, and the non-fulfillment is such that the tenant must vacate the tenancy; and

(i) the tenant is otherwise in breach of his obligations in such a way as to require his removal.

12.2 Even though violation of the above mentioned requirements will most likely entitle the landlord to terminate the tenancy agreement without notice, this is not the case if the violation in the specific case is *deemed to be immaterial* and, in some cases, e.g. defaults in the punctual payment of rent, if the *breach in question has been remedied before the landlord's termination*.

12.3 Upon termination by the landlord without notice, the tenant must vacate the tenancy immediately and must pay rent until the expiry of the usual notice period. Also, the tenant must indemnify the landlord from any loss, including the cost of recovering possession of the tenancy. The landlord's obligation to seek to re-let the tenancy, cf. clause 11.10 above, also applies in case of termination without notice.

12.4 In practice, the most important reason for termination is late payment of rent. In this case termination is subject to a certain dunning procedure. If the landlord has observed this procedure correctly, an eviction of the tenant can be carried out through the bailiff's court. An eviction can be carried out approximately 3 months from the time of the default. This gives an investor with an attractive property a relatively low credit risk.

13 Vacation by tenants

13.1 In the absence of any other agreement, the tenant must leave the tenancy in the original state and condition, except for any deterioration due to fair wear and tear (provided that this is not subject to the tenant's obligations of maintenance) and except for any defects for which the landlord is responsible. The parties may agree that the tenant must maintain, and thus leave, the tenancy in a good state of repair; however, it cannot be agreed that the tenant must leave the tenancy in a better state of repair than upon possession. It is very commonly agreed that the tenancy is newly refurbished upon commencement of the tenancy and that the tenant must leave the tenancy newly refurbished.

13.2 In case the tenant does not leave the tenancy in the agreed state of repair, the landlord is entitled to set off the costs of repairing the tenancy against the tenants deposit, cf. clause 6 above, and require the tenant to pay any excess amount. In this regard it is important to note that *the landlord must notify the tenant of the landlord's claims within 2 weeks* from the date of the tenant's vacation of the tenancy. If the tenant is not notified of the claims within 2 weeks, the landlord forfeits the right to rely on any such claim, unless the defects of the premises are not ascertainable by the use of ordinary care and skill or if the tenant has acted fraudulently.

13.3 In case the tenant has made any improvements to the tenancy, the tenant is only allowed to remove such improvements if the tenant can (and does) reinstate the tenancy to the original condition at the commencement of the tenancy. If the tenant has altered the tenancy with the landlord's consent, the landlord cannot require that the tenant reinstates the tenancy in relation to such alteration, unless reinstatement is specifically agreed upon.

14 Transfer of the property and the tenant's rights of pre-emption

14.1 The landlord is in principle free to sell the property without consulting the tenants. The buyer of the property will automatically subrogate as (new) landlord in the tenancies relating to the property.

14.2 However, in properties used in whole or in part for residential purposes the landlord must offer the property to the tenants on a co-operative basis before disposing of the property to a third party. The provisions on the obligation to offer a property to existing tenants applies to properties used exclusively for residential purposes, containing 6 or more flats. If a property contains residential tenancies as well as business leases, the tenants' preemption right applies if the property contains not less than 13 residential tenancies.

14.3 The landlord's obligation to offer the property to the tenants is discharged by an offer from the owner addressed to all tenants of residential tenancies to the effect that a housing co-operative (in Danish: Andelsboligforening) established by the residents may acquire the property subject to the price, cash down payment and other terms and conditions obtainable by the owner on a sale to a third party. The period for acceptance must be not less than 10 weeks, provided always that the month of July is not included in the acceptance period.

14.4 The landlord may refuse the acceptance from the housing co-operative unless at least 50% of the tenants of flats at the date of acceptance are members of the co-operative, or if the co-operative fails to prove upon demand its ability to pay the cash down payment required.

14.5 If the landlord's offer is not accepted, the property may be transferred to a third party by sale subject to the terms and conditions offered, or by gift, exchange of properties or appropriation from the estate of a deceased person, provided the title document is filed for registration within one year from the offer to the tenants.

15 The Gorrissen Federspiel Real Estate group

15.1 Contact the group by contacting one of the following members:

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