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Amendments to the law on residential leaseholds: what are the innovations of the current bill of law?

As part of the reform of the law of 21 September 2006 on residential leaseholds and amending certain provisions of the Civil Code (hereinafter, the "Law of 2006"), government amendments have recently been made to the bill of law with the intent to strengthen the protection of the tenants.

The main changes can be summarized as follows:

1. The **maximum authorized legal rent** is reduced to:

- > 3.5% of the invested capital for furnished and unfurnished housing in the energy categories A+, A, B, C, D and E,
- > 3% of the invested capital for furnished and unfurnished housing in the energy categories of F, G, H or I.

The invested capital corresponds to the amount paid by the owner to acquire and/or renovate the leased property. In the case of a building acquired free of charge by way of inheritance, the capital shall be assessed, as the case may be and if the amount is not mentioned in the declaration of inheritance, by the owner by way of expertise.

An appendix provides a coefficient to be taken into consideration to reassess the capital invested in older buildings (more than 10 years old).

The invested capital will then be discounted by 1% per year for wear and tear after 2 years of existence of the accommodation.

These rules will apply to new leases as well as to current leases if the lessor decides to increase the rent during the lease.

2. The **oral conclusion of lease agreements** is from now on **prohibited**. Lease agreements shall thus be in writing.

The lease agreements shall also contain certain **mandatory information**, such as the amount of capital invested, revalued and discounted, the amount of the rent, the amount of the instalments on charges or the flat rate provided for this purpose, if applicable, the rent supplement for the furniture, the costs relating to additional services, the statement that the rent requested by the lessor complies with the legal rent ceiling and the indication of the possibility for the parties to refer to the rental commission (*commission des loyers*) in the event of a dispute regarding the monthly rent amount.

In the absence of an indication of the revalued and discounted amount of the invested capital in the lease agreement, the rent requested may not exceed a ceiling of 8 euros per square meter of the energy reference surface indicated on the energy performance certificate.

3. The **rental guarantee** cannot exceed two months' rent (instead of currently 3 months).

With regard to the refund of the rental guarantee, the bill foresees a new procedure: if the lessor has no claim in terms of rent arrears or if there is no rental damage noted in the hand-over certificate at the time of exit, half of the rental guarantee shall be returned within a maximum period of one month from the delivery (by hand or by registered letter with acknowledgment of receipt) of the keys to the lessor or his agent. The balance of the guarantee shall be returned within the month following receipt of the statements relating to the rental charges (which the owner must claim no later than one (1) month after the end of the lease), otherwise no later than one (1) month after the final approval of the annual accounts of the joint ownership building.

If the lessor delays or refuses to return the rental guarantee, he risks to pay the tenant, in addition to the reimbursement of the bank guarantee, a lump sum of 10% of the monthly rent for each month's delay or part thereof. Such an increase shall not apply in case the lessor can justify a valid reason that may be imputed to the tenant.

4. **Joint tenancy**, which was not covered until now by the Law of 2006, will become subject to new mandatory rules. Joint tenancy refers to the rental of the same accommodation by several tenants, qualified as joint tenants. It is expected that the joint tenancy shall be organized by a "Joint Tenancy Pact" ("*pacte de colocation*"). This agreement shall state the conditions of the lease between the tenants and the lessor (distribution of the rent, distribution of the charges, the conditions for the set-up and the refund of the rental guarantee, the terms and conditions of the departure of a roommate, etc.). The joint tenancy agreement may also apply to the lessor, in case he also lives in the rented accommodation.

5. In the case of a **leased furnished accommodation**, the lessor is entitled to request each month, in addition to the rent, a rent supplement corresponding to the provision of the furniture. This supplement shall be indicated separately and distinctly in the lease agreement and may not exceed 1.5% of the total amount of the invoices relating to the furniture furnishing the rental object. Only invoices not older than 10 years on the day of the signature of the lease or the adjustment of the rent can be taken into consideration for this supplement.

The content of the bill of law is still under discussion and is, of course, still subject to change.

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