

Tenancy Law in Germany:

Information event for students Summary

Content

Rental period.....	2
Utility costs.....	3
Deposit.....	4
Cosmetic repairs.....	5
Pets.....	6
Subletting.....	6
Property defects.....	7
Shared apartments.....	8
Information regarding Mieterschutzverein Aachen e.V.	9

1. Rental period

There are two options for a property owner to bind the tenant to an apartment on a long-term basis:

1. Agreement on a waiver of termination

- This option is only possible if the waiver of termination applies to both parties, i.e. if an ordinary termination is not possible for either the owner or the tenant.
- In general, a waiver of termination can be agreed upon for a maximum period of four years, which begins with the day the lease is signed and not with the day the lease period begins.
- A special rule applies to students: the waiver of termination is limited to a maximum of two years. A waiver of termination beyond two years is not permitted and after the first two years, the statutory period of termination (three months) applies.

2. Lease limited in time

- In the case of a fixed-term contract, the tenancy automatically starts and ends on the date agreed upon without further notice.
- Termination by the property owner is only possible for three reasons:
 - Personal need of the property owner or his/her family
 - Loss of the apartment due to extensive renovation of the property
 - A person obliged to provide services (e.g. the janitor) will be using the
- On the part of the tenant, no ordinary termination is possible in case of a fixed-term contract.
- The only possibility for a termination is with the property owner's consent, e.g. by providing a new tenant for the apartment.

2. Utility costs (i.e. service charge)

The tenant pays for the utility costs (i.e. service charge, deu. Nebenkosten) if this is explicitly stated in the rental agreement. There are two ways to pay the utility costs:

1. Monthly advance payment

- The utility costs are charged in addition to the base rent.
- The property owner is obliged to prepare an annual statement and billing of the utility costs.
- **Tip from the Mieterschutzverein (engl. Tenant Protection Association):** check the amount of the utility costs before signing your lease contract!
 - Approx. 2,50€ per square meter are to be expected for apartments with central heating systems (example: 80sqm, min. 150€ advance payment per month)
 - If the utility costs per square meter are below this, the risk is very high that after one year a high additional payment will be due (e.g. 1€ per square meter is not realistic).
 - In case of doubt, ask the property owner and try to negotiate for the monthly utility costs to be set higher in order to avoid larger additional payments in the future.

2. Agreement on a flat rate

- In the case the property owner and yourself agree on a flat rate, no annual utility bill will be provided. The flat rate already includes all utility costs.
- If the property owner has set the flat rate costs too high, the tenant cannot demand a refund of the extra costs and vice versa, the property owner cannot demand an additional payment if the utility costs were estimated too low in the lump sum (e.g. all-inclusive rent).

Utility costs bill statement

- The property owner has 12 months from the end of the billing period (calendar year until 31.12.) to issue the utility bill and send it to the tenant.
- The tenant has 12 months after receiving the bill statement appeal and request to view the receipts for the utility costs.
- A personal review of the receipts and invoices for the utility costs is usually only possible in-person at the property owner, unless this person lives more than 600km away, in which case the documents may be provided by e-mail or as a copy in exchange for a fee.
- If the property owner does not give you the chance to review the documents, the payment of the utility costs can be withheld by the tenant until he/she has been able to view the documents.
- **Tip from the Mieterschutzverein:** the tenant should first look at the receipts and invoices before the transferring the amount indicated in the utility costs bill, as it is difficult to actually get a payment refund if necessary.
- The utility bill cannot include administrative costs or repair costs. If the lease contract only lists only some items (e.g. winter maintenance, garbage collection) but not all of them, these are legally the only items the tenant has to pay for. If the operating costs are listed individually, these expenses must then be listed in full in the contract.

Question from the audience: My utility costs have exploded due to increased insurance costs and I was not informed about this cost increase by my property owner in advance. Is this legal?

Answer from the Mieterschutzverein: In general, the property owner is allowed to allocate some costs (e.g. building insurance) to the tenants. However, the property owner must usually inform the tenant about predictable extreme cost increases, if he/she can estimate them (e.g. increase in insurance costs). This is not always the case.

Question from the audience: Is Corona a valid reason for delaying the issuance of my utility costs billing statement?

Answer from the Mieterschutzverein: No, Corona is not a valid reason for the property owner to issue the utility costs bill later than the twelve months deadline. Only the utility cost receipts viewing upon request may be more difficult due to COVID-19 contact restrictions, if applicable. If the property owner misses the twelve-month deadline to issue the utility costs bill, he/she is not entitled to any additional payment by the tenant, even in pandemic times. However, if the bill shows a credit balance for the tenant, he/she is allowed to request the payment excess refund at any time. In case the apartment is located in a building shared by several property owners or managements, the twelve months deadline still applies. If the property management team issues the utility bill beyond the deadline, the property owner cannot use this as an excuse. In this case, it is also considered the owners' fault and the tenant may not have to pay for additional costs.

Question from the audience: If the property owner sets the utility costs per square meter too low, is that my problem, because I should have asked for a bill statement of an previous year? Or is it fraud, because the owner knows that the costs are set too low and thus help attract new tenants?

Answer from the Mieterschutzverein: It is usually not possible to request former utility bills due to the twelve-months deadline. This is not a case of fraud, but of miscalculation by the property owner. The tenant should rather contact the property owner and ask whether the utility costs per square meter are really sufficient and, if necessary, suggest that the costs be set higher from the beginning.

3. Security deposit

- The security deposit usually consists of a cash deposit or a parental guarantee (deu. Elternbürgschaft). The cash deposit may never exceed the sum of three base rents.
- **Tip from the Mieterschutzverein:** The property owner may also not request three base rents for the deposit and additionally a parental guarantee. However, the tenant should not point this out before signing the contract, as it may lower the chances of getting the apartment.
- The rent deposit must be kept by the property owner separately from his/her assets, so that no third party may access it (e.g. through a rent deposit account that is created by the property owner in the name of the tenant).
- The tenant has the right to request proof that the rental deposit has been properly banked at any time during the tenancy. Such proof is part of the property owner's legal obligations. If no proof can be provided or if it is not valid, the tenant has the right to withhold the rent until the deposit amount is reached. However, once the valid proof is provided, all withheld payments (rent) must be paid. Here, withholding rent is simply used as leverage to get the requested documentation.

Refund of the deposit:

- The property owner has min. six months to settle the deposit. Within these six months, the property owner has to claim for any damages and set them off against the deposit.
- The refund of the deposit is only due when it is clear to the property owner that he/she has no counterclaims (e.g. unpaid rent and/or utility bill, damages to the apartment, not performed cosmetic repairs). The deposit will then only be transferred after the last utility costs bill statement has been issued.
- The property owner may partly refund the deposit (e.g. because of outstanding utility costs) or in full earlier, but is not obliged to do so. He/she may also continue to offset claims within the six-months limit.

Question from the audience: Is the property owner obliged to refund the full amount of the deposit or is he/she allowed to refund only part of the deposit after moving out?

Answer from the Mieterschutzverein: The property owner can only withdraw amounts that he/she actually needs. For example, to paint the apartment, he/she must obtain price offers from painters and present the invoices to the tenant as proof. Proof must always be provided for damage claims.

Question from the audience: Is there a deadline for the property owner to return the deposit or the credit for the utility costs statement after the statement has been issued?

Answer from the Mieterschutzverein: The tenant can set the deadline himself/herself and if necessary „threaten“ with an official letter.

4. Cosmetic repairs

- In general, property owners are responsible for cosmetic repairs. This includes: painting walls, painting door (and frames) and doors from the inside, painting window frames from the inside and, if necessary, painting radiators.
- In case of first-time occupancy or renovated apartments, the costs of cosmetic repairs may be (partly) allocated to the tenant.
- Whether the tenant has to pay for cosmetic repairs depends on the condition of the apartment. An apartment does not have to be renovated by the tenant if the apartment was not renovated before the handover. This should be indicated during the handover protocol.
- Colorfully painted apartments (red, black, etc.) has to be painted in neutral colors before moving out, unless the apartment was painted colorfully before the handover.
- It is not necessary to sign the apartment handover protocol. However, it is recommended to take photos with a date stamp during the handover inspection.
- **Tip from the Mieterschutzverein:** If there are clauses with rigid deadlines for renovations in the lease agreement regarding cosmetic repairs (e.g. renovation of the kitchen every five years), but the addition of „generally“ (deu. im Allgemeinen) or „as a rule“ (deu. in der Regel) is missing, these clauses are invalid.

Question from the audience: Can I ask my property owner to renew my floor covering?

Answer from the Mieterschutzverein: The property owner is responsible for work on the floor covering, but work on the floor is not part of cosmetic repairs. You can request the owner to have the floors renewed, but you may have to contribute to the costs, as there is no entitlement to a replacement of the floor as long as it is functional, i.e. if there is no danger of injury, etc.

Question from the audience: What is the best way to protect yourself when moving in or out?

Answer from the Mieterschutzverein: It is best to take a witness with you, as photos (even with a date stamp) may not always sufficient.

5. Pets

- Keeping small animals in cages and aquariums is allowed without the property owner's consent. Prior consent of the property owner is required for cats and dogs and similar or bigger animals, even if this clause is not included in the contract. On the other hand, a refusal by the property owner is only possible with a justification.
- Besides the keeping of the pet, the visit or temporary care of an animal is also possible without the owner's consent. However, you should inform him/her in advance that you are looking after a relative's or friend's cat or dog temporarily.
- The keeping of (small) animals has its limits, if co-tenants or neighbors are disturbed (e.g. by noise).

6. Subletting

- Subletting (no matter if only for one room or for the whole property) is only permitted with the owner's consent.
- Consent to sublet a part of the property is easier to obtain with a valid reason and information about the subtenant(s).
- The main tenant is not entitled to sublet the entire property, but the owners can provide their consent.
- Refusal by the owner can be due to the subtenant him-/herself (e.g. if the landlord has already had bad experiences with this person) or overcrowding of the living space (e.g. if a single apartment is sublet to a family).

Question from the audience: Is the main tenant allowed to demand a deposit from the subtenant?

Answer from the Mieterschutzverein: Yes, because a regular tenancy exists between the main tenant and the subtenant (the main tenant is the landlord vis-à-vis the subtenant). Theoretically, the right to a deposit also applies to conditions such as cosmetic repairs, etc., although sublease agreements are usually so short that no cosmetic repairs are listed or agreed upon.

7. Property defects

- Reporting defects to the property owner by phone or WhatsApp is very inconvenient. E-mails are also not an ideal solution, as it is not possible to prove that the owner actually has received the report (the e-mail may end up in the spam folder or be accidentally deleted). Ideally, you can call or email the property owner in advance and additionally report the defect by letter with tracking with a detailed list and a specific deadline to fix the defect. The tenant should keep all documents.
- Depending on the severity of the defect, the tenant may request a reduction in rent or a conditional rent:
 - Conditional rent: the rent will continue to be paid in full, but the tenant has the right to ask for a partial refund of the rent. In the case of conditional rent, the owner has no reason to terminate the lease if the tenant requests a partial refund
 - Rent reduction: rent reduction is a potential termination trap, because if you do not pay in full over a certain period, the owner can terminate the contract.

Rent reduction

- What percentage of the rent can I reduce? This depends on the defect (severity, duration...) and must be decided on a case-by-case basis. The rent reduction is calculated from the total rent and the percentages are agreed upon with the owner.
- **Tip from the Mieterschutzverein:** it is better to set the percentages higher at the beginning in order to negotiate a better deal with the owner.
- Rent reduction for renovation: cannot be made retrospectively or retroactively. You have to apply for it at the time of the renovation. If you do not report the defect and pay the full rent without restrictions, you lose the right to a rent reduction.

Question from the audience: May the property owner forbid me to carry my race bike to the 2nd floor in the apartment? (His reason: the tires may leave marks in the staircase that have to be cleaned).

Answer from the Mieterschutzverein: Bikes do not necessarily have to be stored in the apartment. If frequent burglaries occur in the bike cellar, or where bikes cannot be safely locked up, the tenant may keep the bike in the apartment. However, he/she must not damage the house in the process and accordingly must ensure that the bike does not damage the property when carried up. Damages have to be cleaned or repaired at the expense of the tenant. If several tenants take their bicycles into their apartment, it will be difficult for the owner to prove which tenant has damaged the property. The owner will not be able nor allowed to allocate the costs to a single person.

Mold

- Unlike other defects in the apartment, the property owner must prove that he/she is not responsible for mold.
- The usual argument „You are not heating and airing your apartment properly“ does not help the property owner.
- If mold damage occurs, the tenant is obligated to report it to the property owner. It is best if the tenant reports the defect by letter and sets a deadline for the removal of the mold damage.
- It is also recommended to keep a heating and ventilation log and, if necessary, to buy a hydrometer to measure the humidity and to limit the damage by airing regularly

8. Shared apartments

Types of shared apartments

1. All co-tenants are main tenants (most common type of shared apartment):

- There is a risk that the property owner will collect the rent from a random co-tenant if the rent is not paid by one.
- Correspondence between the owner and all co-tenants must exist, i.e. all co-tenants and the owner have to be notified of defects, rent increases and notices of termination.
- The termination by a single co-tenant is not possible. However, owners often agree to this and release the co-tenant from the contract if a new tenant is found. If necessary, however, the owner has the right to refuse the individual termination.
- In case of shared apartments, a special rule applies: the landlord is aware that tenant turnover will take place at some point and must be more flexible accordingly. However, the co-tenants must find a replacement for the co-tenant moving out of the property.
- Alternatively, you can conclude a rental agreement with the owner, where the following is explicitly stated „shared apartment xy consisting of person A, B, C...“ and in which an individual right of termination is granted.
- **Tip from the Mieterschutzverein:** the respective main tenants should do everything in writing to protect themselves.

2. The residents of the shared apartment consists of one main tenant and one or more subtenant(s):

- The main tenant bears full responsibility for the apartment (damages, rent defaults, if applicable) and must transfer the full rent.
- If the main tenant terminates the lease contract, he/she must also cancel the sublease(s). If the main tenant moves out, the owner may evict the subtenant(s) because there is no tenancy agreement between them.
- If the main tenant has fully furnished the apartment, the subtenant(s) has/have no protection against termination. The notice period is reduced to two weeks.

3. An individual rental contract is concluded for each room in the apartment:

- The tenants have no say in the selection of the roommates. The selection is made by the property owner directly.
- It is clear, however, that each tenant only pays his/her rent and is responsible for the damage for his/her own room. The owner is not allowed to demand the amounts of the other tenants from other roommates.

Question from the audience: What happens to the subtenants in a shared apartment with a single main tenant if the latter gives notice?

Answer from the Mieterschutzverein: If a main tenant gives notice, he/she is obliged to give notice to the subtenant(s). However, legally it is only possible with a valid reason for termination. In shared apartments, it can usually be solved „internally“: the subtenant(s) contact(s) the owner so that one of the subtenant(s) becomes the main tenant, since at least one person must have the contract with the owner.

Question from the audience: In such a situation, is the owner allowed to sign a completely new lease including rent increase with the tenants of the shared flat?

Answer from the Mieterschutzverein: Yes, because it is a new tenancy agreement.

9. Information regarding the Mieterschutzverein Aachen e.V.

- Membership for students: when submitting a valid certificate of study, students get a 12€ discount per year.
- Minimum duration of membership: 24 months
- Fee: 96€ per year for regular membership / 84€ per year for students (can be paid monthly or quarterly)
- Short-term memberships for three months: 30€ for the whole period (trial offer, membership ends automatically). Service: unlimited consultations but no correspondence through Mieterschutzverein Aachen e.V.
- A short-term membership can be converted into a full membership.
- **Tip from the Mieterschutzverein:** It is better to make an appointment with the Mieterschutzverein via the AStA BEFORE signing a contract or similar. Once a contract is signed, you are legally bound to it and it is difficult to get out.