

## Dossier on the Residential Leases Bill

The Residential Leases Bill has entered the Committee phase of the legislative process after receiving the green light during the 1<sup>st</sup> reading held in the sitting of the 18 June 2019 and the second reading held in the sittings of the 03 July, 08 July and 09 July 2019. The objects and reasons of the Bill are the promotion and development of the private rented sector by ensuring standards of fairness, clarity and predictability in contractual relations between lessors and lessees and to safeguard and protect the right to adequate accommodation.

### ***Definitions***

The Bill commences with a set of definitions and introduces the distinction between a “long” and “short private residential lease”, with the latter meaning any lease negotiated for a duration of less than six (6) months which is meant to satisfy the specific needs of four (4) categories of lessees (non-resident workers, non-resident students, residents seeking alternative accommodation and non-residents who do not seek to stay longer in Malta).

All other leases exceeding six months or leases for up to six (6) months which do not meet these requirements or attest to said requirements through annexed documentation, shall be considered “long” private residential leases for all intents and purposes of the law.

The Bill also defines “residence” as an apartment or building, in which the lessee, his spouse, civil union partner, cohabitant or a family member (up to the second degree) reside/s in as his/their principle place of abode. Shared bedroom spaces or dormitories are excluded from the definition of “residence”.

The concept of “room rental” is also introduced whereby it is defined as the renting of part of or a room within a property, separately let, with shared kitchen and bathroom facilities, occupied by the lessee for residential purposes.

### ***Applicability of the Bill***

The provisions of the Bill shall be applicable to all leases of residential property entered into or renewed after its coming into force provided that leases granted after the 01 June 1995, still in force on the day of promulgation, shall continue to be regulated exclusively by the Civil Code. The exception to this rule relates to leases which would still be in force on the 01 January 2021.

Government tenements (excluding those owned by affordable housing purpose foundations), tenements rented exclusively for tourism purposes, secondary residential or summer residence tenements and tenements leased **before the 01 June 1995** fall outside of the scope of the Bill. Furthermore, tenements where contracts of emphytheusis or sub-emphytheusis **have been or are about to be** converted into leases *ipso jure* are also excluded from the applicability of the Bill.

***Obligation to register lease agreement and transitory period***

The Bill introduces an obligation to register private residential lease agreements, **on pain of nullity**, and the duty of registering the agreement with the Housing Authority, within thirty (30) days of the commencement of the lease, shall lie squarely on the lessor. In cases where the Lessor fails to comply with the above mentioned obligation, the lessor may proceed with the registration of the agreement at the lessor's expense.

The Bill shall allow a transitory period up until the 01 January 2021 for all lessors to register their respective private residential lease contracts with the Authority. Such applications to register lease agreements shall be accompanied by a declaration of any amount deposited by the lessee as security and the presentation of an inventory. The lessee may not preclude the landlord from accessing the property for the purposes of compiling said inventory.

***Essential Elements of a lease agreement and forbidden clauses***

The Bill confirms the essential elements of the lease agreement as laid down in article 1531A of the Civil Code whilst also adding the requirement of a clause describing the security deposit and an inventory attesting the condition of the premises as well as the state of any movables supplied by the lessor. The Authority shall not register any lease agreements which do not meet any one (1) or more of these essential requirements. The Minister may also publish standard private residential lease contracts for the general use of the public.

Further to the above, the Bill lays down an exhaustive list of conditions which, if inserted in a private residential lease contract, shall be deemed ineffectual, these being:

- a) automatic termination clauses other than those relating to the non-fulfillment of the lessee's obligations under article 1554, 1555, 1570 and 1614 of the Civil Code;
- b) clauses authorizing the lessor to reduce any benefits without equivalent consideration;
- c) clauses exempting the lessor from his legal responsibilities under articles 1545 and 1546 of the Civil Code;
- d) clauses imposing additional payments other than the rent, deposit, insurance and any contribution in accordance with article 11(4) of the Condominium Act provided that expenses related to common parts shall be limited to those duties at the charge of the lessee, as set out in the Civil Code;
- e) clauses imposing additional payments for the use of movables beyond the rent itself;
- f) clauses stipulating the payment of fixed amounts for the consumption of utilities if such amount does not reflect actual consumption of such utility services by the lessee; and
- g) Clauses limiting the use of the residence subject to the observance of the Civil Code provisions and the rules of good neighborliness.

## ***Minimum contractual duration, notice of termination and withdrawal of lessee***

The minimum contractual duration for long leases shall be a period of at least one (1) year subject to a written notice of termination (by means of a registered letter) to be sent to the lessee at least three (3) months before such date of termination. Failure to notify in accordance with this provision shall mean that the long lease shall be automatically renewed for an equivalent period. Such automatic renewal shall not apply to short lease agreements and such short residential leases shall be terminated by operation of article 1566 of the Civil Code.

The Bill distinguishes between long private residential leases and short ones with respect to the right of withdrawal of the lessee. In the case of long leases, the lessor is prohibited from withdrawing before the lapse of: (i) two (2) months if the agreement is for two (2) years or less; (ii) four (4) months if the agreement is for a period of two (2) to three (3) years; or (iii) six (6) months if the agreement is valid for three (3) years or more. If the lessee decides to withdraw after the lapse of the aforementioned period he must give notice in writing, by means of a registered letter: (i) at least one (1) month prior to termination if his lease is for a maximum duration of two (2) years; (ii) two months (2) if his lease is valid for a period between two (2) to three (3) years; and (iii) at least three (3) months if the lease is for a period over three (3) years.

In respect of short private residential leases the lessee is precluded from withdrawing before the lapse of one (1) months subject to the obligation of providing written notice by means of a registered letter at least one (1) week prior to termination. In both cases, more advantageous conditions for the lessee may be stipulated and no penalties may be set for the withdrawal of the lessee in accordance with the lawful time periods described above.

## ***Rent and permissible rent increases***

The Bill specifies that the rent amount shall be freely stipulated by the parties and, unless otherwise agreed, it shall be paid on a monthly basis. Notwithstanding the above, the lessor cannot require advance payments of more than one (1) month's rent, although this provision shall not prohibit the payment of security deposits. The lessor is also obliged to deliver receipt of payment unless payment is made through means which sufficiently prove effective fulfillment of the obligation (this exception should in theory cover payments made through internet banking methods).

Rent increases are only permitted once (1) every year and in absence of any express agreement the rent cannot be revised during the term of the lease. These annual increases may not exceed the annual variations (the average of four quarters preceding the date of increment) recorded in the Property Price Index published by the National Statistics Office. In any case, this increase in rent may never exceed five per cent (5%) over the previous rent amount and a negative annual variation shall not result in the reduction of the rent.

## ***Room Rental***

Room rentals shall be capped to a maximum duration of six (6) months and the lessee may withdraw at any time, after the lapse of a minimum one (1) month period, by giving one (1) week written notice by means of a registered letter. These room rentals are not subject to the obligation of registration, are non-renewable, and the provisions on room rental shall also apply where either the lessor, or the lessee in case of a sub-lease, also reside in that property.

## ***Water and electricity services***

The provision of water and electricity services is considered an essential element for the enjoyment of a residential tenement and subsequently the lessor is bound to ensure an adequate supply of such services. The Bill also stipulates that the lessor cannot refuse to sign any relevant declaration on the number of persons residing in the tenement or any other form entitling the lessee to verify any pending dues upon the lessee's request.

The Bill also imposes a prohibition on the relevant utility service provider from interrupting the supply of water and electricity to the property as long as the lessee is still in occupation of the tenement. The Bill also introduces an amendment to sub-article (1) of article 85 of the Criminal Code (arbitrary exercise of pretended rights) consisting of a proviso imposing a fine (*multa*) of not less than one thousand five hundred euro (EUR 1,500) and not more than four thousand euro (EUR 4,000) for persons who suspend or interrupt water and electricity services, in whichever manner, in cases of arbitrary or forced evictions of an occupant from the property which he occupies as his primary residence.

## ***Over-holding of rented premises by tenant***

A tenant who remains in occupation of the rented tenement after the expiry of his title shall be bound to pay the lessor an amount equivalent to the rent until the date of effective eviction from the property. The demand for such compensation may be made simultaneously with the demand for termination of the lease and the eviction of the lessee. The provisions of the Bill do not preclude the lessor from obtaining compensation for any greater amount of damages.

## ***Monitoring and Enforcement***

The Housing Authority shall be the main public entity responsible for monitoring and enforcement of private residential leases and the Bill has expanded their rights to enter private premises to verify occupation, take any photographs and request any legitimate information from the occupier of such premises.

The Bill establishes an enforcement procedure empowering the Housing Authority to issue enforcement notices in cases of *de facto* leases which are basically contracts of letting and hiring which are not in writing or registered in accordance with the Bill. In such cases the Authority shall

give the lessor engaged in irregular rental activities a specific time period to comply with the rules established by the Bill and it may also impose a one (1) year period of rent at seventy-five percent of the rental value of the tenement upon the parties.

If the lessor in a *de facto* lease persists in his non-compliance the lessee is entitled to avail himself of an additional remedy. In such cases, the Housing Authority may file an application to the Rent Regulation Board requesting it to impose a three-year written lease agreement at seventy five (75%) of the market rental value of the tenement. The Rent Regulation Board may also fix compensation for the occupation of the tenement whilst the application is still pending. These remedies shall not apply to irregular room rentals.

### ***Adjudicating Panel for Private Residential Leases***

An Adjudicating Panel appointed by the Minister responsible for Housing shall be set-up to decide disputes relating to private residential leases governed by the Bill involving issues mentioned in articles 1540, 1541, 1542, 1543, 1556, 1559, 1561, 1562 and 1563 of the Civil Code in so far as the claim does not exceed five thousand euro (€ 5,000).

The Panel shall be the responsibility of the Chairman of the Housing Authority and shall consist of a Chairperson, who shall be an advocate who has practised as an advocate for not less than twelve (12) years and two (2) professionals having knowledge and experience in the real estate sector. The appointment of the members of the Panel shall be for a non-renewable term of five (5) years.

The mode of filing the complaint shall be in writing and the defendant shall have five (5) working days to file a reply. The Adjudicating Panel shall deliver judgement within five (5) working days from the date of the last submission of the parties, the witnesses or the experts, as the case may be.

The decisions of the panel shall be subject to an appeal on a point of law to the Court of Appeal in terms of article 41 (9) of the Code of Organization and Civil Procedure. The appeal shall be filed within twenty (20) days from the date of the decision. Any claim brought in front of the Adjudicating Panel shall be prescribed by the lapse of two (2) months from the date of termination of the lease.

### ***Miscellaneous Provisions and Consequential Amendments***

The Bill lists a number of offences for non-compliance, obstruction or interference with the work of any public official or representative of the Housing Authority or false/misleading representation. Persons guilty of offences against this Act may be liable to a fine (*multa*) of not less than two thousand five hundred euro (€2,500) and not exceeding ten thousand euro (€10,000). Proceedings shall be heard by the Court of Magistrates in its Criminal Jurisdiction.

There shall also be a registry of defaults (similar to the proverbial *blacklist*) which may be accessed by prospective lessors and lessees. The Bill also regulates the matter of data sharing and data protection and permits the Minister to make regulations under this Act.

As previously discussed, the Bill amends article 85 of the Criminal Code by making it a criminal offence, punishable by way of *multa*, to arbitrarily or forcibly evict a tenant who occupies a property as his primary residence. Apart from the suspension or interruption of utilities, it is also an offence to enter without permission, remove furniture, appliances or personal belongings from the property subject to the illicit eviction attempt.

The Bill also amends the Code of Organization and Civil Procedure to make decisions of the Adjudicating Panel for Private Residential Leases subject to appeal from the Court of Appeal (Civil, Inferior). The Civil Code and the Reletting of Urban Property (Regulation) Ordinance (Cap. 69) shall also be amended to introduce the Adjudicating Panel and pre-emptively limit any possible overlaps between the Rent Regulation Board and the newly established panel. The Bill also stipulates that the Rent Regulation Board shall not determine claims relating to leases not registered in accordance with Article 5 of the Bill.

In conclusion, the Housing Authority Act shall be amended to establish the Authority as the entity responsible for monitoring private residential leases and organising the Adjudicating Panel for private residential leases.