

Prof. Panagiotis Zamaros, PhD

# Swiss Contract and Business Law

## Text and Cases

### G / Premises

---

#### 28 / Tenancy contracts<sup>1</sup>

##### BIBLIOGRAPHY

##### ACTS

CCS: Swiss Civil Code of 10 December 1907 (Status as of 1 September 2023)

CO: Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911 (Status as of 1 September 2023)

CPC: Swiss Civil Procedure Code of 19 December 2008 (Status as of 1 September 2023)

DEFR: Federal Ordinance on the establishment of the average mortgage rate determining for setting rents (Mortgage Rate Ordinance) of January 22, 2008 (Status on September 1, 2023)

OBLF: Federal Ordinance on the rental lease and farm lease of residential and commercial premises of May 9, 1990 (Status on June 1, 2020)

##### TEXT SOURCES

DIETSCHY-MARTENET, PATRICIA (2018), *Bail à loyer et procédure civile*, Basel: Helbing Lichtenhahn

CONOD, PHILIPPE & BOHNET FRANÇOIS (2021) *Droit du bail : Fond et procédure*, 2<sup>ème</sup> ed., Basel: Helbing Lichtenhahn

##### DIGITAL SOURCES

GUIGNARD, DANIEL, (sans date) *La garantie pour les défauts*, [Online 1](#), accessed on 2.11.23:

[http://www.gross-law.ch/fileadmin/documents/F\\_Guignard\\_La\\_garantie\\_pour\\_les\\_d%C3%A9fauts.pdf](http://www.gross-law.ch/fileadmin/documents/F_Guignard_La_garantie_pour_les_d%C3%A9fauts.pdf)

Taux hypothécaire de référence, [Online 2](#), accessed on 5.11.23 :

<https://www.bwo.admin.ch/bwo/fr/home/mietrecht/referenzzinssatz.html>

HEV Schweiz, [Online 3](#), accessed on 5.11.23:

<https://www.hev-schweiz.ch/vermieten/mietverhaeltnis/referenzzinssatz/ueberwaelzungssaetze>

Indice Suisse des prix à la consommation, [Online 4](#), accessed on 5.11.23 :

<https://www.bfs.admin.ch/bfs/fr/home/statistiques/prix/enquetes/lik.html>

GUIGNARD, KARIM, (2021), Consultation juridique du Valentin, [Online 5](#), accessed on 5.11.23 :

<https://www.consultationjuridiqueduvalentin.ch/post/la-notification-d-une-r%C3%A9siliation-d-un-contrat-de-travail-ou-d-un-bail-en-l-absence-du-destinataire>

CONOD, PHILIPPE (2020) Rendement net art. 269 CO; réévaluation des fonds propres ; taux de rendement des fonds propres (arrêt TF 4A\_554/2019), Newsletter Bail.ch, [Online 6](#), accessed on 6.11.23

##### Sources of law for tenancy contracts

The main source of law for tenancy contracts is the Code of Obligations (CO) art. 253 ss. Some aspects are detailed in the Federal Ordinance on the rental lease and farm lease of residential and commercial premises (OBLF). The Civil Code (CCS) deals with neighbourhood relationships and the real estate administration. It is worth noting that in the French-speaking cantons, “rules and rental practices” (*règles et usages locatifs*) are set out and form part of the rental agreement as they have been enforced by the Federal Council.

---

<sup>1</sup> Revised chapter November 2023; for quotation: ZAMAROS, PANAGIOTIS (2023), *Revised Chapter 28: Lease Contracts*, excerpted and revised from Zamaros, Panagiotis (2018) *Swiss Contracts and Business Law*, Independent Publishing.

## **28-1 Essential Elements**

### 28-1-1 In General

Leases are contracts in which an owner/landlord/lessor (*bailleur*) grants a tenant/lessee (*locataire*) the use of an object in exchange for rent (art. 253 CO) including all movables therein. A contract of lease presupposes four elements<sup>2</sup>:

- An object/property that is moveable or immovable.
- The transfer of the use of the property, thus the lessee becomes the possessor (but not the owner) of the rented property.
- The rent which represents the remuneration of the usability transfer.
- A duration that is determined or not.

### 28-1-2 In Particular

This is applicable to both residential and commercial premises<sup>3</sup>, that include those used by a company, the exercise of a profession or any for-profit or non-for-profit activity.

The contract may be concluded verbally or in writing; however, art. 270, para 2 CO renders the written form compulsory via the use of official cantonal forms<sup>4</sup>.

The tenancy contract may be express or tacit (art. 1, para 2 CO). Tacit conclusions may include the handing over of the keys, or accepting the rent after termination has been given. However, such situations are to be dealt with caution<sup>5</sup>.

### 28-1-3 Restrictions to contracts

The following:

- Rent for less than 3 months is not applicable (art. 253a, para. 2 CO)<sup>6</sup>
- Rents are protected (art. 253b, para. 1 CO) so as to avoid abuse in the sense of an excessive income made from the rented object (see details under art. 296 ss CO).
- Tie-in/paired/conditional transactions (*transaction couplée*) “the tenant's obligation to purchase the rented property, furniture or shares or to conclude an insurance contract” (art. 3 OBLF) are void (art. 254 CO)<sup>7</sup>.

### 28-1-4 Rent

As per art. 257 CO “Rent is the remuneration due by the tenant to the landlord for the transfer of the use of the property.”

### 28-1-5 Accessory charges

As per art 256b CO the landlord “bears all taxes and [accessory] charges in connection with the leased object”. Such accessory charges are “the consideration due for services provided by the landlord or lessor or a third party in connection with the use of the property” (art 257a CO). They are payable by the tenant when this has been specifically agreed with the landlord (art. 257a, para 2 CO), which is typically the case.

Art 257a CO emphasizes “use”: the tenant is to pay only the charges in direct relation with the use<sup>8</sup>. Art 257b, para 1 CO states that accessory charges are “the actual outlays made by the landlord for services connected with the use of the property”. These typically include running the heating system, garden maintenance, janitorial services, use of elevators and air conditioning, lighting of the commons, sewage taxes, garbage collection fees, snow removal, cold and hot water charges, cable network, meter rentals, maintenance services<sup>9</sup>.

---

<sup>2</sup> Dietschy, 2018: 3, Conod & Bohnet, 2021: 12-13.

<sup>3</sup> Dietschy, 2018: 3-4.

<sup>4</sup> Conod & Bohnet, 2021: 22.

<sup>5</sup> Conod & Bohnet, 2021: 24.

<sup>6</sup> As a matter of precision tenancy contracts of a shorter period than 3 months can exist as those found in the hospitality industry: ATF 4A\_341/2016 et 4A\_343/2016, consid. 4.2 states that “The accommodation contract under which the hotelier provides accommodation to the traveller is an unnamed contract comprising elements of the lease, sale, mandate and deposit (ATF 120 II 252, consid. 2a at 253).”

<sup>7</sup> If a conditional agreement clashes with the liberty to contract (art. 19, para 1 CO), leasing property is synonymous with signing up insurance policies against fire, theft or damaging third-party property (Conod & Bohnet, 2021: 17)

<sup>8</sup> ATF 137 I 135, consid. 2.4: “It follows from art. 257a para. 1 CO (a contrario) that services of the lessor unrelated to the use of the rented property cannot be invoiced as accessory costs.”

<sup>9</sup> Conod & Bohnet, 2021: 85.

This means that the landlord is to pay for charges related to refurbishment, bank fees, realty administrator fees, insurance.

It is estimated that accessory charges are thus split between the tenant (approximately 60%) and the landlord (approximately 40%). It is noted that it is common to pay the charges in advance (*acompte provisionnel*) on the basis of an annual budget the realty administrator sets out, yet it is only the effective cost that is actually paid (art. 5, para 1 OBLF) requiring an annual adjustment.

#### 28-1-6 Duration

1/ A first distinction (art. 255, para. 1 CO):

- Fixed-term contacts of determined/limited duration.
- Indefinite-term contacts undetermined duration.

Unlike employment contacts where the emphasis is placed on the duration of the contractual relationship since the employer must know for how long he can occupy the employee to achieve set business objectives while the employee must know for how long he can count on a wage, tenancy contracts put *emphasis on the mode of termination*: a contact is deemed of “determined duration when it should end without notice on expiry of the agreed duration” (art. 255, para. 2 CO). This is again repeated under art. 266, para. 1 CO. Thus, by default “other leases are deemed to be of undetermined/indefinite duration” (art. 255, para. 2 CO).

The reason for which this article of law has been worded and structured thus is to allow an owner to retrieve an object when it is needed after a certain period of time (e.g., retrieve the apartment for the owner’s children who are temporarily absent for study abroad)<sup>10</sup>. Thus, if the period is known beforehand and will not change in the course of time, the contract will be of limited duration, if not, of undermined duration.

2/ A second distinction:

- Tacitly renewable fixed-term contacts; these, by virtue of art. 266, para. 2 CO are considered to be contracts of indefinite duration.
- Chains of fixed-term contracts<sup>11</sup>.

If the main feature of tacitly renewable fixed-term contacts is that their conditions stay unchanged, and for this reason they are deemed to be of undetermined duration, chains of fixed-terms contracts are characterized by changing conditions from one term to the other.

Thus, if the practice of tenancy chains “is mainly used to prevent tenants from asserting their rights, including challenges to the initial rent, contestation of rent increase or disagreement”<sup>12</sup> and may thus be found abusive<sup>13</sup>.

## **28-2 Obligations**

### 28-2-1/ Lessor/Landlord

1/ Object delivery on agreed date

The landlord makes the object available on the agreed date (art. 256, para 1 CO, first part of the phrase); this is also an essential element of the lease contract.

---

<sup>10</sup> Online 1.

<sup>11</sup> ATF 139 III 145, consid. 4.2.2: “Similar to art. 334 CO for the employment contract, art. 266, para. 2 CO expressly envisages a tacit renewal of the fixed-term lease and presumes that the new contract is for an indefinite period; However, there is nothing to prevent the parties from agreeing to a new fixed-term contract.”

<sup>12</sup> online 1.

<sup>13</sup> ATF 139 III 145, consid. 4.2.4: “The successive conclusion of leases of limited duration may allow the landlord to escape from mandatory rules conferring rights on the tenant, such as the rules against abusive rents, or against abusive dismissals, etc. It is lawful in principle to bind a series of fixed-term leases, subject to a fraud of the law ... Such fraud is committed by a landlord who, in itself, intends to commit himself for an indefinite period but opts for a system of fixed-term leases for the sole purpose of defeating mandatory rules. While it is true that the system of chain contracts is likely to bring significant advantages to the lessor, it cannot be postulated that such a procedure is unlawful in principle, when the law does not prohibit it in any way ... The party seeking to enforce the evaded standard - in this case the tenant - must establish the existence of a fraud on the law.”

However, if the lessor fails to hand the object on time, due to defects that are to be repaired, and there is no question of negligence, pursuant of art. 258, para 1 CO the tenant<sup>14</sup> may resort to the following<sup>15</sup>:

- Set an ultimate date for the performance of the contract (art. 107 CO) if this is at all feasible.
- Withdraw from the contract (art. 109 CO) but one can appreciate the unlikelihood of such a circumstance.
- Accept the object despite the defects while insisting that the contract be duly performed (i.e., without the defects) (art. 258, para. 2 CO).

In the latter case the tenant<sup>16</sup> can make claims pursuant art. 259a, para 1 CO (see below) and in particular ask the lessor to:

- a/ repair the object.
- b/ reduce the rent proportionately.
- c/ pay damages.
- d/ assume responsibility for litigation against a third party.

## 2/ Object delivery on non-agreed date

If the date is not agreed, delivery takes place immediately (art. 75 CO) – the tenant is expected to notify the landlord (art. 102, para 1 CO)<sup>17</sup>. Should the landlord not respond, he becomes liable for damages due to the late moving of the tenant, unless the landlord can prove that the delay was beyond his reach.

## 3/ Fitness of purpose

The object is presumed available in a condition fit for its designated use (art. 256 CO, para 1 CO, middle part of the phrase), and objectively so. The parties may also agree otherwise when the object presents material defects<sup>18</sup>, objectively so, and not just a (subjective) reduction of comfort<sup>19</sup>. The rent will have to be adapted<sup>20</sup>.

With commercial leases, since the object is delivered in its basic form (including electricity, water and heating and excluding amenities or event furniture) fitness of purpose might appear not achievable yet is realised since the state at which it is delivered corresponds to that agreed upon<sup>21</sup>.

## 4/ Administration

The landlord is expected to disclose the lessor of the exit inventory report (*procès verbal de l'état des lieux de sortie*) (art. 256a para. 1 CO) and informs the lessor of the previous rent (art. 256a, para. 2 CO) via the designated cantonal form.

The landlord informs on request by the lessor the detail of accessory charges (art. 257b, para 2 CO).

## 5/ Maintenance works

Repairing defects (art. 259a CO) and refurbishments (art. 260 CO) are taken care by the landlord who informs the lessor of any planned works (art. 257h, para. 3 CO).

Should the landlord fail to remedy a defect, while being aware of it, the tenant may (art. 259b):

- a/ terminate the contract with immediate effect if the defect renders the leased property unfit or significantly less fit for its designated use.
- b/ arrange for the defect to be remedied at the landlord's or lessor's expense.

---

<sup>14</sup> The same provision applies in support of the landlord.

<sup>15</sup> When the tenant accepts the object in its material state art. 107 ss CO cannot be invoked (Conod & Bohnet, 2021: 49).

<sup>16</sup> Or landlord.

<sup>17</sup> Conod & Bohnet, 2021: 39.

<sup>18</sup> ATF 135 III 345, consid. 3.2: "the concept of default - which is a matter for federal law - must be compared with the condition appropriate to the use for which the property was leased; it presupposes a comparison between the actual condition of the thing and the agreed condition; there is thus a defect when the thing does not have a quality that the lessor had promised or when it does not have a quality on which the lessee could legitimately rely in making the purchase. referring to the state appropriate to the agreed use"

<sup>19</sup> ATF 135 III 345, consid. 3.3.

<sup>20</sup> Conod & Bohnet, 2021: 42; ATF 135 III 345, consid. 3.2: "in order to justify a reduction in rent, the use of the property must be restricted by at least 5%, but the case law allows it to be reduced to 2% if it is a permanent infringement".

<sup>21</sup> Usage theory, Conod & Bohnet, 2021: 43-44.

Art 259d CO gives the tenant the right to claim a reduction in the rent proportionally to the degree of unfitness due to the unrepaired defects.  
Atf 130 iii 504

## 28-2-2/ Lessee/Tenant

### 1/ Administration

- Pays the agreed rent (art. 257 CO).
- Pays accessory charges (i.e., third party services) if so agreed (art. 257a CO).
- Pays the rent and changes at the end of the month (art. 257c CO).
- Furnishes security in the form of cash or negotiable securities (art. 257e, para. 1 CO) of no more than 3 months' worth of rent.

### 2/ Care

- Must use the object with due care (art. 257f, para. 1 CO).
- Shows consideration towards the neighbours (art. 257f, para. 2 CO, art. 684 CCS).

### 3/ Maintenance

- Informs the lessor of defects (art. 257g, para. 1 CO).
- Tolerates works intended to remedy defects (art. 257h, para. 1 CO).
- Takes care of minor defects by cleaning and repairing (art. 259 CO).
- Does renovations with the consent of the lessor (art. 260a CO).
- Hands back the object in a condition that accords with its contractually designated use (art. 267 CO).

## **28-3 Tenant's rights**

The following rights:

- Protection against abusive rents (art. 269 ss CO).
- To challenge rents (art. 270 ss CO).
- To challenge terminations that are made against principles of good faith (art. 271 ss CO).
- To request that the rent be extended if its termination may have dire effects (art. 272 ss CO).

## **28-4 Noteworthy Aspects**

### 1 / Security deposits

If it is expected that the lessor deposits the tenant's security with a bank (art. 257e para. 1 CO), in practice it is the tenant who does it. Nowadays, banks are not the only way to establish the security as other cautionary institutions (e.g., Swisscaution) fulfil the same role.

### 2 / Subletting

A tenant may sublet his object to a third party with the consent of the owner (art. 262 CO); the latter may refuse *only if* (i.e., imperatively) (art. 262, para. 2 CO):

- a/ The tenant refuses to inform him of the terms of the sub-lease.
- b/ The terms and conditions of the sub-lease are unfair in comparison with those of the principal lease.
- c/ The sub-letting gives rise to major disadvantages for the landlord.

### 3 / Lien

With regards commercial lease, the lessor has a right of lien (i.e., attachment) on all the objects found on the premises (art. 268 CO) so as to guarantee the current annual/semester rent.

## **28-5 Rent modifications**

### 28-5-1 Modifications

The landlord can modify:

- The rent
- The accessory charges according to third party increases in electricity, fuel, insurance etc. (art. 269a, let. b CO)

### 28-5-2 Rent modifications

Rent can be unilaterally modified in the following ways:

#### 1/ Relative criteria

- According to variation of the benchmarked mortgage interest rates (*taux d'intérêt hypothécaire de référence*) set by the Federal Council (art. 12a OBLF, art. 2 ss DEFR)<sup>22</sup>. The increase is 3% per 0.25 change in the interest rate<sup>23</sup> as it is less than 5% (art. 13, para 1, let. c OBLF).
- According to the inflation/deflation rate (*indice Suisse des prix de consommation*)<sup>24</sup>, but only 40% of the rate. If the rent agreement is indexed (*loyer indexé*), on condition that it is concluded for 5 years (art. 17, para 4 OBLF), the change is 100% of the rate (art. 269b CO).
- According to changes set beforehand in a graduated rental agreement, on condition that it is concluded for at least 3 years (art. 269c CO).
- According to the value-added works the landlord has carried out.

#### 2/ Absolute criteria

- According to the net return of the investment
- Comparative rents in the neighbourhood where the object is located.

Reserve: If the landlord does not exhaust the possibilities of permissible increases, he can do so on a later occasion by formulating a reservation in the notice of increase.

### 28-5-3 Procedure

#### 1/ Form

The landlord announces the modifications via the prescribed cantonal form (i.e., where the object is located) (art. 19 OBLF) which is hand filled out and signed and sent to the tenant in registered mail 3 months + 10 days prior to the expiry date of the rental agreement (art. 269d, para 1 CO) (theory of relative receipt<sup>25</sup>). Notices of increases that do not use the form or that are filled out via a computer are null and void (art. 269d, para 2 CO).

#### 2/ Content

The form mentions the current rent, the % increase in CHF, the increased rent; the date of effect and the reason for the increase (see under 28-6-2) are also mentioned (art. 19, para 1 OBLF). Unmotivated and conditional notices are null and void (art. 269d, para 2 CO, art. 20 OBLF).

### 28-5-2 Challenging increases

#### 1/ Means

The tenant may challenge the modification with the following means:

- Challenge added-value works.
- Claim a reduction in accessory charges.
- Invoke “excessive return on the leased property or when they result from a manifestly exaggerated purchase price” (art. 269 CO) – see below the computing methods.

---

<sup>22</sup> Online 2; at the time of writing, 2023, the rate is 1.5%.

<sup>23</sup> Online 3.

<sup>24</sup> Online 4.

<sup>25</sup> Online 5: “the registered mail is received at the moment when the recipient actually collects it from the post office counter and, in all cases, on the seventh day and last day of the deadline guard the post office.” – compared to the *theory of absolute receipt* under the same source.

## 2/ Procedure

The tenant has to file a claim with the Conciliation Court (art 202 CPC) within 30 days of receipt of the modification notice, otherwise it is deemed inadmissible.

## 3/ Computing methods

For examples, consult the appendix.

Depending on the age of the building the following methods can be used for establishing a “fair” rate of return for the landlord i.e., “fair” rent:

1/ If the building is 10 years old or less, the gross yield (*rendement brut*) is computed (art. 269a, let. c CO, art. 15 OBLF), that is, the ratio between the rent of the rented property and the cost/purchase price, provided that the latter is not manifestly exaggerated (art. 15, para. 2 OBLF).

2/ If the building is 10 to 30 years old, the net return method (*rendement net*) is used i.e., ratio between the landlord’s net income after payment of charges and own funds. The Federal Tribunal in a landmark jurisprudence establishes 1/ that the 100% of owner funds are to be adjusted for inflation<sup>26</sup>; 2) the yield can be equal or greater than 2% if the reference mortgage rate is equal or less than 2%<sup>27</sup>. In 2023 the reference mortgage rate is 1.5%, thus a “fair” rate of return would be 2 + 1.5% = 3.5%. However, Conod<sup>28</sup> notes that this calculation omits the part of charges the landlord pays and proposes 1.5%. Thus, the total gross yield for 2023 is 5%, also noted by other commentators<sup>29</sup>.

3/ If the building is more than 30 years old, which is still in the hands of the same owner, the neighbourhood rents are used as the criterion (art. 269a, let. A CO, ATF 144 III 514, consid. 3.4, art. 11 OBLF).

## **28-6 Termination**<sup>30</sup>

### 28-6-1 Termination conditions

#### 1/ Short notice periods

When the contractual expiry period or date are not respected, termination deploys its effects on the following term (art. 266a para. 2 CO)

#### 2/ Form and content of termination

2-1/ Form: The termination of residential or commercial leases by the landlord must be notified in writing using the cantonal official form where the property is located (art. 266l, para 2 CO). The form is signed by the landlord or his representative by hand. If these are not respected, termination is null and void (art. 266o CO).

2-2/ Content: termination must be justified if requested by the other party (art. 271, para. 2 CO). Since the aim of this provision is to avoid bring to court an action blindly, and to avoid responding to the request made by the other party, it is best to motivate the termination in the first place. A list of details to include is given at art. 9 OBFL.

#### 3/ Family dwelling<sup>31</sup>

3-1/ The landlord: The lessor is expected to notify the tenant and the spouse/partner separately even if the latter is not a signatory of the lease (art. 266n CO). Otherwise, the termination is null and void (art. 266o CO). The same goes if the landlord sends the two terminations in a single letter.

---

<sup>26</sup> ATF 147 III 14, consid. 8.5.

<sup>27</sup> ATF 147 III 14, consid. 8.4.

<sup>28</sup> Online 6.

<sup>29</sup> ATF 147 III 14, consid. 8.4.

<sup>30</sup> Terminology: 1/ The termination date or term (*terme*) is the date by which the parties can terminate the contract that is either contractually set or subject to notice of termination. 2/ The notice period (*délai de résiliation*) is the period of time that must elapse between the date of receipt of the notice of termination and the day of termination of the lease.

<sup>31</sup> It is defined as the common residence chosen by and where spouses or partners undergo their main activities (art. 162 CCS); this excludes concubines unless a concubine contract is concluded, and co-tenants unless they have all signed the lease agreement.

3-2/ The tenant: If the tenant terminates the tenancy agreement must, for his/her part, obtain the written consent of his spouse/partner (art. 266m CO).

#### 28-6-2 Termination periods

Unless otherwise agreed or longer periods apply, the minimal termination notice for periods for undetermined contracts are the following (art. 266 ss CO):

- Immovable construction: 3 months.
- Residential premise: 3 months.
- Commercial premise: 6 months.
- Furnished rooms: 2 weeks.
- Parking lots: 2 weeks.
- Movable objects: 3 days.

#### 28-6-3 Revoking termination conditions

A termination notice is revokable under the cases listed under art. 271a CO considering the exceptions under art. 271a, para 3 CO.

#### 28-6-4 Lease extensions

##### 1/ Principles

The tenant may request an extension of the lease if the termination of the contract could have short-term painful consequences (art. 272, para. 1 CO). This can occur under 3 conditions that are cumulatively met:

- The lease must have been validly terminated.
- There is no case for excluding the extension as per art. 272a, para. 1 and 2 CO.
- Termination has dire consequences for the tenant.

Even if an extension is granted, it is expected the tenant to take all the necessary steps for relocation (art. 272, para 3 CO).

##### 2/ Procedure

A tenant who wishes to request a lease extension must apply to the Conciliation Court within 30 days of receipt of the notice (contract of indefinite duration) or, at the latest, 60 days before the expiry of the contract (contract of fixed duration).

Unlike the previous one, this approach emphasises the nature and conditions of termination. We can distinguish between:

#### 28-6-5 Termination circumstances

##### 1/ Ordinary termination of the lease:

- Fixed-term lease contracts (art. 255, para. 1 and 2, art. 266, para. 1 CO) terminate on a date contractually set.
- Indefinite-term lease contracts (art. 255, para. 1 and 3, art. 266 ss CO) terminate on a set date provided through notice (see here below for the legal periods).

##### 2/ Extraordinary termination of the lease when the following legal conditions are met:

###### 2-1/ Just cause (art. 266g CO)

This includes cases of disability or serious economic reasons<sup>32</sup>.

###### 2-2/ Bankruptcy of the tenant (art. 266h CO)

The cancellation of the contract follows if the guarantees provided are insufficient (art. 83 CO).

---

<sup>32</sup> ATF 4C.280/2006, consid. 5.1 and 5.2. Note that art. 266g CO is general and subsidiary to the other articles of a specific content and reason for extraordinary termination such as art. 266h CO pertaining to the bankruptcy of the tenant.



2-3/ Tenant does not pay rent (art. 257d CO)

Two time-linked situations:

1/ The tenant is late: the landlord will grant 30 days' notice for the rent to be paid.  
2/ The tenant has not paid within the prescribed period i.e., 30 days: the landlord who has to act within 3 weeks of between the expiry of the notice period and the termination of the lease for non-payment<sup>33</sup> will terminate the contract in 30 days.

2-4/ Death of the tenant (art. 266i CO)

The landlord may not terminate the lease in the event of the tenant's death, unless the continuation by the heirs constitutes just cause for termination (art. 266g CO).

2-5/ Breach of contract (art. 257f CO)

In cases such as noise, if, despite written warnings, the duty of care towards the neighbourhood is breached, the lessor may terminate the contract within 30 days at the end of a calendar month.

2-6/ In the event of sale of the property (art. 261 CO)

The buyer can terminate the contract at the legal expiry date for the following cumulative conditions:

1/ the object is needed for himself (see above).  
2/ the need is serious i.e., motivated.  
3/ the need is urgent<sup>34</sup>.

2-7/ Serious defects in the property (art. 259b CO)

Defects that hinder its use and which the landlord fails to mend.

2-8/ Procedure note

A judge may not convert an extraordinary termination into an ordinary termination<sup>35</sup>. On the other hand, there is nothing to prevent the landlord from notifying the tenant of a *duplicate termination*, i.e., an extraordinary termination and an ordinary subsidiary termination, which is intended to take effect only if the first one is not validated<sup>36</sup>.

3/ Anticipatory termination of the lease when the tenant returns the object before the legal term:

3-1/ Conditions:

- The tenant presents a new solvent tenant whom the landlord cannot reasonably refuse; the lease is taken over on the same terms.
- The landlord responds to the request in less than 20 days.

3-2/ Effect: the tenant is immediately released from his obligations.

3-3/ Counter-effects:

- Should the proposed tenant not be eligible, or that a suitor is not found, the tenant remains liable to pay the rent until the term of the lease expires.
- If the landlord offers a higher rent to the new tenant and the new tenant refuses, even though he had agreed to sign the contract on the basis of the rent paid by the previous tenant, the outgoing tenant is released.
- In case the landlord delays in responding more than 20 days, this is equivalent to the outright acceptance of anticipatory termination without financial compensation.

---

<sup>33</sup> ATF 4A\_366/2008 consid. 4.

<sup>34</sup> ATF 4A\_447/2013, consid. 4.1: "the urgent need does not presuppose a situation of constraint or even a state of necessity; it is sufficient that, for economic or other reasons, the lessor cannot be required to renounce the use of the leased property. The need in question must be serious, concrete, and current; it then takes precedence over the tenant's interest." The same notion of urgency is mentioned under art. 261 para. 2 let. a, 271a para. 3 let. a et 272 para. 2 let. d CO (ATF 118 II 50 consid. 3a).

<sup>35</sup> ATF 135 III 441, consid. 3.3.

<sup>36</sup> ATF 137 III 389, consid. 8.4.2.

Note that in the extraordinary event that the performance of the contract becomes burdensome (i.e., financially speaking), the contract may be terminated at any moment by observing the minimal notice periods.

APPENDIX

COMPUTATION EXAMPLES

**2.5 room flat + car parc + private garden in Charrat Martigny, Valais**

built 2019

price of the flat	366,000.00
notary fees, taxes, registration (3%)	10,980.00
total	376,980.00

rent agreement: indexed, duration 5 years (art. 269b CO)

current rent 2023	14,580.00
monthly	1,215.00

**GROSS YIELD**

total purchase costs	376,980.00
current rent 2023	14,580.00
rate % (rent to purchase value)	3.87
increased rent as of 2024 (see below)	15,221.52
rate % (rent to purchase value)	4.04

**NET YIELD 1**

total purchase costs	376,980.00
average landlord charges	480.00
mortgage interest (2.74%)	10,329.25
estate taxes	300.00
total costs	11,109.25
current rent	14,580.00
net revenue	3,470.75
own funds (35%)	128,100.00
rate % (net revenue to own funds)	2.71

**NET YIELD 2**

**financing**

own funds (35%)	128,100.00
mortgage	248,880.00

**indexation of 100% own funds**

inflation 2019-2023	4.40%
indexed own funds	5,636.40

total investment	133,736.40
------------------	------------

**establishing the reference mortgage rate**

reference mortgage rate as per Fed Council 2023	1.50%
reference mortgage rate as per ATF 147 III 14	2%
total	3.50%

**valuations**

own funds valuation at 3.50%	4,680.77
mortgage valuation et 3.50%	8,710.80

**average charges 2019 to 2023**

tenant	1,500.00
total	1,500.00

**admissible rent value**

indexed own funds	4,680.77
mortgage valuation	8,710.80
average charges	1,500.00
annually	14,891.57
monthly	1,240.96

**examination of the admissibility of current rent**

annually	14,580.00
monthly	1,215.00
value difference: admissible rent value - current value	311.57
rate % (benchmark 2 - 2.5%) (value difference to current rent)	2.14

**examination of the admissibility of rent increase**

inflation 2019-2013	4.40%
---------------------	-------

adjustment 100% to inflation (art. 269b CO), otherwise 40%

monthly	53.46
annually	641.52
new rent as of 2024	
annually	15,221.52
monthly	1,268.46
value difference: admissible rent value - future value	-329.95
rate % (benchmark 2 - 2.5%) (value difference to future rent)	-2.17