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The Flemish Lease Decree has arrived, including regulation for student rentals

After a long period of gestation, the Flemish Lease Decree was adopted on 24 October 2018.

The new rules will enter into force on 1 January 2019, but are only applicable to new contracts.

In addition to the reform of the classic residential lease laws, for principal places of residence, the Flemish Lease Decree also provides for the first time a separate regulation for student housing leases (apartments, rooms and studio flats) (articles 53 through 65).

This regulation applies to leases where the resident (not necessarily the lessee) is a student and the leased property is not the principal place of residence. Leases signed by e.g. the parents thus also fall under this regime. A "student" is broadly defined as a person who is registered at an institution offering full-time education.

A number of provisions that apply to normal residential leases are declared to apply to student rentals as well (inventory of fixtures, delivery obligation and maintenance and repair duties).

Tacit renewal of a student lease is not possible - even if the contract should provide for it. Specific termination mechanisms are also provided, but only for the lessee's benefit. The lessor cannot cancel the lease. Thus the lessee can terminate the agreement before the entry into effect, whereby a compensation in lieu of notice of two months' rent is owed if the lease is terminated less than three months before the entry into effect (so no compensation at all in case of an earlier notice). Further, the lessee can terminate the lease (i) at the end of his studies or (ii) upon the death of one of his parents or some other person who is responsible for supporting the lessee, and this with an advance notice period of two months. Finally, the lease ends ipso jure as a result of the death of the lessee.

Subletting and lease transfer are prohibited, unless the parties agree otherwise. However, subletting and lease transfer are in principle authorised if the lessee is participating in a student exchange programme or completing a traineeship, unless the lessor has well-founded reasons for objecting to this.

With regard to the rent, a single all-in rent must be provided for. All costs and charges, with the exception of the consumption of energy, water and telecommunications and the (possible) tax on second residences, must be included herein. This is intended to avoid later high settlements relating to charges and costs. However, a transitional arrangement is provided for leases concluded

after 1 January 2019 which follow on an already-existing lease between the same parties. Here it is still possible to split up rent and costs.

Furthermore, it is specifically provided that in case of successive leases with the same lessee, the base rent may not be higher than that set in the initial lease. Only indexation is possible, no other price increases. An exception is made if the normal rental value of the property, as a result of new circumstances, has risen by at least 20%, or as a result of works on the leased property by at least 10%. The burden of proof in this regard rests upon the lessor.

Finally, any security deposit can amount to at most two months' rent. Contrary to normal residential leases, here the security deposit can be paid into an account of the lessor. A security deposit cannot be paid in cash.

For more information on this subject, you can contact Ewoud Willaert (author and practice group head).

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