



German Landlord/Tenant Laws



Please note this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

Living on the German economy is a great way to learn more about your new home. But be aware that when you rent a German apartment, your relationship with your landlord is bound by German law. This paper is meant to be a very general introduction into German landlord-tenant law. For more information, call the Stuttgart Legal Assistance Office.

TERMINATION OF A LEASE

Termination Period

Check your lease to determine the required notice period.

Indefinite leases typically require three months notice unless the contract specifies a shorter notice period. The period starts at the beginning of the month if the landlord has received notice within the first three working days of that month. If the tenant has lived in the apartment for more than five years, the termination period is six months for the landlord, if the tenant has lived in the apartment for more than 18 years, the termination period is 9 months for the landlord, and always three months for the tenant.

The 30 day termination periods starts when the landlord physically receives the termination letter.

Fixed-term leases are binding on the tenant for the agreed upon rental period. The landlord is not obligated to release a tenant, even if that tenant offers someone who is willing to take over the lease.

The Housing Office uses a standard form contract that allows a tenant to terminate a lease in one month if terminating for military reasons (PCSing, deployments, etc.). This is known as the Military Clause. A service member should *always* use the Housing Office's standard contract and never sign a contract that does not have a Military Clause.

Termination in Writing

As soon as you know your date of departure, you should give your landlord written notice of lease termination, by registered letter. You should ask the Housing Office for the necessary paperwork for a termination notice to your landlord. After signing the termination notice, you must send it to your landlord, return receipt requested, by German Mail or hand carry it and deliver it in the presence of an unbiased witness. This allows you to prove when the landlord received the termination.

If you want to terminate an indefinite lease, the landlord's consent is not required. If you want to terminate a fixed term lease and the landlord refuses to release you, contact the Legal Assistance Office for help.

OUTSTANDING RENT

The landlord does not have to cover past-due rent with the security deposit. Therefore, you should not withhold the last one or two months' rent unless you inform the landlord about your intentions and the landlord agrees.

For failure to pay rent, the landlord is entitled to attach property of the tenant. This right of the landlord can be enforced without a court order as long as the property is located in the rented apartment. However, there are some restrictions as to the type of property that may be attached.

RENOVATION COSTS

A tenant may be responsible for renovation costs. Unless the contract specifies that the tenant is responsible to renovate or to pay for renovation, he is released from this obligation. Therefore, you must check the renovation clause of your lease.

DAMAGES TO THE PROPERTY

Tenants should conduct a pre-checkout with a representative from Housing Office and/or the landlord a few weeks prior to the move-out date. This provides an opportunity to settle disputes about the property's condition. If actual damages are present, there is sufficient time to get an estimate of the repair costs.

The tenant has the burden of proof to establish that any damages were present in the apartment before he moved in. A check-in list or inventory sheet and digital photos are the best proof. If an inventory sheet is not available, the statement of a credible witness can also be considered sufficient.

UTILITIES

In Germany, utility charges are based on estimates. Tenants pay a set amount each month and will either pay more or get money back based on the actual usage at the end of the accounting period – this is called the annual reconciliation. The accounting period can start /end any time during the calendar year. At this time, the meter for water and heating will be read. German courts grant the landlord periods of up to 12 months after the meters are read to provide the tenant with the reconciliation statement. A problem could occur if the tenant has paid advanced monthly payments for utilities and yet has not received the annual reconciliation.

If the tenant moves out within the accounting period, the meters have to be read at the time of move-out. However, the bill is not due at this time.

The landlord is allowed to withhold an appropriate part of the security deposit if an additional payment for the utilities can be expected based on the last year's reconciliation. In these cases, it is recommended to work out an agreement based on the amount of the last year's reconciliation or to provide the landlord with the tenant's address in the states to settle any future claim.

COURT ACTION

If there are no disputes, reimbursement of the security deposit is due at the time of move-out. If the landlord requests reimbursement for damages or renovation, he is granted an appropriate period of time to specify his claims. The German courts grant a maximum extension of six months to specify the claims and to reimburse the tenant.

A tenant can hire a German attorney on the economy to file a reimbursement claim against the landlord. It is recommended that the soldier inform a trustworthy person about his case and provide that person with a power of attorney so this person can be a point of contact for the German attorney after the soldier's departure from Germany.

Another possibility is to buy legal protection insurance (= Rechtsschutzversicherung, not limited to landlord-tenant issues) on the economy or to join the Tenant's Association. Legal Protection insurance is available from many major insurers in the area. The Tenant's Association provides free consultation with an expert on landlord/tenant problems to their members. If the member wants to file a claim against a landlord or is sued by a landlord, the Association will provide an attorney, but *only* if the tenant's chances of winning the case are realistic. If the tenant has been a member of the Association for at least three months before the issue arose, the Association may pay the attorney fees if the tenant is not successful. In cases where the tenant has just recently joined, the Association provides an attorney but the tenant has to pay court and attorney fees if he is not successful. The Association is located at: Mieterverein Stuttgart, Moserstr. 5, 70182 Stuttgart, Tel: 0711-21016-0 (<https://mieterverein-stuttgart.de/en/>). A yearly membership fee is required.

As a general rule in civilian court actions, the unsuccessful party must pay the costs of the court action, which includes attorney fees for both sides and the court costs. The successful litigant does not have to pay anything. If a litigant is partially successful, all procedure costs are divided proportionally. The cost of attorney fees and court costs depend on the value of the matter in dispute.

If the litigant has severe financial problems, his attorney can apply for legal aid. If the judge grants legal aid, the client has to pay only the other party's attorney fees if he is unsuccessful.

STATUTE OF LIMITATIONS

Claims of the landlord:

Outstanding rent and utility payments: 3 years (starting at the end of the year during which the claim for payment arose) – if the reconciliation statement was provided by the landlord not later than 12 months after the billing period had ended

All other claims arising from a rental agreement: 6 months (starting with the return of the rental object)

Claims of the tenant:

Security deposit: 3 years (starting at the end of the year during which the claim for payment arose)

Reconciliation of utilities: 3 years (starting at the end of the year during which the claim for payment arose)

Dispute of the reconciliation: 12 months after reconciliation was received

For further information, contact the Legal Assistance Office, Stuttgart Law Center, DSN 421-4152; Civ 0711-729-4152

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Reference:

Bürgerliches Gesetz Buch (BGB) § 535 et seq.

(http://www.gesetze-im-internet.de/englisch_bgb/index.html)