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The Flemish Housing Rental Decree
for student tenancy agreements
concluded from 1 January 2019

Translation from Dutch

www.woninghuur.vlaanderen

**AGENTSCHAP
WONEN
VLAANDEREN**

INTRODUCTION

Each year, quite a few students conclude a tenancy agreement for their room or digs. The tenancy agreement establishes the rights and obligations of the tenant and the landlord. Until recently, the rules for student tenancy agreements were a federal power. The rules were set out in the Civil Code. Since the sixth round of the reform of the Belgian state, the power for establishing rules on student tenancy agreements has been devolved to the Regions.

In the Flemish Region, these rules are set out in Title 3 of the Flemish Housing Rental Decree. The present Decree applies to all student tenancy agreements concluded from 1 January 2019 for student accommodation in Flanders. The Decree regulates the main aspects of the student tenancy agreement, such as the condition of the let property, the options for giving notice, the transfer of the tenancy agreement and sub-letting, the indexation and providing a rental guarantee.

Concluding a student tenancy agreement may give rise to a wide number of questions: which elements need to be included in the tenancy agreement? What is the term of the tenancy agreement? How are the rent and the costs and charges determined? What kind of rental guarantee is the landlord entitled to demand? Is the student allowed to terminate the tenancy agreement early? What to do in a conflict between the landlord and the student?

The aim of this brochure is to provide students and landlords with answers to all these questions.



Important!

The 'Decree of 9 November 2018 setting forth provisions on the tenancy of properties or parts thereof intended for habitation' is the full title of the Flemish Housing Rental Decree.

Title 1 of the Flemish Housing Rental Decree sets out a series of general provisions.

Title 2 of the Flemish Housing Rental Decree applies to the tenancy agreements for a dwelling which the tenant designates as his principal place of residence. More on this topic is available from the Housing Rental Tenancy Agreements brochure.

Title 3 of the Flemish Housing Rental Decree specifically deals with student housing.

This brochure discusses only **Title 3** of the Flemish Housing Rental Decree which regulates student housing.

Title 3 of the Flemish Housing Rental Decree does not regulate all aspects of the student tenancy agreement. In addition to these provisions, the parties still need to observe:

- The general provisions of the Civil Code which, in theory, apply to tenancy agreements (art. 1708 through 1762bis of the Civil Code). These provisions too are discussed in the brochure;
- Certain contract regulations, provided they do not conflict with any peremptory statutory provisions.
- Regional standards in the areas of environmental health, spatial planning and housing. These rules are not covered here.

At the end of this brochure are a number of useful addresses for further advice.

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I.

GENERAL



1. What is a student tenancy agreement?

Article 53 Flemish Housing Rental Decree

A tenancy agreement is formed when a person (the landlord) allows another person (the tenant) to have the use or the enjoyment of a property or a part thereof against payment of a rent.

A student tenancy agreement is said to exist when the resident is a student and the rented property is not used as the student's principal place of residence.

A student is a person who is enrolled at an educational institution that provides full-time education. There is no requirement for the student to be of legal age.

2. When do the provisions of Title 3 of the Flemish Housing Rental Decree apply?

The provisions on student tenancy agreements take effect on 1 January 2019. They apply to all student tenancy agreements taken out from that date onwards. Which means the Flemish Housing Rental Decree does not apply to student tenancy agreements which were ongoing or which had already been signed on that date.

Article 82 Flemish Housing Rental Decree

For student tenancy agreements concluded after 1 January 2019, but which follow consecutively a tenancy agreement that was concluded between the same tenant and landlord before 1 January 2019, the rule that a portion of the rental charges must be included in the rent does not apply (see III.6.a.). For these tenancy agreements, the rent and the costs and charges are allowed to remain separate.

3. Are the provisions of the Flemish Housing Rental Decree on student housing mandatory?

Article 54 Flemish Housing Rental Decree

All provisions of the Housing Rental Decree on student tenancy agreements are provisions of mandatory law, which means they must be observed. This means that the tenancy agreement is not permitted to derogate from these rules, not even if the landlord and the tenant agree to do so. A mandatory rule applies in all cases and at all times, even if the contract contains a clause that says the exact opposite. In that case, the said contract clause is null and void, but the other provisions of the tenancy agreement continue to apply.

An additional rule is a rule from which the contract is permitted to derogate. This kind of rule applies only insofar as the contract itself does not contain any other provisions.

Normally speaking, the general provisions of the Civil Code are additional in nature, unless they state that they are mandatory or if they are intended to award compulsory protection to one of the two parties.

II.
PRIOR TO
CONCLUDING A
STUDENT TENANCY
AGREEMENT



II. PRIOR TO CONCLUDING A TENANCY AGREEMENT

1. Compulsory specification of the rent and the costs

Article 4 Flemish Housing Rental Decree

When letting a property which is intended for habitation in the broad sense of the word, all official or public notifications are required to post the rent and the costs and charges.

The rent posted is not a binding price offer.

The qualified municipal authority has the power to penalise violations of this with an administrative fine ranging from 50 to 350 euros.

2. What kind of information is the landlord permitted to demand from the prospective tenant?

Equal Opportunities Decree of 10 July 2008

Pursuant to the freedom of contract principle, the landlord is free to decide to whom he wishes to let his dwelling. However, this freedom is not without limitation. In deciding whether or not to let the dwelling to a particular person, the landlord is not allowed to discriminate. Discrimination is said to exist if someone is disadvantaged based on the colour of their skin, disability, gender, marital status, sexual orientation or wealth.

Further information on discrimination in private tenancy agreements is available in the separate brochure entitled 'Discrimination on the rental market'.

III.
**CONCLUDING A
STUDENT TENANCY
AGREEMENT**



1. Who can conclude a student tenancy agreement?

Every person who is of legal age (i.e. anyone who is at least 18 years of age or above and who has not been declared incapacitated) and every emancipated minor is able to conclude a valid tenancy agreement.

Article 1124-1125 Civil Code

Under-age students are also able to conclude a valid tenancy agreement for student accommodation, even though it is better if they are represented by their parents or a guardian.

Where the tenancy agreement is concluded by an under-age person, there is the risk that this agreement may be declared null and void by the court. However, this is only the case if the minor or one of his representatives proves that the minor was prejudiced in doing so.

2. Which form should the student tenancy agreement take and which elements should it contain?

a. What is the difference between a written and a verbal tenancy agreement?

If the tenancy agreement between the landlord and the tenant was not recorded in writing, a verbal tenancy agreement is said to exist.

If the parties agree terms and lay these terms down in writing, there is a written tenancy agreement.

b. Is it obligatory for the student tenancy agreement to be drawn up in writing?

Article 56 and 8, sub-sections 1 and 2 Flemish Housing Rental Decree

In all cases, student tenancy agreements must be drawn up in writing in a document signed by both parties

The contract must contain the following details:

- The identity of all parties;
 - For natural persons, these details are: their surname, their first two first names, their address and their national register number. Failing a national register number, the date and place of birth must be stated;
 - Legal persons must specify the following details:
 - .. Their company name;
 - .. Their registered office;
 - .. Their company number, assigned by the Crossroads Bank for Enterprises. If the company number has not yet been assigned, this must be added later in the tenancy agreement or in a duly signed supplementary statement at the bottom of the agreement;
- The start date of the agreement;
- The exact duration of the agreement;
- The specification of all spaces and parts of the building that come under the tenancy;
- The amount of the rent;
- The arrangement regarding the costs and charges;
- A reference to the layman's explanatory note.

The layman's explanatory note lays out a number of important aspects of housing tenancy law for the benefit of tenants and landlords. This is what this brochure is for.

Where a legal person fails to specify its company number in the tenancy agreement, it will need to bear the consequences of the non-registration of the tenancy agreement (see III.3).

- c. How many copies should be drawn up of the student tenancy agreement?

Article 1325 Civil Code

The tenancy agreement must be drawn up in as many copies as there are parties. If only two parties are involved, the tenant and the landlord (which is usually the case), there must be at least two copies of the tenancy agreement. Each party must have an original document. Each document also needs to specify how many original documents have been drafted and signed.

If an insufficient number of documents has been drafted, the tenancy agreement is not null and void, but it is considered to be a verbal agreement.

Normally speaking a third document is required for the registration of the tenancy contract (see III.3).

- d. What if there is no written student tenancy agreement?

Article 55 and 8, §3 Flemish Housing Rental Decree

If the tenancy was agreed only on a verbal basis, both the tenant and the landlord may demand that a written contract be drawn up by serving notice of default on the co-contracting party by registered letter or by bailiff's writ.

If no (fully) written tenancy agreement has been prepared within eight days, the co-contracting party can be forced to draft, complete or sign a written tenancy agreement by judicial means. If need be, the Justice of the Peace can even be asked to determine that the ruling carries the legal weight of a written tenancy agreement.

If neither of the parties has a written tenancy agreement drafted, only a verbal tenancy agreement exists. This will be a problem when it comes to the compulsory registration (see III.3).

3. Registration of the student tenancy agreement

- a. What is the registration?

Article 19, 3° Registration Fees Code

By law, the tenancy agreement must be registered, along with all supplements (such as any amendments and the delivery report). Other annexes, such as the energy performance certificate, are not required to be included as part of the registration.

The registration means that three copies (if there are two parties) of the agreement and the delivery report must be submitted to the Legal Certainty Bureau (Kantoor Rechtszekerheid), i.e. the former registration board, that is authorised for the address where the dwelling is located. You can also register the tenancy agreement online via MyRent. In that case, no third copy needs to be drawn up. A copy of the tenancy agreement suffices.

Full details regarding the registration of tenancy agreements is available to consulted on the website of the Federal Public Service of Finance (https://financien.belgium.be/nl/particulieren/woning/huren_-_verhuren/registratie_huurcontract).

- b. Who should have the student tenancy agreement registered, within which deadline and what are the penalties?

Article 32, 5° Registration Fees Code

It is for the landlord to see to the registration of the tenancy contract. He must do so within two months after the tenancy agreement is signed. As such, the expenses for late registration in all cases are to be paid by the landlord.

If the landlord does not have the contract registered, the tenant is always free to do so himself.

c. How much is the registration fee?

Article 161, 12° Registration Fees Code

The registration of tenancy, subletting or tenancy transfer agreements of immovable properties or parts of properties for housing is free of charge.

If the contract is only registered after two months, the landlord faces a fine.

d. What is the value of an unregistered student tenancy agreement?

An unregistered tenancy agreement between the landlord and the tenant carries the exact same legal weight and produces the same legal effects as a registered agreement.

Vis-à-vis third parties, registration is important as it assigns a legal date to the agreement, which means everybody will be required to observe this tenancy agreement (see IV.7).



4. Condition of the leased dwelling

Article 57 and 12 Flemish Housing Rental Decree

The landlord must deliver the rented property in a properly maintained condition in every respect to the tenant and maintain the property during the term of the agreement in such a way that it is fit for the purpose for which it is intended. The landlord also needs to make sure that, when concluding the tenancy agreement, the property complies with the elementary requirements in the areas of health and safety and habitability, set out in Article 5 of the Flemish Housing Code.

The main minimum quality standards with which a leased dwelling must comply are :

- The area of the living spaces, taking into account the type of dwelling and the purpose of the living area;
- The sanitary facilities;
- The level of wind proofing, thermal insulation and the heating facilities;
- The ventilation, extraction and lighting facilities;
- The availability of sufficient and safe electrical installations for the lighting of the dwelling and for the safe use of electrical appliances;
- The gas installations;
- The stability and building physics of the dwelling;
- Accessibility and respect for personal privacy;
- Minimum energy performance;
- Availability of potable water.

The dwelling must also comply with all requirements in the area of fire safety and needs to provide sufficient space for the number of residents.

If the landlord received a conformity certificate for the dwelling three months ahead of the start of the tenancy agreement, it will be assumed that he is leasing the property in proper condition. The tenant may refute this assumption by demonstrating that the rented property had flaws at the start of the tenancy agreement.

a. What happens if the dwelling fails to comply with the minimum quality standards at the outset of the tenancy?

A dwelling that fails to meet the elementary requirements may not be let.

If the landlord decides to let the property regardless, the tenant may seek the nullity of the tenancy agreement before the court. If the court declares the tenancy agreement null and void, the tenant must vacate the dwelling, and the landlord shall be required to reimburse all rental sums paid. He may request the court for an occupancy fee, which will be based on the objective rental value of the property. This occupancy fee must subsequently be deducted from the rental sums to be reimbursed.

b. What happens if the dwelling no longer complies with the minimum quality standards during the tenancy agreement?

If, during the course of the tenancy agreement, the rented property no longer complies with the minimum requirements as a result of the landlord's action or inaction, the tenant has two options open to him:

- Either he may request for the tenancy agreement to be dissolved and claim payment of a sum in compensation;
- Or he may demand that the relevant work be carried out so that the property once again complies with the elementary requirements in the areas of health and safety and habitability. Pending the execution of the works, the court may grant a reduction of the rent.

5. The delivery report

a. Is a delivery report at the commencement of the student tenancy agreement mandatory?

Article 56 and 9, §1 Flemish Housing Rental Decree

The tenant and the landlord are under obligation to draw up jointly (in the presence of both parties or their representatives) a detailed delivery report at their joint expense. This must occur during the time when the dwelling is still uninhabited or during the first month of the tenancy. The delivery report must be attached to the tenancy agreement and be registered.

If either of the parties fails to consent to the co-contracting party's request to have a delivery report drawn up, the other party may request the Justice of the Peace to appoint an expert.

This request must be lodged within the first month in which the tenant has the use of the dwelling.

The delivery report acts as proof of the condition of the dwelling at the start of the tenancy. This is important at the end of the tenancy, as the tenant is required to return the rented property in its original condition (see III.5.d).

b. Who should draw up the delivery report?

The delivery report can be drawn up in one of three ways:

- The tenant and the landlord can jointly draw up a delivery report by themselves;
- The tenant and the landlord can jointly appoint an expert (an estate agent, a (real estate) expert, an architect, etc.) who will draw up the delivery report for them;
- If both parties fail to agree on the procedure, the court may appoint an expert to draw up the delivery report.

In each scenario, the tenant and the landlord each pay half the costs. When the tenant and/or the landlord each separately seeks the assistance of an expert for drawing up the delivery report, they will obviously pay for those services themselves.

In all cases, the delivery report must comply with the following requirements:

- It must be prepared jointly, which means in the presence of the tenant and the landlord or their representatives;
- It must be duly dated and signed by the tenant and the landlord in person or by their representatives (at all times, a delivery report prepared by one of the parties or by an expert appointed by one of the parties may be disputed by the other party);
- It must be sufficiently detailed and specify all matters as meticulously as possible. A clause such as 'The property is in proper condition and well maintained, which both parties acknowledge' does not constitute a delivery report.

c. What happens if alterations are made to the dwelling after the delivery report?

Article 56 and 9, §2 Flemish Housing Rental Decree

If, at the start of the tenancy agreement, a delivery report has been prepared and the dwelling undergoes major alterations during the tenancy, each party is within its rights to demand that an addendum be drawn up and attached to the delivery report. This addendum must be registered, just like the delivery report (see III.3).

And, just like the delivery report, this addendum may be drawn up by the parties themselves or by an expert. If the parties fail to agree on the addendum, the Justice of the Peace will appoint an expert.

d. What happens at the end of the student tenancy agreement?

Article 56 and 39 Flemish Housing Rental Decree

At the end of the tenancy agreement, the landlord or the tenant may request the co-contracting party to draw up a new (joint) delivery report (at their joint expense). This must be performed no later than at the time when the landlord accepts the return of the keys to the rented property.

Just as at the start of the tenancy, both parties can draw up this delivery report either by themselves or have it drawn up by an expert. If one of the parties fails to consent to the request to draw up a delivery report, the co-contracting party may request the Justice of the Peace to appoint an expert to prepare the delivery report. The request to the court must be submitted within one month of the dwelling being vacated.

The condition in which the tenant must return the rented property depends on whether a delivery report was drawn up at the start.

- If a detailed delivery report was drawn up at the start of the tenancy agreement, the tenant must return the dwelling in its original condition as detailed in that delivery report.

Damage or flaws that are not included in the delivery report, must be repaired by the tenant, unless the damage is the result of normal wear and tear through obsolescence or force majeure, or if the tenant is able to show it is for the landlord to repair the damage in question.

- If, at the start of the tenancy agreement, no detailed delivery report has been drawn up, it is assumed that the dwelling is still in the condition it was in at the start of the tenancy.

In that case, the tenant is not responsible for any damage, except if the landlord is able to prove that the damage was caused by the tenant.





III. CONCLUDING A TENANCY AGREEMENT

6. Rent and rental charges

a. Can the rent be freely established?

Article 60 Flemish Housing Rental Decree

The rent may be freely established by the parties. For student accommodation tenancies, the rent not only includes a fee for the landlord for the use of the rented property by the tenant, but equally for all costs and charges, with the exception of the consumption of energy, water, telecommunication facilities/services and, as applicable, the second residence tax.



PLEASE NOTE

This rule does not apply for student tenancy agreements concluded after 1 January 2019 between a tenant and a landlord who had already previously concluded a student tenancy contract (see I.2).

Article 61, §3 Flemish Housing Rental Decree

If the landlord and the tenant conclude consecutive tenancy agreements for the same dwelling, the rent is not allowed to be higher than the rent established in the first short term agreement. However, the rent remains subject to indexation or review (see below IV.1).

The rent may be revised where the normal rental value of the property has increased by at least 20% as a result of new circumstances or by at least 10% as a result of work carried out in the rented property.

If the landlord does demand a higher rent, the court will reduce this down to the rent of the first tenancy agreement, taking into account the possible indexation.

b. How are the costs and charges calculated?

Article 1728ter Civil Code

The costs and charges must be commensurate with the actual costs, unless the parties decide to establish a flat rate amount.

The costs for the consumption of energy, water and telecommunication facilities/services and, as applicable, the second residence tax are to be billed separately from the rent in a separate invoice. The tenant may, at any time, ask the landlord to provide him with documents corroborating the costs and charges. If the landlord lets a residential unit in an apartment building and the management thereof is assumed by one and the same person, all that is required is for him to provide the tenant with a statement of the costs and the charges, and give him the opportunity to inspect the documents. This disclosure shall take place at the landlord's address or at the registered office of the legal entity that handles the management.

7. Rental guarantee

Article 62 Flemish Housing Rental Decree

Most tenancy contracts require the tenant to put up a rental guarantee. This is to ensure that the landlord is not left empty-handed if the tenant fails to comply with his obligations.

The landlord is not under obligation to demand a rental guarantee. If he does so anyway, he is required to observe the following rules.

a. No more than two months' rent

On no account is the rental guarantee for a student room allowed to exceed two months' rent, i.e. without the costs for the consumption of energy, water and telecommunication facilities/services.

The tenant himself decides how he constitutes the rental guarantee. He can choose between paying a sum in cash or putting up a real security. The tenancy agreement must specify how the rental guarantee was made.

The landlord may request the rental guarantee to be provided no earlier than three months prior to the entry into force of the tenancy agreement.

If the tenant decides to put up a sum in cash, he must do so in one of the two ways detailed below:

- Either he pays the cash sum into an individualised account held in the name of the tenant with a financial institution.
The interest is capitalised to the benefit of the tenant. The landlord has a preferential claim over the assets in this account in the event of the tenant failing to honour all or part of his obligations.

- Or the sum in cash is paid into an account specified by the landlord.
When the landlord is in possession of the rental guarantee, he must pay the tenant interest over the amount, at the average interest rate on the financial market. This interest must be paid from the time the tenant provided the rental guarantee and this sum shall be capitalised. Please speak to someone at your local bank to find out the average interest rate on the financial market.

b. What happens at the end of the tenancy agreement?

If the tenant has complied with all his obligations, the rental guarantee and the interest will be returned to him at the end of the tenancy agreement.

If there is damage or there are outstanding rent arrears, the landlord may use the rental guarantee to offset his financial loss.

The financial institution may only refund the rental guarantee upon presentation of:

- Either a written agreement from the tenant and the landlord that is drawn up after the tenancy agreement has ended. This may be a letter or a special form (available from the bank) which has been signed by both parties;
- Or a copy of a court decision which specifies to whom the rental guarantee should go.

The landlord must refund any rental guarantee that has been paid into his account within three months of the tenant vacating the property, except if he disputes the refund within this deadline by registered letter to the tenant.



IV.

**DURING
THE TERM OF THE
STUDENT TENANCY
AGREEMENT**



1. Rent indexation

The indexation is the periodical adjustment of the rent to the cost of living.

a. When may the rent be index-corrected?

Article 61, §1 and §2 Flemish Housing Rental Decree

For student tenancy agreements that are older than one year, the rent may be adjusted to the cost of living once a year, on the anniversary of the agreement's effective date. Indexation is always possible, except if the tenancy agreement rules out this possibility.

No indexation can be implemented for tenancy agreements concluded by educational institutions with students who qualify for a concessionary rent.

b. Is indexation automatically implemented?

Article 34, §1 Flemish Housing Rental Decree

The indexation of the rent is not automatic, but needs to be requested in writing by the party in whose interest the indexation-correction is implemented (usually the landlord). The adjustment of the rent may have retrospective effect by no more than three months from the indexation request date. The indexation is to be paid for the month in which the request was made.



EXAMPLE

A student tenancy agreement was concluded on 1 July 2019 and takes effect on 1 September 2019. The tenant or the landlord may request for the rent to be index-corrected no earlier than from the anniversary of the effective date of the tenancy, i.e. from 1 September 2020. The party in whose interest the indexation-correction is implemented may also request for this correction to be carried out in due course, although he should bear in mind that that the indexation can have retrospective effect by no more than three months. If the indexation is not requested until 12 January 2021 for instance, it already needs to be paid starting from January and it may have retrospective effect only covering the months of October, November and December.

Statutory limitation period

Article 2273, sub-section 1 Civil Code

Statutory limitation means that a person can no longer be required to pay a debt after a certain length of time has been and gone. As soon as the limitation takes effect, a tenant is, for example, no longer under obligation to pay the amount of the indexation.

The right of the landlord to demand payment of the indexation becomes statute-barred after one year, counting from the date on which the indexation request was sent. As soon as the landlord has dispatched the indexation request, he has just one year to claim payment of the amount of the indexation before the courts.



EXAMPLE

On 15 June 2019 a tenancy agreement is concluded which is set to take effect on 1 October 2019. From 1 October 2020, the landlord may, by written request, index the rent. Suppose the landlord requests the indexation on 1 November 2020, then this date will trigger the limitation period. If the tenant fails to pay the indexation, the landlord will need to institute his claim before the Court no later than 31 October 2021.



c. How is the indexation calculated?

Article 34, §2 Flemish Housing Rental Decree

The rent is adjusted to the cost of living based on the health index. This is calculated using the following formula:

$$\frac{\text{basic rent price} \times \text{new index}}{\text{initial index}}$$

- The basic rent is the rent as laid down in the tenancy agreement, without the costs and charges.
- The new index is the health index of the month that precedes the month of the anniversary of the start of the tenancy agreement (which is not necessarily the month in which the tenancy agreement was concluded: a tenancy agreement can, for instance, take effect three months after it was concluded).
- The initial index is the health index of the month that precedes the month in which the tenancy agreement took effect.



EXAMPLE

A tenancy agreement was concluded in August 2019 and took effect on 1 September 2019 with a rent of 350 euros. Up until the end of the agreement:

- the basic price will be 350 euros;
- the initial index will be that of August 2019;
- the new index will be that of the month of August.

If the rent is revised, the revised rent becomes the new basic rent price (see III.6.a) from that time forward. The initial index then also becomes that of the month before the month in which the rent was revised.



EXAMPLE

On 15 July 2019 the parties conclude a tenancy agreement with a rent of 400 euros. The tenancy agreement takes effect on 1 September 2019. In September 2020, the rent is revised, with the new rent amounting to 450 euros. From this time forward, the basic rent will be 450 euros, whereas the initial index becomes the index of the month August 2020.

d. Where do you find the indices for the calculation of the rent indexation?

The health index is calculated each month by the FPS Economy. The latest health index is available at the website:

<https://statbel.fgov.be/nl/themas/consumptieprijzen/index/gezondheidsindex>.

You can also work out the index-correction yourself using the Rent Calculator:

https://huurcalculator.statbel.fgov.be/NL/indicators/cpi/rent_nl.asp

2. What course of action is open to the tenant if he overpaid?

Article 1728quater Civil Code and 2273, sub-section 2 Civil Code

It may be that that the tenant pays amounts which in due course turn out to be too much or which he was not even required to pay. In that case, he may demand that the landlord refund the amount overpaid. To this end, the best course of action is for him to send a registered letter. If the landlord declines to comply, the tenant may claim reimbursement through the Justice of the Peace.

! PLEASE NOTE

- The tenant may only claim reimbursement of sums which he paid in the five years prior to sending his registered letter.
- After he has sent his registered letter, the tenant still has a year to claim reimbursement through the courts. The tenant's right to demand reimbursement becomes statute-barred after a year, counting from the date on which he sent his registered letter.

→ EXAMPLE

A tenant turns out to have been overpaying his rent by 20 euros a month since 1 September 2019, something which he only notices in May 2020. On 5 June 2020, he sends the registered letter demanding reimbursement of the sum he has overpaid. If the landlord fails to refund the total overpaid amount, the tenant is free to take the matter to court. He only has one year to do so, which means he has until 5 June 2021 to take action.

3. What course of action is open to the landlord if the tenant fails to pay the rent or the rental charges?

Article 1762bis Civil Code and 1244 Civil Code

The non-payment of the rent or the rental charges does not entitle the landlord to evict the tenant himself or to terminate the contract.

If the tenant fails to pay the rent or the rental charges, the landlord is best advised to send a registered letter demanding payment. If the tenant fails to respond, the landlord is free to take the matter to the Justice of the Peace to claim payment of the rent or rental charge arrears. In doing so, the landlord is also free to petition for the tenancy agreement to be dissolved and for the tenant to be evicted from the dwelling. He can also at all times claim compensation and interest.

The court will rule on the matter, although under certain circumstances the court may also grant the tenant deferment of payment. As a rule, the court will only impose harsh penalties such as the dissolution of the tenancy or the eviction of the tenant in case of repeated or persistent gross negligence on the part of the tenant.

Some student accommodation services also offer free mediation.

Article 2277 Civil Code

In the event of payment arrears by the tenant, a five-year limitation period applies. In other words, the landlord can no longer claim payment of rent arrears or costs five years after the date on which the tenant had to pay this sum.





4. Maintenance & repairs

a. General

Article 58 and 25, 26 and 28 Flemish Housing Rental Decree

Normally speaking, all repairs are paid for by the landlord, except for:

- Minor repairs;
- Repairs that are necessary as a result of injudicious use or poor maintenance by the tenant;
- Repairs that are necessary because the tenant failed to comply with his reporting duty (unless he is able to demonstrate that the landlord was actually aware of the repairs required).

In all cases, the maintenance and cleaning of the dwelling are to be undertaken by the tenant. In all cases, repairs of wear and tear through obsolescence or damage by force majeure, must always be undertaken by the landlord.

The parties are free to restrict or exclude the tenant's repair duty. The reverse (increasing the repair duty of the tenant) is not allowed by law.

b. What are minor repairs?

Appendix 4 Implementing Order of 7 December 2018 to the Flemish Housing Rental Decree

The Government of Flanders has drafted a list of minor repairs and maintenance duties. This list is not exhaustive: as such, it does not provide a full run-down of all possible cases.

The list includes duties such as:

- Mowing the grass;
- Replacing broken glass;
- Replacing lost keys;

See appendix 2

c. What happens in case of urgent repairs?

Article 58 and 27 Flemish Housing Rental Decree

Normally speaking, the landlord is not permitted to make repairs to the rented property without the tenant's consent. The tenant is, after all, entitled to the quiet enjoyment of the dwelling.

If the dwelling urgently requires repairs during the course of the tenancy which cannot wait until after the tenancy has ended, the tenant must allow these repairs to be carried out, even if they cause discomfort and even if part of the dwelling is unusable during the works.

If the repairs last longer than 30 days, the rent will be reduced in proportion to the duration and the scope of the discomfort.

If the repairs render normal habitation impossible, the tenant may have the agreement dissolved.

5. Who is liable for fire?

Article 1733 Civil Code

The tenant is liable for fire, unless he proves that the fire started through no fault of his own, for instance due to the poor condition of the electrical installation.

This presumption of liability applies only for the fire damage to the rented property itself. Neighbours who have also sustained damage will therefore need to demonstrate fault on the part of the tenant in order to be eligible for compensation.

These regulations are a matter of additional law; the tenancy agreement may derogate from them.

If the tenant or the landlord does not have fire insurance and is held liable after a fire, the sums in compensation he is required to pay can get very hefty indeed. Which is why it is a good idea for both parties to take out a fire insurance policy.

6. Is the tenant allowed to transfer the tenancy or sub-let the student room?

Article 59 Flemish Housing Rental Decree

Transfer of the tenancy agreement means that the tenant passes on the rights and obligations arising from the tenancy agreement to someone else. In case of sub-letting, the principal tenant continues to rent the place himself. Only, he then in turn lets all or part of the rented property to a sub-tenant.

The student is only permitted to transfer his tenancy agreement to another student or sub-let the rented property if the landlord has agreed to this in writing ahead of time.

However, the student does have the right to transfer his tenancy or to sub-let it to another student if he is enrolled in a student exchange programme or is serving an internship. The landlord may only object to this if he has a valid reason, for instance because the new incoming tenant is unable to pay the rent.

A tenant who sub-lets the property will still be beholden to the landlord for all obligations arising from the tenancy agreement.

7. What happens to the student tenancy agreement if the rented property gets a new owner?

Article 1743 Civil Code

The ramifications of a change of owner (“transfer of the title of ownership of the property”) for the tenant depend on whether or not the tenancy agreement has a legal date before this “transfer of the title of ownership”.

a. What is a tenancy agreement with a legal date?

Article 1328 Civil Code

An authenticated tenancy agreement, i.e. a tenancy agreement prepared by a notary, always has a legal date.

A written private (“non-authenticated”) tenancy agreement carries a legal date:

- From the day of the registration (see III.3);
- From the day of the death of one of the parties who is a signatory to the agreement;
- From the day on which the existence of the agreement was recorded by ruling or by an authenticated instrument prepared by a public official, such as a notary or a bailiff.

Verbal tenancy agreements never carry a legal date.

b. What if the tenancy agreement has a legal date prior to the transfer of the title of ownership?

If the tenancy agreement carries a legal date prior to the transfer of the title of ownership of the rented property, the new owner of the dwelling is required to abide by the tenancy agreement.

As the new landlord, he assumes all rights and obligations from the previous landlord, except if the tenancy agreement contains an eviction clause. In that case, the tenant is entitled to compensation.

c. What if the tenancy agreement does not have a legal date prior to the transfer of the title of ownership?

If the tenancy agreement does not have a legal date prior to the transfer of the title of ownership of the rented property, the buyer is not bound by the tenancy agreement and he is within his rights to evict the tenant from the dwelling.

For reasons of fairness and reasonableness however, he will be required to allow the tenant one to two months to vacate the dwelling. The tenant may demand compensation from the landlord (not the buyer), as he failed to abide by his obligations.

V.

**TERM AND END OF THE
STUDENT TENANCY
AGREEMENT**



1. What happens at the end date of the student tenancy agreement?

Article 63 Flemish Housing Rental Decree

The parties freely decide on the term (duration) of the student tenancy agreement. The tenancy automatically ends on the end date of the contract.

The law prohibits tenancy agreements from containing a clause that says that the tenancy agreement is to be tacitly renewed if neither of the two parties expressly terminates the tenancy. A contractual clause of this kind is null and void.

2. Can the student tenancy agreement be terminated early?

Article 64, §1 Flemish Housing Rental Decree

The landlord is not permitted to terminate the student tenancy agreement early.

The tenant may terminate the student tenancy agreement early in three cases:

a. Prior to the entry into force of the student tenancy agreement

The tenant may terminate the tenancy agreement even before it has entered into force. If this occurs more than three months before the start of the tenancy contract, he may do so without incurring any costs. If he terminates the tenancy agreement fewer than three months before the start date, he is required to pay two months' rent by way of a termination fee.

EXAMPLE
A student who, after failing his resits, decides to drop out, is allowed to terminate his tenancy agreement which he had already concluded for the next academic year.

b. Upon study completion

The tenant is allowed to terminate the tenancy agreement when he decides to drop out of university/college. To do so, he must provide the landlord with a supporting document issued by the educational institution.

Any such termination is subject to a two-month notice period, which starts on the first day of the calendar month after the month in which he gave notice.

EXAMPLE
A student who decides to switch to a different study programme during the course of the academic year or decides to take a job, is allowed to terminate his tenancy agreement.

c. If one of the parents or another person dies who is responsible for his upkeep

The tenant is allowed to terminate the tenancy agreement early when one of his parents or another person dies who is responsible for his upkeep. The tenant must provide the landlord proof of decease.

Any such termination is subject to a two-month notice period, which starts on the first day of the calendar month after the month in which he gave notice.

3. What are the other ways to terminate a student tenancy agreement?

- a. Are the parties free to decide between themselves to end the student tenancy agreement?

The parties are free at all times to decide amongst themselves to terminate the tenancy agreement early. To avoid any subsequent disputes, they are advised to do so in writing.

- b. What if one of the parties fails to comply with his obligations?

Article 1184 and 1741 Civil Code

If the tenant or the landlord fails to abide by the obligations of the tenancy agreement or the law, the co-contracting party may serve notice of default on him by registered letter. If this fails to elicit a response, the tenant or the landlord may have the co-contracting party summoned or subpoenaed to appear before the Justice of the Peace to:

- Either demand full performance of the contract;
- Or to claim the dissolution of the contract.
- In both cases, the claimant is also free to claim compensation.

Some student accommodation services also offer free mediation.

Article 1762bis Civil Code

Only the Justice of the Peace can pronounce the dissolution of the tenancy agreement. The parties are not allowed to include a clause in the tenancy agreement saying that the tenancy agreement will end by operation of law (automatically) if one of the parties fails to comply with its obligations. This kind of clause is null and void.

- c. What if the rented property is destroyed by accident?

Article 1722 Civil Code

If the rented property is completely destroyed by accident during the tenancy, e.g. as a result of a fire started by a lightning strike, the tenancy agreement is automatically dissolved.

If the rented property was partially destroyed by accident, e.g. as a result of a flood and damp problems in the basement, depending on the circumstances the tenant may:

- Either demand a reduction of the rent;
- Or have the tenancy agreement dissolved.

In neither of these two cases is the landlord required to pay any compensation.

This provision is a matter of additional law: the tenancy contract may derogate from them.

- d. What happens if the landlord or the tenant dies?

Article 64, §2 Flemish Housing Rental Decree

If the tenant should die, the tenancy agreement automatically ends on the first day of the month after he died.

The death of the landlord on the other hand does not cause the tenancy agreement to be terminated.

VI.

**WHAT IF THERE IS A
CONFLICT BETWEEN THE
TENANT AND THE
LETTER?**



VI. WHAT IF THERE IS A CONFLICT BETWEEN THE TENANT AND THE LETTER?

Article 65, 43 and 44 Flemish Housing Rental Decree

In case of a dispute between the tenant and the landlord, various solutions exist.

Either they opt to take the matter to court. The Justice of the Peace of the town where the dwelling is located is competent to hear such cases. You can look up the Justice of the Peace of competent jurisdiction at the following website:

<http://www.juridat.be/kantons/kantons.htm>.

Or they decide to explore a different avenue to resolve their dispute, such as mediation. Some accommodation services of educational institutions offer free mediation.

Arbitration, whereby a third party imposes a solution on the parties, is not allowed. Nor are the parties permitted to include a clause in the tenancy agreement saying that a possible conflict is to be resolved by way of arbitration.





1. Conciliation procedure

Article 731 Judicial Code

Before instigating proceedings before the Justice of the Peace, each party can have the co-contracting party summoned to appear in a conciliation procedure. The benefit of this conciliation procedure is that it is free of charge. There are no court costs and you do not need a lawyer.

This request must be addressed (verbally or in writing) to the Court Registry of the Justice of the Peace Court of the canton in which the dwelling is located. The Court Registry will summons the parties by court letter to appear before the Justice of the Peace on a particular date and time.

There are two possibilities:

- Either the conciliation is a success: in that case the official record will acknowledge the agreement of the parties; this agreement carries the same weight as a court ruling;
- Or one of the parties fails to appear or there is no agreement, which only leaves the option of court proceedings.

2. How do the proceedings before the Justice of the Peace work?

Article 47 Flemish Housing Rental Decree

If a party, rather than trying a conciliation procedure first, wants to instigate proceedings before the Justice of the Peace straight away, the court will always first try to reconcile the parties. Only if this does not work will the court rule on the dispute.

a. Voluntary appearance

Article 1344bis Judicial Code

The parties can appear before the Justice of the Peace on a voluntary basis, requesting the Justice to acknowledge and record their appearance. This keeps down the court costs, whilst allowing the parties to put forward their positions clearly from the outset.

b. Instituting a claim by way of a petition

Article 45 Flemish Housing Rental Decree

The applicant may deposit a petition with the Court Registry of the Justice of the Peace Court.

On pain of nullity, this petition is to include the following elements:

- The date (day, month and year);
- The surname, first name, the date of birth and the applicant's address;
- The surname, first name, the date of birth and the address, or failing an address, the place of residence of the co-contracting party;
- The subject and a brief summary of the arguments for the claim (the provisions of the tenancy agreement and a description of the nature of the dispute);
- The signature of the applicant or that of his lawyer;
- A family household composition certificate that has been issued by the municipal authorities.

Along with the petition, the party instituting proceedings must also deposit a recent certificate of the co-contracting party's address, issued by the municipal authorities of the town where the co-contracting party lives.

The Court Registrar will then summon the parties by court letter, along with a copy of the petition, to appear before the Justice of the Peace.

These proceedings for tenancy disputes are advisable if it is impossible for the parties to make a voluntary appearance. This avoids the costs involved in a writ of summons and you only pay the cause list duties.

c. Instituting a claim by issuing a summons

You can also instigate court proceedings by having the co-contracting party summonsed by a bailiff. The fee for having a writ of summons served is to be paid upfront to the bailiff by the applicant. The Justice of the Peace may decide afterwards that the unsuccessful party is to reimburse this fee.

If you are unfamiliar with how court proceedings work or you are dealing with a complicated legal issue, you would do well to consult a lawyer.

d. Summary proceedings

Article 43, §2 Flemish Housing Rental Decree and Article 1035-1041 Judicial Code

For urgent disputes for which regular proceedings before the Justice of the Peace may take too long, the claimant may apply to have the matter addressed in summary proceedings. The Justice of the Peace will then decide how urgent the case is.

e. Eviction

Article 48 Flemish Housing Rental Decree

When the Justice of the Peace orders the tenant's eviction, the eviction must in principle be carried out no earlier than one month after the ruling was served.

There are four cases where eviction may be enforced either sooner or later:

1. If the landlord furnishes evidence that the tenant has already vacated the property;
2. If the tenant and the landlord agreed a different deadline and this agreement is incorporated in the eviction ruling;
3. If the court extends the said term or brings it forward at the request of the tenant or the landlord on the grounds of exceptionally serious circumstances. In deciding to do so, the court will consider the interests of both parties.
4. If the court returned a ruling in summary proceedings. In that case, the court - taking the interests of the two parties into account - will set a new term in which the eviction may not be enforced. In doing so, the court will take the urgent nature of the case into account.

The bailiff must notify the tenant or the residents of the property at least seven calendar days ahead of time of the actual date of the proposed eviction.

Regulations regarding the household effects of the evicted tenant

Article 49 Flemish Housing Rental Decree

When serving the eviction ruling, the bailiff gives the tenant notice that the items that are still inside the dwelling after the eviction term has lapsed will be put on the public road at the evicted tenant's expense.

If the items block the public road, the municipal authority will have them removed at the tenant's expense and hold them in storage for six months (except items that quickly spoil or that are harmful to public sanitation, health and safety).

All items taken away and stored are registered per municipality. The tenant may request an extract, free of charge, specifying the items of his that have been removed.

When returning the items, the municipal authorities may demand payment of the expenses incurred for removing and storing the items.

These costs may not be charged when items are returned that should not have been seized in any case. These include essential items such as beds and bed linen, clothes and wardrobes, a washing machine, an iron, a dining table with chairs, a cooker, a refrigerator, studying and professional equipment and materials. Article 1408, §1 of the Judicial Code has a comprehensive list of items which may not be seized by law.

3. What is legal assistance and legal aid and when are you entitled to them?

a. Primary legal assistance

Article 508/1-508/23 Judicial Code

Primary legal assistance is legal assistance in the form of practical information, legal information, an initial legal opinion or referral to a specialist body or organisation.

Primary legal assistance is available to all citizens and, among other things, is provided by lawyers who have a surgery at the Houses of Justice and the Court Houses. The primary legal assistance provided by lawyers is free of charge.

Primary legal assistance is organised in every legal district by the Committees for Legal Assistance (commissies voor juridische bijstand).

b. Secondary legal assistance (pro bono)

Article 508/1-508/23 Judicial Code

Secondary legal aid is legal assistance provided by a lawyer in the form of detailed legal advice or assistance as part of proceedings or litigation.

Secondary legal aid is available only to financially vulnerable people. Depending on their income, the assistance is partially or completely free of charge. The applicant must address his request for secondary assistance to the Bureau for Legal Assistance of the National Bar Association (Orde van Advocaten).

For details regarding legal assistance and legal aid, please contact the House of Justice or the Bureau for Legal Assistance of the National Bar Association.

c. Legal aid

Article 664-699 Judicial Code

Where legal assistance revolves around assistance provided by a lawyer, the legal aid refers to the 'court costs'.

An applicant who furnishes proof that he has no financial means, may - depending on his income - be granted full or partial discharge from the obligation to pay the court costs and the costs of the involvement of public officers and ministerial civil servants, such as a bailiff.

For disputes regarding the tenancy of real properties, requests for legal aid must be entered with the Justice of the Peace who will hear or is already hearing the case.

VII.
USEFUL ADDRESSES



For an initial legal opinion on the tenancy agreement, please contact one of the following interest groups:

- For tenants there is the National Association of Tenants (www.huurdersbond.be);
- For landlords, there is the Owners Association (Verenigde Eigenaars) (www.ve-pr.be) or the Owners Union (Eigenaarsbond) (www.eigenaarsbond.be);
- Real estate agents can take matters up with CIB-Vlaanderen (www.cibweb.be).

You may also speak to the student accommodation service of the university or university college.

For advice from a lawyer, contact:

- The Committees for Legal Assistance for primary legal assistance (the contact details of these committees are on the website www.advocaat.be);
- The bureaus for legal assistance for the secondary legal aid (whose contact details are available from the same site).



VIII. APPENDICES



1. Text of the Flemish Housing Rental Decree (extract)

Title 1. General provisions

Article 1. Regional and community power

The present Decree regulates a Regional and Community matter.

Article 2. Reference title

The present Decree is referenced as:
Flemish Housing Rental Decree.

Article 3. Non-mandatory effect of common tenancy law

For the aspects that are not regulated in the present Decree or the implementing orders thereof, the provisions of Volume III, Title VIII, Chapter II, Section I of the Civil Code apply.

Article 4. Disclosing rent and costs and charges

If a property is let that is intended for habitation in the broad sense of the word, each official or public notification relating thereto shall state at least the amount of the rent and of the costs and charges demanded.

If the landlord or his proxy fails to comply with the obligation, set out in the first sub-section, the municipal authority can impose an administrative fine ranging from 50 to 350 euros on the party making the official or public notification.

The municipal authority can establish, prosecute and penalise the offences against the obligation, set out in the first sub-section. The competent municipal authority shall be that of the town where the property is located. The offences shall be established, prosecuted and penalised in compliance with the formal requirements, the time limits and the procedures set out in the Act of 24 June 2013 on municipal administrative penalties.

The present Article does not apply when the property is made available for letting as tourist accommodation within the meaning of the Decree of 5 February 2016 on tourist accommodation.

Title 2. Tenancy agreements for principal places of residence

Chapter 2. Start of the tenancy

Article 8. Written form requirement

A record shall be drawn up of each tenancy agreement which comes under the application of the present Title, which - apart from all further rules - shall include the following details:

- 1° The identity of all contracting parties, namely:
 - a. For natural persons: their surname, their first two first names, their address and their national register number. Failing a national register number, the date and place of birth must be stated;
 - b. For legal persons:
 1. Their company name;
 2. Their registered office;
 3. Their business number, assigned by the Crossroads Bank for Enterprises, set out in Article I.2, 1°, of the Code of Economic Law. In the absence of the allocation of the aforesaid business number, this party shall affirm this in the tenancy agreement or in a duly signed supplementary statement at the bottom of the document;
- 2° The start date of the agreement;
- 3° The exact duration of the tenancy agreement;
- 4° The specification of all rooms and areas of the building that come under the tenancy;
- 5° The amount of the rent;
- 6° The arrangement regarding the costs and charges;
- 7° A reference to the layman's explanatory note, set out in Article 10.

The party which fails to comply with its obligation to state its identity including the business number as set out in the first sub-section, 1°, b), 3), shall assume all consequences of the non-registration of the tenancy agreement.



If a request to draw up a written tenancy agreement is not complied with within eight days after notice of default was served by registered letter or by bailiff's writ, either contracting party shall constrain the other party by judicial means to draw up, complete or sign a written agreement, and, if necessary, request for the ruling to carry the legal weight of a written tenancy agreement.

Article 9. Delivery report

§1. The parties are under obligation to prepare a detailed joint delivery report at their joint expense. This delivery report shall be prepared either during the time when the spaces are uninhabited, or during the first month in which the tenant has the use of the property. The delivery report shall be attached to the tenancy agreement and it must be registered.

If the parties are unable to agree, the court hearing the case instigated by way of a petition entered prior to the expiry of the one-month time limit, set out in the first sub-section, shall appoint an expert who shall draw up the delivery report. The ruling shall be enforceable regardless of opposition and shall not be open to appeal.

§2. If major alterations should be made to the rented premises after the delivery report was drawn up, each party shall be within its rights to demand a joint addendum to be drawn up to the delivery report at the parties' joint expense. The addendum to the delivery report shall also be registered.

If the parties are unable to agree, the court hearing the case instigated by way of a petition shall appoint an expert who shall draw up the addendum to the delivery report. The ruling shall be enforceable regardless of opposition and shall not be open to appeal.

Article 12. Duty to deliver and condition of the property

§1. The landlord is under obligation to deliver the property in a properly maintained condition in every respect.

The rented property must comply with the elementary requirements in the areas of health and safety and housing quality, set out in Article 5 of the Decree of 15 July 1997 setting forth the Flemish Housing Code, hereinafter referred to as the Flemish Housing Code.

The availability of a conformity certificate as set out in Article 7 of the Flemish Housing Code, delivered within three months prior to the start of the tenancy agreement, shall act as a presumption of compliance of the obligation set out in the second sub-section.

§2. A tenancy agreement that is concluded for a property which fails to comply with the requirements set out in paragraph 1, second sub-section, shall be null and void. The nullity must be established by the court.

Without prejudice to the tenant's right to claim compensation, the court which pronounces the nullity set out in the first sub-section, shall be free to impose an occupancy fee that is based on the objective rental value of the property, taking into account the flaws to the property.

Section 3. Condition of the dwelling during the tenancy agreement

Article 25. Duty of maintenance and repair incumbent on the landlord

The landlord is under obligation to maintain the property in such a way that it is fit for the purpose for which it is let.

Throughout the term of the tenancy the landlord shall carry out all repairs that are necessary, except for the repairs to be undertaken by the tenant.

Article 26. Duty of maintenance and repair incumbent on the tenant

The tenant shall be responsible for minor repairs. In addition, the tenant shall undertake the repairs that are necessary due to usage that is at odds with the intended purpose of the property or at odds with due care and diligence and to the repairs that are necessary as a result of a negligence on his reporting duty intended in Article 28, §2, unless he shows that the landlord was aware of the repairs required in timely fashion, without needing to have been notified thereof. Repairs that are necessary solely as a result of obsolescence or force majeure must, however, be undertaken by the landlord.

The Government of Flanders shall establish a list of minor repairs which in all cases are to be considered as minor repairs.

The parties may agree to restrict or exclude the repair duty of the tenant set out in the first sub-section.

Article 27. Urgent repairs

If the rented property requires urgent repairs during the term of the tenancy which cannot wait until after the tenancy has ended, the tenant shall permit such repairs, regardless of the inconvenience caused in his home as a result, even if this means that he loses the enjoyment of part of the rented property during the repairs.

If said repairs take longer than 30 days, the rent shall be reduced in proportion to the length of time during which, and the part of the property of which the tenant was forced to lose the enjoyment.

If the repairs render normal habitation impossible, the tenant can have the tenancy dissolved.

Article 28. Use of the property with due care and diligence

§1. The tenant shall be required to use the rented property with due care and diligence and in accordance with the intended purpose assigned to the property as specified in the tenancy agreement, or in accordance with the intended purpose which, failing agreement thereon, shall be presumed according on the circumstances.

Where the tenant fails to use the property in compliance with the intended purpose set out in the first sub-section, or the property has been assigned a purpose which is injurious to the landlord, the landlord shall be within his rights, depending on the circumstances, to seek to have the tenancy dissolved.

§2. The tenant shall be required to inform the landlord of the repairs that are necessary and are to be undertaken by the landlord.

Article 34. Indexation

§1. If the tenancy agreement was concluded in writing, the rent shall be adjusted once per rental year to the cost of living on the anniversary of the effective date of the tenancy agreement, unless said adjustment has been expressly excluded.

The adjustment set out in the first sub-section, shall be implemented only if the party in whose interest the indexation-correction is implemented requests such in writing. The adjustment shall have retrospective effect by no more than three months from the request date.

§2. The rent shall be adjusted to the cost of living based on the fluctuations of the index that is calculated and specified to that end, hereinafter referred to as the health index.

The adjusted rent shall not be allowed to exceed the amount that is obtained in application of the formula detailed below:

$$\frac{\text{basic rent price x new index}}{\text{initial index}}$$

The basic rent is the rent which follows from the agreement or from a ruling, to the exclusion of all costs and charges, expressly charged to the tenant by the tenancy agreement.

The new index is the health index of the month that precedes the month of the anniversary of the effective date of the tenancy agreement.

The initial index is the health index of the month that precedes the month in which the tenancy agreement took effect.

§3. Contract provisions which go beyond the adjustment set out in the present Article, may be reduced to the said adjustment.

Chapter 4. End of the tenancy

Article 39. Obligation to return the property incumbent on the tenant

§1. The tenant shall be liable for the damage or the losses arising during his tenancy term, unless he furnishes evidence that these occurred through no fault of his own.

§2. If one of the parties were to request such, the parties shall draw up a detailed joint delivery report at their joint expense at the end of the tenancy. This delivery report shall be prepared no later than at the time the keys to the rented premises are returned and accepted.

If the parties are unable to reach terms, the court hearing the case by way of a petition entered prior to the expiry of the one-month time limit after the property was vacated, shall appoint an expert who shall draw up the delivery report. The ruling shall be enforceable regardless of opposition and shall not be open to appeal.

§3. If a detailed delivery report is drawn up between the landlord and the tenant at the start of the tenancy, the tenant shall be under obligation to return the property in the same condition as it was made available to him, in accordance with the said delivery report, with the exception of fixtures and fittings that have been destroyed or damaged through obsolescence or force majeure, and with the exception of the fixtures and fittings that need repair which by law are required to be undertaken by of the landlord.

If no detailed delivery report is drawn up at the start of the tenancy, it shall be presumed that the rented property was made available to the tenant in the condition in which it finds itself at the end of the tenancy agreement, in the absence of proof to the contrary, which may be furnished using all means.

Chapter 5. Disputes

Section 1. Jurisdiction

Article 43. Jurisdiction of the Justice of the Peace

§1. Irrespective of the amount of the claim, the Justice of the Peace shall hear the disputes over the tenancy agreements to which the present Title applies, and of the claims pertaining thereto.

The Justice of the Peace of the town where the property is situated is solely competent to hear the claim.

§2. In derogation from Article 584 of the Judicial Code, the Justice of the Peace shall rule provisionally on the disputes set out in paragraph 1 which he deems to be urgent.

Without prejudice to Article 45, §1, first, second and third sub-section, Articles 1035 through 1041 of the Judicial Code shall apply.

Article 44. Exclusion of arbitration as an option

Any arbitration agreement concluded before a dispute arose or concluded on the occasion of a dispute, of which the court takes cognisance in application of Article 43, shall be null and void by operation of law.

Section 2. Court proceedings

Article 45. Instigating proceedings by petition

§1. Each claim in respect of the tenancy agreements to which the present Title applies, may be instituted by a petition to be deposited with the Court Registry of the Justice of the Peace Court.

On pain of nullity the petition shall specify:

- 1° The day, the month and the year;
- 2° The surname, first name, the date of birth and the address of the applicant;
- 3° The surname, first name, the date of birth and the address, or failing an address, the place of residence of the person against whom the claim is being instituted;
- 4° The subject and the brief summary of the arguments for the claim;
- 5° The signature of the applicant or of his lawyer;
- 6° A family household composition certificate.

A certificate of the address and the date of birth of the person set out in the second sub-section, 3°, is to be included with the petition. The certificate must be issued by the municipal authorities.

The family household composition certificate set out in the second sub-section, 6°, must be issued by the municipal authorities.

The Court Registrar shall convoke the parties by court letter and by regular letter to appear at the hearing determined by the court, within fifteen days of the petition being added to the general cause list. A copy of the petition must be included with the convocation.

§2. In derogation from Article 1026 of the Judicial Code, the signature of the applicant or the lawyer of the party shall be required for claims in respect of the tenancy agreements to which the present Title applies.



Article 47. Conciliation

In all cases, the court shall endeavour to reconcile the parties.

If the parties cannot be reconciled or if either of the parties fails to appear, the proceedings shall be conducted on the merits. The ruling shall state that the parties were unable to be reconciled.

Article 48. Enforcement of eviction - term

The eviction set out in Article 46 may only be enforced after a one-month period has lapsed since the ruling was served, unless one of the following situations occurs:

- 1° The landlord furnishes evidence that the property has been vacated;
- 2° The parties agreed a different time limit and this agreement was incorporated in the ruling;
- 3° The court extends the time limit or brings it forward at the request of the tenant or the landlord who furnishes proof of exceptionally serious circumstances, which among other things includes the options open to the tenant to find new housing in circumstances that do not detract from the unity, the financial resources and the needs of the family. In consideration of the interests of the two parties and subject to the conditions established by the court, the court shall determine the time period during which the eviction may not be enforced;
- 4° The court returned a ruling in summary proceedings pursuant to Article 43, §2. In consideration of the interests of the two parties and subject to the conditions established by the court, the court shall determine the time period during which the eviction may not be enforced. In particular, this time period shall take into account the urgent nature of the case;

In all cases, the bailiff shall notify the tenant or the residents of the property at least seven calendar days ahead of time of the actual date of the eviction.

Article 49. Enforcement of eviction - items

When serving an eviction ruling, as set out in Article 46, the bailiff shall give the person notice that the items that are still inside the dwelling further to the expiry of the statutory time limit or the time limit established by the court, shall be put on the public road at his expense. He shall also inform him that, if the aforesaid items block the public road and the owner of the items or his beneficiaries leave them there, the said items shall be removed by the municipal authorities and held in storage for a six-month period, unless these are items that quickly spoil or that are harmful to public sanitation, health and safety.

The bailiff shall record the fact that he has communicated the information set out in the first sub-section in the writ of service.

Title 3. Tenancy agreements for the housing of students

Article 53. Scope of application

The present Title applies to tenancy agreements whereby the resident is a student who does not use the rented property, whether with or without express or tacit consent, as his principal place of residence

Student denotes any person enrolled with an institution that provides full-time education.

Article 54. Mandatory nature of these provisions

The provisions of the present Title are a matter of mandatory law.

Article 55. Written form requirement

Article 8 applies to the tenancy agreements that are concluded on the basis of the present Title.

The Government of Flanders shall establish a specific layman's explanatory note regarding tenancy agreements which come under the scope of application of the present Title.

Article 56. Delivery report

Article 9 and 39 apply to the tenancy agreements that are concluded on the basis of the present Title.

Article 57. Duty to deliver and condition of the property at the start

Article 12 applies to the tenancy agreements that are concluded on the basis of the present Title.

Article 58. Duty of maintenance and repair incumbent on the tenant and the landlord

Articles 25 through 28 apply to the tenancy agreements that are concluded on the basis of the present Title.

The Government of Flanders shall establish a specific list of the minor repairs of rented properties which come under the scope of application of the present Title.

Article 59. Transfer of the tenancy and sub-letting

Transferring the tenancy agreement and sub-letting are prohibited, unless with the written and prior permission from the landlord.

The landlord shall agree to the transfer of the tenancy agreement or sub-letting to a student if the tenant is enrolled in a student exchange programme or is serving an internship.

The landlord may object thereto only if he adduces valid reasons for doing so.

Where the property is being sub-let, the tenant shall remain liable vis-à-vis the landlord complying with the obligations arising from the tenancy agreement.

Article 60. Establishment of the rent and the billing of costs and charges

The landlord and the tenant agree on a rent in the tenancy agreement which encapsulates a fee for the use of the rented property by the tenant as well as all costs and charges, except for the consumption of energy, water and telecommunication facilities/services and the second residence tax.

Article 61. Indexation of the rent

§1. The present Article does not apply to tenancy agreements whereby an educational institution rents accommodation to students who meet the requirements for a concessionary rent.

§2. If the term of the tenancy agreement amounts to more than a year, the rent shall be adjusted once a year to the cost of living on the anniversary of the effective date of the tenancy agreement, unless such an adjustment has been expressly excluded.

The adjustment set out in the first sub-section, shall occur in compliance with Article 34.



§3. If the same dwelling has been the subject of consecutive tenancy agreements with the same tenant, the basic rent is not allowed to exceed the rent established in the initial tenancy agreement. This rent may be proportionally adjusted in compliance with Article 34, unless the normal rental value of the property has since risen by at least 20% as a result of new circumstances or has risen by at least 10% because of work done to the rented property.

Notwithstanding any clauses to the contrary the court shall reduce the rent to the rent which was claimable pursuant to the initial tenancy agreement, proportionally adjusted in compliance with Article 34, if the landlord fails to furnish evidence that the rent was established in compliance with the first sub-section.

Article 62. Rental guarantee

§1. By way of a guarantee of compliance with his obligations, the tenant may provide the landlord with a rental guarantee. This rental guarantee may take the form of a sum in cash or a real security with a financial institution held in the name of the tenant, the value of which may not exceed a maximum of three months' rent. The rental guarantee must be provided by the tenant three months at the earliest before the tenancy agreement takes effect.

§2. The sum in cash put up as a rental guarantee is either to be paid into an individualised account with a financial institution held in the name of the tenant, or paid into an account specified by the landlord. The manner in which the rental guarantee is to be put up shall be specified in the tenancy agreement.

If the rental guarantee is paid into an individualised account, the interest yielded shall be capitalised to the benefit of the tenant. The landlord shall acquire a preferential claim over the assets in the account for every debt claim arising as a result of the partial or total non-compliance with the obligations of the tenant.

If the rental guarantee is paid into an account specified by the landlord, the landlord shall pay the tenant interests over the amount of the rental guarantee at the average interest rate of the financial market, from the time the tenant deposited the rental guarantee. The interest shall be capitalised.

§3. The assets held in the bank account set out in paragraph 2, second sub-section, may not be used, whether the principal or the interest, other than to the benefit of one of the two parties, subject to presentation either of written acceptance, drafted no earlier than upon the termination of the tenancy agreement, or of a copy of a court decision. This decision shall be provisionally enforceable, notwithstanding any opposition or appeals and without any form of judicial deposit or payment into court.

The sum in cash that is paid into the account specified by the landlord, raised with the interest set out in paragraph 2, third sub-section, shall be refunded to the tenant by the landlord within three months after the tenant has vacated the property, unless the landlord has disputed the refund vis-à-vis the tenant within the said time limit by means of registered letter.

Article 63. Tacit renewal ban

The tenancy agreement shall end upon the expiry of the term specified in the agreement.

A provision pursuant to which the tenancy agreement is to be tacitly renewed if the tenancy agreement is not expressly cancelled, shall be deemed unwritten.

Article 64. Termination of the tenancy agreement

§1. The tenancy agreement may be terminated by the tenant in the following cases:

- 1° ahead of the effective date of the tenancy agreement;
- 2° upon completion of his studies/when the student decides to drop out of university or university college, subject to presentation of a supporting document issued by the educational institution;
- 3° If one of the parents or another person dies who is responsible for the upkeep of the tenant, upon presentation of a supporting document.

In the case set out in the first sub-section, 1°, a termination fee of two months' rent shall be payable if the tenancy agreement is terminated fewer than three months prior to the entry into force of the tenancy agreement.

In the cases set out in the first sub-section, 2° and 3°, the notice period shall be two months.

The notice period shall commence on the first day of the month that follows the month in which the notice is sent out.

§2. The tenancy agreement shall be dissolved by operation of law as a result of the death of the tenant on the first day of the month that follows the said death.

Article 65. Disputes

Chapter 5 of Title 2, with the exception of Article 46 and 50, is of analogous application on the tenancy agreements that are concluded on the basis of the present Title.

Title 5. Final provisions

Article 82.

Article 60 does not apply to tenancy agreements that are concluded after the effective date of the present Decree and which follow on without interruption from a tenancy agreement that was concluded between the same tenant and landlord prior to the entry into force of the present Decree.

Article 83.

The present Decree does not apply to the written tenancy agreements that were concluded ahead of the effective date of the present Decree.

Article 84.

The present Decree shall take effect on 1 January 2019, with the exception of Article 37 and Article 79, second paragraph, which shall take effect on the date to be established by the Government of Flanders.

2. List of minor repairs

1. General principles governing the implementation of the list below:

- In all cases, repairs that are necessary through obsolescence or force majeure, are to be undertaken by the landlord.
- In all cases, repairs that are necessary as a result of injudicious use by the tenant, are to be undertaken by the tenant.
- In all cases, maintenance and cleaning are to be undertaken by the tenant.
- Technical installations, such as electrical installations, heating installations, fire safety installations, home automation, solar panels, solar boilers, heat pumps, etc. must be serviced by the landlord.
- The tenant shall be under obligation to notify the landlord of the repairs that are necessary and which must be attended to by the landlord. If the tenant fails to comply with this reporting duty, he shall be liable for the damage arising .
- All repairs undertaken by the tenant must be expertly carried out to professional standards. If the tenant carries out unprofessional repairs, he shall be liable for the damage they cause.
- The repair duty incumbent on the tenant shall be confined to places which can be reached without the use of a ladder.



- The list below is not exhaustive. Repairs that are not included in the list must be assigned to the tenant or the landlord in accordance with the general allocation of duties principle set out in Article 26 of the Flemish Housing Rental Decree.
- The list may be derogated from at all times to the benefit of the tenant.

2. Exterior of the dwelling

2.1. (Front) garden

- Mowing the lawn and cleaning the garden path if the landlord provides the appropriate equipment/tools

2.2. Balcony/terrace

- Preventing the drainage from getting clogged

2.3. Letterbox

- Replacing the keys in case of loss

2.4. Windows

Glass

- Replacing broken glass

Window frame

- Keeping the drainage duct free from condensation
- Keeping the extraction grilles or systems clear
- Tightening the screws of hinges if they start to loosen

Roller shutters

- Ensuring it is working properly by regularly using it

2.5. Doors

- Tightening the screws of hinges if they start to loosen
- Replacing the keys in case of loss
- Replacing batteries of the door bell and the door phone

2.6. Garage door

- Ensuring it is working properly by regularly using it
- Replacing the batteries of the remote control
- Replacing the keys or the remote control in the event of loss

3. Interior of the dwelling

3.1. Rooms

3.1.1. Walls/ceilings

- Removing nails, staples and screws and repairing the damage
- Repairing damage as a result of insufficient extraction (if there are sufficient ways to ventilate the room)
- Keeping the paintwork in good condition (removing smudges, dirt, greasy stains, drawings, etc. and repairing damage to the walls (chips, holes, etc.)). Colour differences as a result of furniture pieces or picture frames do not come under the tenant's responsibility. The tenant must repaint the room if he decided on colours that are difficult to cover.
- Keeping the wall paper in good condition (removing smudges, dirt, greasy stains, drawings, etc.). Colour differences as a result of furniture pieces or picture frames do not come under the tenant's responsibility. The tenant must hang fresh wallpaper if he decided on unreasonable colours.

3.1.2. Interior doors

- Tightening the screws of hinges if they start to loosen
- Replacing the keys in case of loss

3.1.3. Parquet flooring

- May not be plasticised without the landlord's consent
- Colour differences as a result of furniture pieces or carpets do not come under the tenant's responsibility.



3.1.4. Extraction (grille)

- Do not cover

3.2. Technical installations

3.2.1. Electricity

Lighting

- Screening electrical wires from the lighting fixture with clamps if they are not being used
- Do not shorten wall/ceiling-side wires

3.2.2. Radiators/convectors

- Regularly using radiator valves
- Ventilate

3.2.3. Smoke detectors/fire detection system

- Replacing batteries in smoke detectors

3.2.4. Sewerage, drainage pipes and siphons

- Preventing them from getting clogged up

3.3. Sanitary facilities

Bath tub / shower / bathroom sink (unit)

- Removing calcium deposits, do not use corrosive products
- Repairing leaking taps unless the tap needs to be fully replaced

Toilet

- Screwing down hinges and screws of toilet seat and screwing down the lid
- Preventing the toilet from blocking up

3.4. Kitchen

Kitchen sink

- Removing calcium deposits, do not use corrosive products
- Prevent the kitchen sink from blocking
- Repairing leaking taps, unless the tap needs to be fully replaced

Extractor hood

- Replacing filter and light bulbs

3.5. Vermin

Eradicating vermin, unless it was already in place at the start of the tenancy





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