

RESUME

Lease of flat

One of the essential human needs is dignified living. This thesis focuses on the institution of flat lease which is the second most often legal cause of living in the Czech Republic. I chose the subject for two main reasons.

First of the reasons is running my own estate agency focused on flat lease intermediation. Part of the job comprises of drawing up lease contracts which made me get acquainted with valid legislation in this field. Step-by-step I started to provide estate management for building owners including their representation in negotiating with tenants. I had the occasion to gain some practical experience which I used in this thesis.

The second reason is my interest in the problems of lease regulation in the Czech Republic, especially its development after 1989.

It is not my aim to complexly analyse the institution of flat leasing from the view of valid legislation as it would considerably exceed the maximum recommended scope of the paper; I rather tried to view the problem from its historical origins to current understanding of various relations and terms as seen by courts of general trial jurisdiction and findings of the Constitutional Court. That is why I completely omitted the item of extinction of lease which is such an extensive question it could be an independent thesis subject. I did also not mention the differences of cooperative flats lease.

Chapter 1 includes historical development of flat leasing from the times of Roman law to embodying lease contracts in the AGBG (1811) code of civil law. It is followed by development in the “First Republic” legislation. Further I paid attention to gradual destruction of lease contracts in communist era when new socialist institution of “the right to use the flat” was established. In the end of this chapter I tried to describe in detail legal development in the field of lease regulation and the actions of the Constitutional Court in this problem.

Chapter 2 provides an overview of all valid legal regulations related to flat leasing.

In chapter 3 I went in for explanation of key general terms of flat leasing. Those are especially the possible parties of the lease relation (the landlord and the tenant). I also described the conceptual features of flats including definition of flats and the attachments, various kinds of rental flats and charges as the feature of the lease. The end of the chapter deals with leasing relations for definite and indefinite periods.

Title of chapter 4 is „The Beginning of Flat Lease“.

The attention is first of all paid to lease contracts as the most usual legal cause of the lease beginning. Contractual parties, subject of the lease and content items of contracts are defined in detail, dealing in particular with the obligatory items of contracts and other contractual stipulations. I also mention the required written form of the lease contract.

Another cause of the flat lease beginning that I concentrated on is conclusion of marriage. Two possible situations are diversified – beginning of the lease before and after the solemnization of marriage.

To the chapter focused on the lease beginning I included transfer of the lease; in the entrance of this sub-chapter I explain why it is not a part of the lease relation modification. The interpretation contains especially a list of the entitled persons and the conditions under which the lease is transferred to these persons. In the chapter conclusion I concentrated on the misapplication problems of lease transfers which I also illustrate by examples from practice, and I deliberate the possible future regulation of transfers of flat leases (*de lege ferenda*).

The most extensive chapter 5 is focused on the rights and duties implied by the flat lease. It is divided to several sub-chapters. The first sub-chapter is aimed at various rights and duties related to using the flat, common areas and building contents. I list the sanctions for breaching these duties. The second sub-chapter deals with the flat repairs and maintenance. It includes the valid legislation for small repairs and expenses for routine maintenance stating which repairs are to be secured by the landlord and which on contrary by the tenant. In the following part I concentrate on construction changes and adaptations of the flats. The fourth sub-chapter deals with the new institution of “rental deposit ” incorporated to the Civil Code by an amendment in 2006. The fifth sub-chapter focuses on the sum of rights and duties related to the lease termination. The

last sub-chapter concentrates on the landlord's duties when providing the lease to foreigners.

Chapter 6 aims at the lease and related services. At the beginning there is a brief sum of development of legal regulations after 1989 until the Act no. 107/2006 Coll. on the unilateral increase of residential rents. Process and method of the rent increase in compliance with this Act is described and the problems of regulation are completed by the last important amendment of the law which partly postponed the deregulation until 2012. The text further deals with paying the residential rents and services especially with the term and method of payment and the sanctions for breaching the implied duties.

The final chapter number 7 is called "Sub-lease of the Flat". It describes the beginning and termination of this legal cause of the flat usage implied from this rental right. Special sub-chapter is also dedicated to the necessary approval of the landlord related to this sub-lease contract.

In the conclusion of the thesis I try to assess the approach of the government and the lawgivers in the field of lease deregulation from 1989 till these days and as far as I am concerned I propose the most suitable model of the flat lease legal form in the Czech Republic.