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The law of tenancy was again in the news at the beginning of this month with the following headline: “The National makes flowers to the owners in the law of tenancy”. But what is it realy ?

As a preliminary point, it should be recalled that, although the National Council has indeed accepted two projects aiming, according to some, to “*toughen the law of tenancy*“, these two objects must still be submitted to the Council of States for a decision. This has not yet been done and the two projects are therefore not yet validated.

First project

The first project deals with subletting. Its aim is to prevent abusive subletting. The draft provides that the lessor’s consent must now be given in writing. It also provides that the landlord may refuse a subletting if it lasts more than two years or presents major inconveniences for him.

Currently, subletting is regulated by Article 262 CO.

According to this article, “*the tenant may sublet the whole or part of the thing with the consent of the lessor*“. The consent of the lessor is therefore already required and in practice the consent is usually given in writing. Indeed, a prudent tenant is advised to seek consent in writing. The project therefore does not seem to change much on this point.

According to this article, “*the lessor may refuse his consent only if: a. the lessee refuses to inform him of the conditions of the sublease; b. the conditions of the sublease, compared to those of the main lease, are unfair; c. the sublease presents major inconveniences for the lessor*“. The lessor can therefore already refuse his consent if the sublease presents major inconveniences.

As to the duration of the sublease, although Article 262 CO does not mention it, in essence, the sublease must remain temporary. In other words, it must be limited in time.

At present, subletting is permitted, for example, if the main tenant leaves the accommodation for a few months (for example, to travel abroad) and wishes to sublet the accommodation during this period. The main tenant therefore intends to recover his accommodation on his return and the subletting should not be permanent.

In practice, it is not uncommon for landlords or management companies to accept subleases limited to a period of six months. Beyond this period (which is debatable), but especially beyond a period of two years, the sublease is no longer temporary and the tenant’s desire to recover his or her accommodation is doubtful (except in special cases).

The project therefore does not seem to change much either on the question of the major inconvenience and especially on the question of duration. On the contrary, on this last point, the project finally seems to concretise what is already done in practice.

Second project

The second draft aims to simplify the termination of the lease for the lessor’s own needs and to make the conditions relating to the urgency of these needs more flexible.

Currently, the urgent need of the lessor is mentioned in several articles.

Article 271a CO deals with the annulability of the lessor’s notice of termination and sets out the cases in which the notice of termination may be annulled.

It provides that the notice is not voidable during conciliation or court proceedings in relation to the lease, or within three years of the end of conciliation or court proceedings, if the notice is given “***because of the urgent need of the lessor or his close relatives or relations to use the premises themselves*“.**

Article 272 CO deals with the extension of the lease. This article provides that, when a tenant requests an extension of the lease following termination, the judge, in weighing up the interests involved, must take into account, inter alia, "***the need that the lessor or his close relatives or relations may have to use the premises themselves and the urgency of that need*"**.

Urgent need is also mentioned in Article 261 CO, which concerns the purchase of the leased object.

According to this article, the new owner may, inter alia, "*in the case of residential or commercial premises, terminate the lease by observing the statutory period of notice for the next statutory term if he or she claims* ***an urgent need for himself or herself or for his or her close relatives or relations*"*.***

It is not yet clear whether the project covers all of these articles and how the conditions relating to urgency of need will be relaxed.

At present, however, it can be very complicated – and above all very time-consuming – for a lessor to get his property back, even if he can demonstrate that he wants it back for himself or for his close relatives. This is even more complicated in the case of a purchase of a rented flat or house for their own use.

While the two projects that have been accepted by the National Council have caused a stir in some quarters, as mentioned above, they still need to be validated by the Council of States. Moreover, they do not fundamentally change what is already provided for in the current tenancy law and seem rather, at least as far as subletting is concerned, to concretise what is already done in practice.

Source :
https://www.wg-avocats.ch/en/news/tenancy-law/law-of-tenancy-headline-national-makes-flowers-to-owners-in-the-law-of-tenancy-but-what-is-it-really/