

Termination of lease agreement for apartments and premises due to non-payment of rent

The lease agreements for apartments and premises are often terminated by the Lessor giving notice to terminate the lease agreement due to non-payment of the rent. However, it is essential to note that not only the provisions of the Civil Code (both the former and the new), but the provisions of Act LXXVIII of 1993 (Act on Leases) as special regulation shall also be applied. The provisions of the Act on Leases basically make a difference between the leases of apartments and premises, furthermore also **according to the legal practice which developed over the past decades it is of particular significance in connection with a lease of a real property whether the subject of the lease agreement is a residential or a non-residential property.**

To put it simply, the basic difference may be summarised as that there are more such mandatory provisions with respect of the lease of apartments, which do not allow any derogation. Whereas the legal practice seems to support such a regulatory nature and legal interpretation, which is more flexible and provides a wider room for the contractual freedom of the parties, in case of the lease of premises. It shall be noted however, that unfortunately, there is still no consistent legal practice regarding this issue, as there are also such court decisions in connection with lease agreements for premises, which recognise this flexibility in a much narrower scope.

The aforementioned also have relevance with respect of the issue of giving notice of termination by the lessor based on the non-payment of the rent. According to the provisions of the Act on Leases currently in force, **the written demand notice of the Lessor indicating the consequences shall precede the notice of termination given on the basis of the non-payment of the rent.** Furthermore, the Act on Leases also stipulates that if the Lessee fails to fulfil the request within eight (8) days, and fails to pay his rent arrears within this deadline then the Lessor shall be entitled to terminate the agreement within further eight days. On one hand, it is important that it is not the date of the demand notice and the notice of termination, but the date of their delivery which have significance, on the other hand, in case of agreements for leasing of premises, it is possible to derogate from these requirements, which require strict formalities in practice and therefore often cause problems with respect of such type of terminations.

A decision of the Curia published this year confirms that if the Lessor does not take over the demand notice preceding the notice of termination and thus it is returned to the Lessor with the signal of unclaimed, the eight-day deadline stipulated by the Act on Leases relating to remedy such default and in the absence of this, the further eight-day deadline with respect of the subsequent possibility to give a



notice of termination by the Lessor does not commence on the day, on which the concerning notice of demand and the relating notification by the postal service is returned to the Lessor, but on the day, on which, the Lessee may still have taken over the relevant demand for payment before the return of such demand according to the notification by the postal service.

Accordingly, in practice, the Lessor may have difficulties to meet the requirements to lawfully exercise the right to terminate within the eight-day deadline to be calculated this way (thus from the commencement date preceding the return of the notice by Lessor in any case). In particular, pursuant to the decision of the Curia mentioned above, however, according to its date, the notice of termination by Lessor was dated within eight (8) days following the date of the possibility for the Lessee to take over the notice of demand, but since it has been posted (and accordingly delivered or failed to be delivered) beyond the deadline, thus the Curia decided without any further examination that in this case, the termination notice was late and therefore it did not comply with the legislative requirements.

With respect of lease agreements for apartments, it is advisable to separately regulate the communication of the parties and also when such shall be deemed delivered in order to mitigate the possible risks unsuccessful delivery.

In case of lease agreement for premises, furthermore, - considering that the jurisprudence, in this respect, mostly supports the possibility to derogate from the relevant strict rules of the Act on Leases – it is recommended to regulate in detail and in accordance with the market demands not only the issue of delivery, but also specific reasons for ordinary notice, and in particular cases, reasons for extraordinary notice. In the absence of regulation or, in certain cases, in the absence of detailed regulation the relevant provisions of the Act on Leases and the Civil Code will be applicable with respect of the issues not regulated by the Parties. Therefore, it is suggested to examine existing lease contracts in accordance with the aspects referred to above and to apply carefully established provisions in case of conclusion of new lease agreements.