BRIEF EXPLANATION OF SOME IMPORTANT ASPECTS OF TENANCY LAW FOR ACCOMMODATION

ASSOCIATION OF LETTING AGENTS

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Introductory remarks

Tenancy law for housing is very complicated, mainly because there are many statutory regulations and because a large number of the statutory regulations contain so-called mandatory law. This means that if the tenancy agreement departs from the law, the party who it benefits - usually the tenant - can disregard the tenancy agreement and invoke the law. This means that if two parties enter into a tenancy agreement with each other, they cannot always be sure that what they have agreed to is also legally enforceable.

The reason for the mandatory nature of many statutory regulations is that the legislature believes that the tenant often has a weaker position compared to the landlord, so that the tenant needs legal protection. This legal protection is mainly but not exclusively related to the termination of the tenancy agreement and the amount of the rent.

This information sheet does not aim to give a complete representation of tenancy law as that would be impossible. The information sheet only briefly highlights the most important aspects of tenancy law.

This information sheet came about with a view to the practice of letting agents affiliated with the Association of Letting Agents Amsterdam (VVA). VVA agents help both landlords and tenants (mostly expats). The intermediation by VVA agents is often for (upholstered and/or furnished) accommodation that has been decontrolled, i.e. homes that exceed the statutory rent-ceiling limit in terms of points (currently €710.68 per month or 146 points or more). The landlord also generally wants the tenancy agreement to have an initial minimum rental period.

This information sheet only deals with the letting and rental of self-contained accommodation.

Rent protection

Tenants in the Netherlands enjoy extensive protection against termination of the tenancy agreement by the landlord. The landlord can only terminate the tenancy agreement in a number of cases, which are specifically defined in the law. The main termination grounds are:
- the landlord urgently needs the rented property for his own use;
- parties agreed on a fixed term tenancy agreement, where it was agreed that the landlord would move into the home afterwards (also called ‘temporary tenancy’).
This last ground will be further elaborated on here below (Model C).

Rent termination

If the landlord believes he has good reason to terminate the tenancy agreement, he must do so by means of a registered letter or a bailiff's writ. He must state the ground for termination and he must observe a notice period of at least three months. In addition, for each year that the tenant has lived in the rented property an additional month applies, with a maximum of six months in total.

A tenant who wants to cancel the tenancy agreement has a notice period of one month assuming that the rent is paid per month. That cannot be derogated from contractually.

In many cases, it is possible to agree on a minimum initial rental period, during which the tenant and/or the landlord cannot terminate the tenancy agreement. It is also possible to then depart from this, for example if the tenant's work is moved at least 50 or 100 kilometres from the rented property. The latter is usually called the diplomat clause.

VVA model agreements

Until 1 July 2016, it was only possible to enter into temporary tenancy agreements in a limited number of cases. Since this date, the possibilities have been significantly extended. The VVA now uses four models for tenancy agreements:
- Model A: the tenancy agreement for an indefinite period of time;
- Model B: the fixed-term tenancy agreement with a maximum duration of two years;
- Model C: the so-called temporary tenancy agreement (where the landlord moves into the home at the end of it);
- Model D: letting based on the Vacancy Act.

All these models concern the letting of self-contained accommodation.

Model A: tenancy agreement for an indefinite period of time

In this model, the tenant has full security of tenure.
It is possible to agree that the tenant (and/or the landlord) cannot terminate the tenancy agreement for an initial period. That gives the landlord certainty about the rental income for some time. It cannot be ruled out 100% that if such an agreement is made, that this tenancy agreement will be seen as a Model B tenancy agreement (in which case the tenant has no security of tenure and has the right to cancel the tenancy agreement prematurely, even if that is contractually excluded). The VVA Model A is formulated in such a way that this risk is minimised.

Model B: tenancy agreement for up to two years (self-contained accommodation)

Since 1 July 2016, it is possible to enter into self-contained accommodation tenancy agreements for up to two years. The tenant has no security of tenure for this type of tenancy agreement. If the landlord wants, the tenant must leave when the agreed rental period ends. The tenancy agreement for up to two years does not have to be terminated.

The condition is that the landlord notifies the tenant in writing between three months and one month before the end of the tenancy agreement that the tenancy agreement is temporary and that the tenant must leave on the agreed end date. We recommend sending this written notice by registered post. If this notification is not sent or not sent on time by the landlord, the fixed term tenancy agreement automatically converts into a tenancy agreement for an indefinite period with security of tenure for the tenant and the tenant does not have to leave the property on the agreed end date.

This concerns a tenancy agreement for *up to* two years. It is therefore also possible to enter into a tenancy agreement for eight months or a year for example. It is not possible to extend a temporary

tenancy agreement once entered into. If the tenancy agreement is extended, then the fixed-term tenancy agreement automatically converts into a tenancy agreement for an indefinite period of time with security of tenure for the tenant. The tenant then does not have to leave the property on the agreed end date.

The tenant only has the statutory right to terminate the tenancy agreement prematurely when he wants to in this model. He must observe one month's notice. The landlord cannot terminate the tenancy agreement prematurely. The landlord is therefore bound by the agreed period. The landlord who wants security for a minimum rental period should therefore not enter into a tenancy agreement according to Model B. But the landlord who does want absolute certainty about the departure of the tenant at the end of the agreed duration should choose the tenancy agreement according to Model B.

The tenant has the possibility of the rent assessment committee reviewing whether the agreed rent is not too high. The tenant has six months *after the end* of the tenancy agreement to do this. The legislation is not entirely clear on this matter but it is assumed that it means six months after the end of the agreed rental period. If the property is worth more than 145 points, then it is decontrolled and falls in the free sector. The rent assessment committee will leave the rent as it is. If the property is worth 145 points or less, then the rent assessment committee will establish the rent at the maximum statutory level associated with the number of points for the home. The rent assessment committee does that retroactively to the start of the tenancy agreement.

<u>Model C: fixed-term tenancy agreement (temporary tenancy agreement)</u>

The fixed-term tenancy agreement (temporary tenancy agreement) is there for the situation that the tenant and the landlord agree that the tenancy agreement is temporary, because the intention is that the landlord will move into the property at the end of the agreed rental period.

This tenancy agreement will be terminated by the landlord in good time.

It is possible in this model that the tenancy is extended for a certain period, for example if the landlord wishes to stay longer elsewhere than anticipated. Article 3.1 contains a provision to this end. The landlord must then notify the tenant in writing no later than two months before the end date of the tenancy agreement that the tenancy agreement will be extended by a period to be chosen by the landlord. It is understood that the new period is associated with the new date that the landlord expects to want to live in the home insofar as possible. The tenant has the right to terminate the tenancy agreement. We recommend sending this letter by registered mail in a timely manner (and by email and by regular mail) to the tenant and asking the tenant for his agreement. We recommend discussing this with the tenant before sending this letter.
It is possible to repeat such an extension (within certain limits).

If the tenancy agreement comes to an end but the landlord is still not going to live in the house, it is possible to enter into the same tenancy agreement with a new tenant.

Article 3.5 provides that the tenant forfeits a penalty if he does not leave on the agreed date. If the tenant disputes the penalty in legal proceedings, the court does not always allocate the penalty.

<u>Model D: Vacancy Act tenancy agreement (purchase or rental property for sale)</u>

The Vacancy Act tenancy agreement model is intended for the situation that the property is for sale. That can be a home:
- which previously was inhabited by the owner;

- which was let previously in a regular manner (therefore not on the basis of the Vacancy Act) and so was inhabited by a tenant.

There are different rules for these two types of homes that are for sale.

Vacancy Act rental is only possible after obtaining a Vacancy Act licence from the municipality in advance. The tenancy agreement should mention various details from the Vacancy Act licence. If it does not the Vacancy Act is not applicable and the tenant has the right to ordinary security of tenure.

The tenant has no security of tenure for Vacancy Act rental. That means that the landlord may terminate the tenancy agreement when he wants to in compliance with the statutory notice period applicable to him.

The property valuation system does not apply for Vacancy Act rental when it comes to a home that was formerly inhabited by the owner (owner-occupied home for sale). That means that the rent formation is free and the tenant cannot present the rent to the rent assessment committee for review.

The property valuation system does apply for Vacancy Act rental when it concerns a home that was formerly let in a regular manner (i.e. not on the basis of the Vacancy Act). The maximum rent will be stated in the licence.

A Vacancy Act licence is always temporary and, if desired, must be extended by applying to the municipality in good time. If the landlord and the tenant want to extend the tenancy agreement based on the Vacancy Act to a date after the licence duration, the landlord must request extension of the licence from the municipality before the end of the tenancy agreement. If he does not (on time), then the tenant can invoke security of tenure. If the licence is extended but the landlord forgets to notify the tenant before the end of the tenancy agreement then the tenant can also invoke security of tenure.

Short Stay

According to policy rules of the city of Amsterdam homes may not be rented without a licence for a period of less than six months. Landlords acting in breach of this can face hefty fines from the city of Amsterdam.
For further information, see: https://www.amsterdam.nl/wonen-leefomgeving/wonen/woningeigenaren/verhuren/shortstaybeleid/.

All in price

It is not wise to agree on a so-called all in-price. It is recommended that you always break down the rent on the one hand and the cost of supplies and services on the other hand in the tenancy agreement. If the landlord does not, the tenant may effectuate a severe rent reduction in a special procedure at the Rent Assessment Committee. This possibility applies in many cases also in the more expensive decontrolled sector.

Service charges and upholstered/furnished housing

If the landlord provides services to the tenant in addition to the housing, it is recommended to name all of these services in the tenancy agreement. This can include energy and water supplies, cable TV, internet services, hot water, soft furnishings, furniture and so on.

The tenant has the right to have these service costs assessed by the Rent Assessment Committee. The tenant also has that right in the more expensive decontrolled sector, but at the District Court and not

the Rent Assessment Committee. Only the actual costs incurred by the landlord may be passed on to the tenant.

The method of calculating immovable property (upholstery, furnishings) provided by the landlord to the tenant is as follows. First, the so-called value in use is assessed. Then the corresponding total amount is divided by 60.

Accommodation with decontrolled rent.

Homes where the initial rent is more than €710.68 per month (this limit continues to apply in the period 2016 to 2018. After this, the limit may change) are in principle decontrolled. I.e., the property valuation system (also called the points system) does not apply and the rent assessment committee is not authorised to rule on the rent. However, there is an important exception. The tenant always has the right to request the rent assessment committee within six months after the start of the tenancy agreement - for Model B a derogating period applies; see above - to determine what the property is worth in points. If the property is worth 146 points or more (the number of points may be subject to change in the future), then the home is decontrolled and the rent assessment committee does not rule on the rent. But if the Rent Assessment Committee finds that the property is worth less than 146 points, then the points system will still apply, and the Rent Assessment Committee will set the rent from the start of the tenancy agreement at the rent pertaining to the home's number of points.

A deviating period applies for the tenancy agreement referred to above for up to two years (Model B). In that case, the tenant has up to six months after the end of the tenancy agreement to start proceedings before the Rent Assessment Committee for the review of the initial rent. It is not clear from the law whether this means the end of the agreed (initial) rental period or, if the tenancy agreement is extended, then at the end of the tenancy agreement.

If the apartment is worth less than 146 points but the tenant fails to go to the Rent Assessment Committee within the aforementioned term, the home is decontrolled for this tenant if the agreed rent is above the rent-control ceiling.

According to the law it is possible to adjust the rent for a property with decontrolled rent - the law does not determine how often - to the market. The Act prescribes a complex legal procedure for this. This procedure is only intended for the landlord who wants to raise the rent because market prices have increased. There is no legal procedure for the tenant who wants to bring about a rent reduction if market prices have dropped.
The VVA has included an alternative arrangement in its General Tenancy Agreement Conditions. This means that both parties have the right to adjust the rent every five years to the current market level. That market level is determined by agents appointed by the parties. In principle, no legal procedure is necessary.

Agency fee

For a long time, there has been uncertainty about when an agent can charge the tenant fees. The Supreme Court clarified this in an important ruling in October 2015. The Supreme Court determined that if a letting agent presents accommodation on the internet without listing the contact information for the landlord, he is deemed to have an intermediation agreement with the landlord (even if the landlord is not paying him anything). In that case, the law provides that the agent is not free to charge the tenant agency fees.

House sharing/residential groups

Sometimes houses are rented out to a group of individuals. The city of Amsterdam has drawn up policy rules that limit this form of rental. Please see the website of the city of Amsterdam:

https://www.amsterdam.nl/wonen-leefomgeving/wonen/bijzondere-situaties/woningdelen/ .
Landlords acting in breach of this can face hefty fines from the city of Amsterdam.

Energy performance of the home

From the landlord's perspective it is always recommended that the energy performance of the home is recorded by an expert in the form of a so-called energy-index. This generally results in a higher rent. The condition is that the energy index certificate is handed over to the tenant at the start of the tenancy agreement. This is always included in the VVA models.

Heating Supply Act

The Heating Supply Act applies since 1 January 2015. This law has implications for the situation in which the landlord provides heating and hot water to the tenant by means of a (collective) central heating system, such as a block heater or a heat/cooling installation. In that case, there are special rules and we recommend consulting an expert.

The Heating Supply Act will be amended incidentally, such that these particular rules largely no longer apply to letting and rental.

Housing permit

In the Amsterdam area pursuant to the Housing Regulations there are rules for the occupation of self-contained accommodation up to a certain rent limit (the level of the rent-control ceiling). Landlords acting in breach of this can face hefty fines from the city of Amsterdam.