

TERMINATION OF A LEASE CONTRACT:
GENERAL VIEW FROM CZECH AND ILLINOIS LAW¹

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OVERVIEW

Before the advent of municipal codes and state laws involving the legal aspects of lease agreements, the idea at common law of transferring a person's private property to another person for a fee was based on principles of Feudalism. The lessee, or the tenant, was given far less access to the piece of land and the lessor, or the landlord, retained full rights and enjoyment of the land. Under the principles of common law, this idea of Feudalism began to change to allow for a more fair and equitable contractual agreement. Under the common law, the lessee receives a right to possess a specific dwelling for a specific time and to exclude the lessor from his or her use of it for this period of time.

The rights of the lessor are transferred to the lessee for a specific period of time for a specific amount of consideration, or rent. This is distinct from a sales contract for the purchase of a unit because in a lease contract, the lessor retains property rights to the unit and retains ownership rights. A lease contract is different from other types of contracts because it is based on legal principles arising from both contract and property law. Courts must apply legal principles from both areas of law when ruling on an ambiguous term of the contract, or when ruling upon a breach or action for damages based on an issue that arises from the contract itself.

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Today's municipal code for the City of Chicago regarding landlord and tenant relations is a source of law that is designed to protect citizens of the City of Chicago and to establish the rights and duties for both the landlord and the tenant. These rights and duties are granted under the code; however, the Chicago Municipal Code is not the only source of law that both parties must follow when seeking a contractual relationship for leasing an apartment. The Code is not designed to conflict with other local, state or federal laws that also govern the relationship between a landlord and tenant. This article will focus not only on the Municipal code, but also on the Illinois law and how both sets of laws deal with terminations of leases between a landlord and a tenant.

Under the Chicago Municipal Code, only certain dwelling units and accommodations are covered by the chapter. The Code excludes certain types of living places that are not designed for a typical landlord and tenant relationship. These places of living are regulated by a set of different laws.³

The leases that can be covered under this chapter can be both oral and written. A lease contract that will last for longer than one year must be in writing.⁴ If a lease is only a month to month lease or for only six months, the agreement can be oral between both parties. However, this agreement is still subject to the Chicago Municipal Code and Illinois Landlord and Tenant laws.

Under Illinois law, actions for ejectment are found under sections 735 ILCS 5/Art. IX in the Code of Civil Procedure. At common law, the term ejectment was a term for

³ Homes or buildings that are owner-occupied, places in hotels or other types of rooming houses, accommodations in hospitals, religious houses, asylums, and care facilities, as well as dormitories, units occupied by a bona fide purchaser or seller prior to transfer of title, units where an employee of the landlord lives, or a unit in a cooperative that is occupied by a holder of a proprietary lease are all excluded under this section of the code. Chi, Ill., Mun. Code § 5-12-020 (1991).

⁴ According to the Statute of Frauds, when a lease contract has terms requiring a renter to lease an apartment for one year or more and the contract, by its terms, can not be completed in one year the lease contract must be in writing and signed by both parties to avoid fraudulent conduct on the part of the parties.

removing a possessor from land and recovering possession of the land by its rightful owner. Today, causes of action for recovering property, within a lease relationship, are not for ejectment, but for eviction.

Under 735 ILCS 5/9-102, a cause of action for ejectment or eviction can be maintained for several types of reasons. At common law, forcible entry was permitted; however, the law now prohibits this and evictions must be remedied through legal means.⁵ For purposes of a landlord and tenant relationship, only the first four reasons for eviction are necessary to discuss. Under Illinois law, a person is able to obtain rightful possession and maintain an action of forcible detainer or eviction against someone when: (1) a person occupies the property illegally by forcible entry; (2) when a person enters the property peacefully and occupies the premises without proper authority and refuses to turn over possession; (3) when the property is vacant and a person enters without proper right or proper title; and (4) when a tenant remains on the property after the terms of his tenancy or termination of a lease has occurred.⁶

In order to acquire possession of a property, the person seeking possession must demand the property by written notice.⁷ The notice must be delivered directly to: (1) the tenant; (2) any person older than the age of 13; (3) to any “unknown occupants” who reside on the premises who are older than the age of 13; or (4) by posting a notice to the occupants of the property.⁸ This demand must be served by an authorized or by a sworn affidavit by the demanding party and his or her agent.⁹

⁵ Heritage Pullman Bank v. American Nat'l Bank & Trust Co., 518 N.E.2d 231 (Ill. App. Ct. 1987).

⁶ 735 ILL. COMP. STAT. 5/9-102 (1993).

⁷ 735 ILL. COMP. STAT. 5-9/104 (1993).

⁸ *Id.*

⁹ *Id.*

Prior to eviction or the end of a tenancy, either the tenant or landlord has the right to terminate the lease. This notice of termination must be in writing. To terminate a lease that has been executed for one year, a written notice of 60 days is sufficient, as long as the notice is delivered within four months earlier than the last 60 days of the year.¹⁰ If a year to year lease ends, and neither party states their intention to terminate or renew the lease, but the tenant continues to occupy the premises and the landlord continues to accept payment of rent after the lease's supposed termination, the lease contract will be renewed for one year.¹¹

Leases that are made for less than a year have specific date requirements for termination. For a lease that is week to week, either party must give 7 days' notice of termination.¹² In the event the tenant remains in the apartment after the notice, the landlord can then file a suit for eviction.¹³ For tenancies lasting longer than week to week, but less than one year, 30 days' written notice is sufficient to terminate the lease.¹⁴

However, under the Chicago Municipal Code there is a special provision for assessing the reasons why a landlord seeks to evict a tenant. Since Chicago is under home rule,¹⁵ it has authority to supersede the state law with respect to termination of a lease. Under the Residential Landlord and Tenant Ordinance:

[I]t is against public policy of the City of Chicago for a landlord to take retaliatory action against a tenant, except for violation of a rental agreement or violation of a law or ordinance. A landlord may not knowingly terminate a tenancy, increase

¹⁰ 735 ILL. COMP. STAT. 5/9-205 (1993).

¹¹ *Fredman v. Sutliff & Case Co.*, 70 N.E.2d 222 (Ill. App. Ct. 1946).

¹² 735 ILL. COMP. STAT. 5/9-207 (1993).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Chicago is a home-rule city. This means that Chicago has been granted greater power to determine its own laws and structure of government without interference from the Illinois constitution or state statutory provisions. *See* <http://www.encyclopedia.chicagohistory.org/pages/595.html>.

rent, decrease services, bring or threaten to bring a lawsuit against a tenant for possession or refuse to renew a lease or tenancy because the tenant has in good faith:

- (a) Complained of code violations applicable to the premises to a competent governmental agency, elected representative or public official charged with responsibility for enforcement of a building, housing, health or similar code; or
- (b) Complained of a building, housing, health or similar code violation or an illegal landlord practice to a community organization or the news media; or
- (c) Sought the assistance of a community organization or the news media to remedy a code violation or illegal landlord practice; or
- (d) Requested the landlord to make repairs to the premises as required by a building code, health ordinance, other regulation, or the residential rental agreement; or
- (e) Became a member of a tenant's union or similar organization; or
- (f) Testified in any court or administrative proceeding concerning the condition of the premises; or
- (g) Exercised any right or remedy provided by law.¹⁶

If a landlord retaliates against a tenant, the tenant may file a lawsuit against the landlord and may recover possession of the apartment, may terminate the rental

¹⁶ Chicago Municipal Code § 5-12-150 (1991).

agreement and also can recover monetary damages equaled to, but not more than, two months' rent or double the damages that the tenant sustained.¹⁷

According to the Code, a tenant is explicitly responsible, and obligated by law, to keep his or her unit clean and sanitary, to not damage or destroy the unit that he or she is renting, and to conduct himself or herself in a manner that allows other renters who are in the same building or living close by to the continued enjoyment of their respective homes.¹⁸ However, because the tenant is not entitled to exclusive property rights, the lessor is still allowed access to the premises at reasonable times. A "reasonable time" is designated between 8:00 a.m. and 8:00 p.m., or when the tenant has given a specific time.¹⁹ This right of entry is not a right for the landlord to harass, abuse or to gain access to the tenant's personal belongings. This right of entry is for such reasons as: making repairs, to show the unit to prospective lessees, to make sure the lessor is complying with the provisions in the lease, and for cases of emergency.²⁰

If either the landlord enters the unit for a reason that is not deemed lawful, or the tenant does not allow the landlord access to the unit, both parties may obtain an injunction against the other party to either allow or prevent access to the unit. As well, both parties may receive monetary damages based on this judgment.²¹

Primarily, the Code prescribes remedies for the tenant if the landlord breaches a lease contract in such a way that amounts to a material noncompliance of the lease.²² This

¹⁷ *Id.*

¹⁸ Chicago, Ill., Mun. Code § 5-12-040 (1991).

¹⁹ Chicago, Ill., Mun. Code § 5-12-050 (1991).

²⁰ *Id.*

²¹ *Id.*

²² A landlord has a duty to keep the premises in compliance with the code and other applicable law and must maintain the integrity of the building, comply with municipal code, supply and maintain sprinkler system, smoke detectors, must maintain working toilet, shower, heating facilities, hot and cold running water as set forth in other parts of the municipal code, keep stairways, porches and other common areas

breach may amount to a constructive eviction of the tenant. According to Illinois case law, “constructive eviction is defined as something of a serious and substantial character done by the landlord with the intention of depriving the tenant of the beneficial enjoyment of the premises in accordance with the terms of the lease. Unless the premises are vacated, there is no constructive eviction.”²³ If a tenant believes the landlord has in any way violated the municipal code and has breached the rental agreement and such breach causes the unit to not be fit for habitation, the tenant may give the landlord a written notice citing the infraction and can give the landlord a period of 14 days to remedy the material noncompliance.²⁴ If the landlord does not comply with the written notice, the lease contract expires and the tenant will have 30 days to vacate the unit and deliver the unit to the landlord.²⁵ The landlord must then return all prepaid rent, the security deposit plus interest. However, if the tenant does not vacate the premises in 30 days, the lease contract retains full legal effect and the written notice is regarded as withdrawn.²⁶

A failure to provide an essential service, such as heat, water, electricity, gas or another type of essential utility, demands a different remedy under the municipal code. If the failure to supply these utilities is caused by the landlord, the tenant should give written notice to the landlord of the problem; however, the tenant is not required to wait any certain amount of time before using reasonable means to remedy the problem.²⁷ As

free from hazards, exterminate rodents, supply waste disposal, and in general the landlord must obey all municipal code regulations with respect to keeping a proper and lawful residence. Chicago, Ill., Mun. Code § 5-12-070 and § 5-12-110 (1991).

²³ First Nat'l Bank v. Sousanes, 422 N.E.2d 188 (Ill. App. Ct. 1st Dist. 1981).

²⁴ Chicago, Ill., Mun. Code § 5-12-100 (a) (1991).

²⁵ *Id.*

²⁶ *Id.*

²⁷ If the failure to provide an essential utility is the fault of the utility provider and not the landlord, the tenant is not entitled to withhold rent or to terminate the lease agreement with the landlord.

soon as the letter is delivered or mailed the tenant may begin finding heat, running water or other utility services and may deduct the cost of this search from the rent.²⁸ The tenant is also entitled to recover damages if within 24 hours the landlord does not correct the problem. This reduction is measured by the fair market value of the unit as reduced by the absence of an essential utility. The tenant may find for himself or herself substitute housing if the situation gravely endangers the health and safety of the tenant. The tenant may then recover costs for this substitute housing. The tenant may terminate the lease contract if the landlord fails to supply and correct a problem relating to essential services and this problem endures for more than 72 hours after the tenant notifies the landlord.²⁹ In the event that the tenant will move out he or she will have been constructively evicted.

The landlord is also entitled to certain remedies under the municipal code if the tenant fails to pay rent, breaches the lease agreement, fails to maintain the premises, disturbs others or abandons the property. If the tenant does not tender all rent when due, the landlord is required to give written notice that he or she seeks to terminate the lease contract and the tenant is obligated to pay the due rent within five days of receiving this notice. If the rent goes unpaid the landlord is entitled to terminate the rental agreement and evict the tenant from the unit.³⁰ However, if the landlord chooses to accept late payment of rent the landlord waives his right to terminate the lease contract.³¹ Under Illinois law, “the complete process of evicting a tenant in Illinois involves five distinct

²⁸ Chicago, Ill., Mun. Code § 5-12-100 (f) (1991).

²⁹ Chicago, Ill., Mun. Code § 5-12-100 (f)(5) (1991).

³⁰ This notice is commonly referred to as “a five-day notice of termination.” See Chicago, Ill., Mun. Code § 5-12-130 (a) (1991).

³¹ Chicago, Ill., Mun. Code § 5-12-130 (g) (1991).

steps” when a landlord wants to evict a tenant for not paying rent.³² All are not necessary for a lease to terminate. However, in order to maintain an action for eviction:

The first essential step is that the tenant must be delinquent in her rent.³³ Second, the landlord must notify the tenant, in writing, that the rent must be paid within no less than five days.³⁴ Third, the specified time period mentioned in the notice must pass without tender of payment by the tenant.³⁵ Fourth, the landlord must sue for possession or maintain ejectment and obtain a judgment for possession.³⁶ Fifth, and finally, a writ of possession issues pursuant to the judgment for possession.³⁷

If the tenant breaches the lease agreement the landlord must give written notice of the breach to the tenant and the landlord may seek termination of the agreement if the breach is not remedied in 10 days from receipt of the notice.³⁸

If the tenant fails to maintain the property by either not keeping the unit habitable or not using the unit for its intended purpose, the landlord may deliver written notice of the violation and may, within 14 days of the tenant receiving the notice, enter the unit to make all necessary repairs.³⁹

If there are disturbances to others generated by a tenant’s conduct, a landlord will give written notice to the tenant and if the disturbances do not stop within 60 days of the notice, a landlord is then allowed to obtain injunctive relief against the conduct of the tenant or may give the tenant a 10 day notice of termination of the lease contract.⁴⁰

³² *Robinson v. Chicago Hous. Auth.*, 54 F.3d 316, 321 (7th Cir. 1995).

³³ 735 ILCS Ann. 5/9-209 (West 1994).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Chicago, Ill., Mun. Code § 5-12-130 (b) (1991) (commonly referred to as “a ten-day notice of termination”). See *Robinson v. Chicago Hous. Auth.*, 54 F.3d at 321-22.

³⁹ Chicago, Ill., Mun. Code § 5-12-130 (c) (1991).

⁴⁰ Chicago, Ill., Mun. Code § 5-12-130 (d) (1991).

When actual notice is given to the landlord that the tenant wants to abandon the unit, or when a tenant is absent for a specific time from the unit the landlord must make a good faith effort at re-renting the unit for a rent near fair market value.⁴¹ If the landlord succeeds in re-renting the unit, the tenant is liable for any amount of money that exceeds the fair rental value of the unit from the time the tenant abandoned the unit until the time the lease contract was to end.⁴² If the landlord is incapable of re-renting the unit, the tenant will then have to pay the full amount of rent for the remainder of the lease contract he or she has executed with the landlord.⁴³

Historically, contracts between persons for the renting of a dwelling unit have been construed as giving the landlord more rights than the tenant. This is because of the common law property belief that the landlord still retains full ownership rights of the unit and so the landlord is allowed more access to the unit and more enjoyment of the unit in order to fulfill his or her vested property rights. There should be made mentioned of the fact that American federal law can also have an impact on lease contracts in any town city or village in the United States. In 1968, Congress passed the Civil Rights Act, and as part of Title VIII of that act, Congress included the passing of the Federal Fair Housing Act, which, as amended, makes it illegal to discriminate or refuse to rent to an individual based on that person's race, color, religion, sex, familial status, or national origin.⁴⁴ As

⁴¹ Chicago, Ill., Mun. Code § 5-12-130 (e) (1991).

⁴² For example, if the landlord and tenant have executed a one-year lease contract and the tenant abandons the property after ten months, the landlord must attempt to re-rent the unit. If the landlord is successful the tenant must then pay any amount of money that would exceed the rent for the subsequent rental until the time the lease contract was to expire. In this case the tenant would have to pay any amount of money that the landlord was losing from having to rent the unit at a lower price for the two months that are remaining on the lease contract. Chicago, Ill., Mun. Code § 5-12-130 (e)(3).

⁴³ In the above example, the tenant would be responsible for the full amount of two months rent (the remainder of the lease agreement) if the landlord was unable to find another renter. Chicago, Ill., Mun. Code § 5-12-130 (e)(3).

⁴⁴ 42 U.S.C. § 3604 (a)(b).

well, the act placed certain restrictions on the refusal to rent to persons with disabilities.⁴⁵ The passage of this act has increased litigation in America when it comes to discrimination and civil rights law. This law placed an affirmative duty on landlords to open up their rental units and allow everyone equal access to them. This act, along with the foregoing analysis of the Chicago Municipal Code and Illinois statutory laws show that the power a landlord may have once had over the tenant is now becoming less of a superior and inferior relationship, and more of an equal partnership and equal opportunity for both parties involved to enjoy the full rights of the dwelling unit.

I. LEGAL ASPECTS OF THE TERMINATION OF LEASE CONTRACT
IN THE CZECH CIVIL LAW

Leasehold⁴⁶ is one of the fundamental kinds of satisfaction of housing needs. The Czech system of law, on one hand, rigorously respects all aspects of proprietary rights of the owner (as a lessor), and on the other is based on the idea of strong protection of the lessee. Fundamentals of the special protection of a lessee are based on two basic aspects: (1) detailed number of reasons why a lease can be terminated; and (2) legal concept of providing (a) new apartment, (b) new “place to stay”, or (c) shelter (difference is described below).

The contemporary legal regulations require the lease contract to be in written. If the lease period has not been included in the contract, the § 686, par. 2 states an

⁴⁵ *Id.* at § 3604(c)(d)(e).

⁴⁶ See Švestka, J., Spáčil, J., Škárová, M., Hulmák, M. et al. CIVIL CODE II § 460-880, Commentary. 1st ed., Praha: C.H.Beck, 2008, 1784-2018; see also Selucká, M., *Lease and Sublease of an Apartment*, 1st ed., Brno: CP Books, 2005.

irrebuttable presumption, that the lease was made for an indefinite period of time. If the contract provisions regarding to the length of lease period are inapprehensible (or to be more precise, this applies to a case where two contrary provisions occur in the contract), these “length terms” are to be understood as invalid (see § 37, par. 1, CCC). The contract itself is still considered to be valid and effective for an indefinite period of time.⁴⁷ It is important to mention that there is a different approach when misspellings in writing or just numbers occur (of course if the meaning of terms is clear). In this case, the provisions of contract are valid and effective. The imperative of intelligibility of serious and free will is explicated in § 35 CCC, that states how to behave while interpreting legal acts of individuals. The scope of civil tangible law is represented by so called “theory of will” (the emphasis is always placed on what the acting individual intended to do), unlike the scope of law of civil procedure for which is typical the “theory of manifestation” (the way how the will was manifested, and what this manifestation generally means is important for interpretation).

Generally, the lease can be terminated (1) by the agreement between contracting parties, (2) by the expiration of stated time, (3) by destruction of an apartment, (4) by merging of lessor and lessee, (5) by a notice of lessor, (6) by a notice by lessee, or (7) by withdrawal of a contract.

The main focus shall be placed on the notices of lessor and lessee. The latter can terminate a lease, by giving written notice, which does not have to contain reasons that have led to this legal act. Notice of termination can apply to both a lease contract, which was made for either a specific period of time or an indefinite period of time. Period of

⁴⁷ See (Rc) 28 Cdo 2187/2001.

notice cannot be shorter than three months and its end must correspond with the end of a calendar month. Moving out itself is not considered as notice.

Lessor can terminate a lease only with written notice that must contain detailed causes of this act. Notice of termination can be based only on causes that are explicitly stated in the Czech Civil Code⁴⁸. Notice must be delivered to the lessee.

Lessor's notice must contain:

- 1) Specific date of termination that cannot be shorter than three months, and agree with the end of a calendar month.
- 2) Reason for termination.
- 3) Instruction to a lessee about the right to bring an action for voidance of lessor's legal act (only if lessor gave the notice without prior court approval).
- 4) Obligation of lessor to provide a new apartment (only if lessee is entitled for one by law).

It is important to pinpoint the essential differences between termination of a lease by lessor with prior court approval and without approval. A notice of termination without a prior court approval can be understood as penalty for a breach of duty of a lessee, or to be more precise, sanction for lessee's breach of contract. On the other hand, notice of termination with previous court approval usually takes into account the needs of a lessor, or objective causes relating to the property.

If a lessee does not agree with notice that has been given without a prior court approval (if he thinks the facts of the issue are not based on objective truth), he may file a claim in a court that has merit and has competent jurisdiction to examine the notice, within sixty days since the notice has been delivered. The lessee does not have to move out of his apartment until there is a new apartment ready for him (only if he is eligible by

⁴⁸ Act number: 40/1964 Coll. (April 2008). [hereinafter "CCC"].

law to get one), and until the proceedings for avoidance of lessor's notice of termination have been effectively accomplished.

Generally, if the law does not require a prior court approval to give a notice, the lessee has only the right for compensation for loss of his apartment, in the form of shelter.

Notice of termination can be given by lessor without a prior approval of a court when:

- 1) Lessee or other persons, who share an apartment in question, act grossly "contra bonos mores" and this undesirable behavior must be in the building where the rented apartment is located, even though a written warning note has been already given to them (CCC, § 711, par. 2, letter A).

The acting against good manners must be continuous, i.e. it is a repetitious, recrudescing behavior that persists even after the lessor warned lessee that such a behavior is unacceptable, and informed lessee that in their lease he (the lessee) shall be given a notice, unless the "contra bonos mores" acting stops. In this respect the Czech Supreme Court ruled:

The prior notice according to § 711, par. 1, letter C, must contain not only the requirement to stop with that undesirable behavior of lessees but also warning that the lease may be terminated. There is other presumption for giving the notice (according to § 711, par. 1, letter C): the lessees' undesirable behavior must be persisting even after they were given the notice.⁴⁹

The written notice is a condition of tangible civil law for giving a notice according to § 711, par. 2, letter A. This condition cannot be considered fulfilled if the note has not been given in writing (§ 40). A ruling of any administrating body about committing a tort shall not be considered as a official notice, although this ruling may support a

⁴⁹ Judgment of the Czech Supreme Court from October 26, 2006, file number 26 Cdo 1760/2006.

notice given by lessor, i.e. it might serve as an evidence of an unacceptable behavior of lessee.

The concept of “bonos mores” or “good manners” is used in Czech Civil Law very often. The Czech Supreme Court defines this concept in its judicial acts as:

...complex of social, culture and moral norms that have shown in a historical progress, which are constant and comprehend fundamental historical tendencies and are accepted by a clearly recognized majority of society and are of the quality of basic norms.⁵⁰

If the cause of notice of termination is based on an act which is considered to be against good manners, the indecency must be related to the building where the apartment is situated and must be of high intensity:

As a gross violation of good manners which constitutes a right of lessor to give a notice of termination to the lessee, can be understood only as an act by lessee (or persons who share his or her apartment) that relates to the coexistence in the building, where the rented apartment is located, e.g. disturbing others with an inappropriate infringements to the rights of others, such as: excessive noise, smell, insect, dirtiness, inadequate breeding of animals, or verbal or even physical attacks towards other lessees or lessor. Crudity of an act against good manners can be interpreted from the seriousness of consequences of an act of lessee and its duration and reiteration.⁵¹ (File number 26 Cdo 1865/2004)

- 2) The second statutory cause which allows a lessor to give a notice of termination to lessee without a prior court approval is when lessee grossly disobeys his duties that are imposed on him from the force of a lease contract. **Primarily** when: (1) a lessee is late on payments and; (2) there is an unpaid due amount for rent or other payments related to the usage of apartment in question, which exceeds three times the amount of regular monthly payment, or (3) when a lessee has not recharged a deposit, that was used to cover his arrears of payment according to § 686a, par. 3 of CCC; (CCC, § 711, par. 2, letter B).

⁵⁰ Judgment of the Czech Supreme Court from June 26, 1997, file number 3 Cdo 69/96.

⁵¹ Judgment of the Czech Supreme Court from November 24, 2005, file number 26 Cdo 1865/2004.

In terms of this provision, the Czech Supreme Court ruled:

Generally, when trying to interpret this provision, it is important to take into consideration, that the statutory law which states, that gross violation of lessee's duties allows lessor to give lessee a notice of termination, explicitly requires the amount of the unpaid dues of at least triple size of the regular monthly payment. This is only a demonstrative (exemplary) specification. We can figure that out from the word "primarily". This means the causes that allow a lessor to give a notice to lessee could differ from the exemplary breaches of duties by lessee. However, these different breaches of duties shall be of the same quality as the mentioned ones. When measuring the intensity of the breach of lessee's duties, from the point of view of the justifiable interest of a lessor and even other lessees, the emphasis shall be placed on whether or not they are, at least, of the same quality as not paying rent for more than three months.⁵²

The condition for giving the letter of termination is fulfilled when the breach of lessee's duties reaches extremely high intensity, i.e. the duties had to be grossly breached. In this case, lessor's written notice is not required. If we look at the provision in question *stricto sensu*, the breach of duties must be done by the lessee itself. On the other hand, there is a duty of lessee to make sure, that all other persons using the rented place, must follow all rules and contract terms, i.e. use the place properly (§ 683, § 689). However, there is no legal relation between them and the lessor. If lessee does not make all his or her roommates comply with all stated duties, than lessee does not follows all his or her duties, and lessee is the person responsible for the condition of the apartment.

If the intensity of the breach is unacceptable, i.e. it is very likely that some kind of damage may or already has arisen, the lessor is allowed to withdraw from a contract (§ 679, par. 3). Lessor is entitled to do so, even if the notice has been already given.

Lessee's breach of duties, which may be subsumed under the provisions of letter B, is for example use of an apartment for other purpose than living, e.g. for business activities;

⁵² Judgment of Czech Supreme Court from April 22, 2004, file number 26 Cdo 85/2004.

subleasing without lessor's assent; construction work without lessor's approval; or continuous neglect of the basic maintaining and servicing of the apartment; and others.

- 3) Other cases where lessor is allowed to give a notice without court approval is when a lessee is using two or more apartments, except cases where there can be no fair request on lessee to use only one apartment; (CCC, § 711, par. 2, letter C).

Czech Supreme Court explains this reason as it follows:

The concept of "an own apartment" applies when the lessee has some kind of legal title to a place that can satisfy lessee's accommodation needs. It is not of importance, if the lessee actually uses his or her other dwelling.⁵³

There is other Supreme Court reasoning that explains in what particular cases a lessee cannot be asked to move out of his or her apartment.

This contract termination condition is not fulfilled, if one can not request the lessee to use only one of his or her two or more apartments. That means that this applies to a case where both of these apartments are being used for the purpose of living, and not when the other apartment is used for other purposes, such as storage place, business place or is just left empty.⁵⁴

- 4) Or that lessee does not use an apartment at all, without significant reasons, or uses it just rarely, again with no serious reasons; (CCC, § 711, par. 2, letter D).

Both of these issues, referred to as subsection 3 and 4, are pretty much just the response to today's situation on the Czech market with leases of apartments, that is still influenced with persistent legal relations from past non-market background.⁵⁵ "Pro futuro" it can be expected that those two provisions will have been removed from the

⁵³ Judgment of Czech Supreme Court from March 22, 2006, file number 26 Cdo 881/2005.

⁵⁴ Judgment of Czech Supreme Court from February 1, 2005, File number 26 Cdo 909/2004.

⁵⁵ See Judgments of Czech Constitutional Court: File numbers Pl. US 3/2000; Pl. US 8/02; Pl. US 2/03.

Czech legal regulations due to today's tendency to limit strict regulation of lease contracts and replace them with more free-market regulations.

- 5) Last cause that allows lessor to give a notice without a previous court approval when the apartment in question is considered to be an "apartment designed for persons with special needs" or an apartment in the "building designed for persons with special needs," in the case when a lessee is not a disabled person; (CCC, § 711, par. 2, letter E).

By the wording of a particular provision of CCC the abovementioned apartments are referred to as "apartments designed for persons with special needs."

If the given notice is connected to an apartment which is a subject of governmental rent control, the new provided apartment does not have to be a subject of price regulation if statutory stated requirements on quality are fulfilled. Czech Constitutional Court took very clear course to this issue:

Czech statutory rent law is based on explicit protection of lessees. This strong protection is motivated especially with social reasons because housing needs are one of a fundamental human need, and this protection has had a long tradition. Nevertheless, the Constitutional Court has already many times ruled, that it is not acceptable to transfer social difficulties of one group of people (lessees) to the other (lessors). According to today's situation on the market with apartments and condominiums, a lessor has no chance to acquire an apartment which is subject to governmental rent control. It is important, when considering the adequacy of a newly provided apartment, to concentrate on the price, but the price shall be considered only in relation to the regular market price in a particular place and time and can not be based on past unconstitutional regulations and rent controls. Even though there has never been a statute enacted that deals with persisting rent controls this should not be a disadvantage to a lessor. The current deformation on the market with apartments, which has its bedrocks in long-continuing avoidance of the problems that are arising from rent controls, cannot be henceforth conserved in judicial acts. It is against constitutional principles if there is artificially created inequality of subjects in private law relations. The lessees whose leases are subjected and not subjected to rent control, lessors who own buildings that are

subjects to rent controls, and the lessors who can set the regular market prices, shall not be placed in unequal positions. Therefore, if a lessor is entitled, according to the power of execution, to evacuate the apartment that is a subject to rent control, he has a right to reach an executory evacuation under the same contingencies as the lessor whose apartment is not a subject of rent control.⁵⁶

In these cases where notice has been given with prior court approval, lessee is entitled to get a new lease:

- 1) An adequate apartment – when notice has been given according to CCC, § 711a, par. 1, letter A (lessor needs apartment in question for himself or members of his family); or CCC, § 711a, par. 1, letter B (lessee stopped working for lessor and lessor needs the apartment for a new lessee who is going to become a new employee of lessor); or CCC, § 711a, par. 1, letter C (if it is needed due to a public interest which requires disposition of an apartment or a whole building or if the apartment or the whole building requires spacious repairs), or CCC, § 711a, par. 1, letter D (if the apartment in question is connected with a place that is supposed to be used together with a business or with other entrepreneur activities and the owner wants to use it for this primary purpose). An adequate apartment shall be given which is of the same quality as the original one.
- 2) A new “place to stay” – when notice has been delivered according to CCC, § 711a, par. 1, letter B and court decided that lessee is entitled to get only a new “place to stay”. The concept of a new “place to stay” is defined in CCC, § 712, par. 4 and it is understood as a studio or even a single room in a hostel or in an apartment which is to be shared with others.
- 3) Shelter – when notice has been delivered according to CCC, § 711a, par. 1, letter B and lessee’s job was terminated for other than serious reasons.⁵⁷ Concept of shelter is expressly stated in CCC, § 712, par. 5 and it is defined as a temporary arrangement until lessee find new apartment for himself, or a place to store lessee’s domestic furniture.

⁵⁶ Judgment of Czech Constitutional Court from September 23, 2004, file number IV. US 524/03.

⁵⁷ See CCC, *supra* note 48, at § 712, par. 2.

II. WITHDRAWAL FROM A LEASE CONTRACT - AVOIDANCE OF CONTRACT

As it was already described above, another legally recognized fact that abolishes the legal relation between lessor and lessee is withdrawal from a contract. Both lessor and lessee have the right to withdraw from a contract, and this right may be negotiated in the contract itself or may just result from law. The contractual right of withdrawal may not evade the law provisions that are to protect lessee. If the contract contained such term, it could be found by a court as “law evading” and these provisions would be completely invalid (§ 39) and consequently lessor would not have such a right.

The withdrawal from a contract may be described as unilateral (one-sided) legal act of an individual, which gets the result that gets to the objective sphere of recipient, i.e. its consequence is a complete termination of a contract “ab initio” (§ 48). The reciprocal obligations from the forfeited legal relations are to be settled according to CCC provisions on unjust enrichment. The withdrawal from a contract might be classified as both statutory and contractual, i.e. there in the contract may be stated an additional cause (or even without any cause) that allows a party to withdraw. Whether or not the withdrawal must be in writing is not obligatorily determined (in CCC provisions) but if the contract itself has been made in writing, the withdrawal from such a contract must be done in writing too (§ 40, par. 2).

In addition to the legal and contractual provisions on withdrawal from a contract, lessee is entitled to withdraw if lessor fails his or her duty to provide or keep the apartment in question, at the regular ordinary condition for use, i.e. livable, or whatever parties agreed on in the contract. Of course, the lessee is not allowed to withdraw from a contract for that abovementioned reason if he or she had caused the breach of duty.

The quality of condition of an apartment is crucial. The lessee may withdraw from a contract if the rented place cannot be used for the reason that was expressed in the contract. However, it might be used for an ordinary purpose. On the other hand, if the conditions allow lessee to use an apartment just partially, he or she can withdraw only if such a partial usage were denying the purpose of contract. In the case that this purpose is not completely abolished, lessee is not allowed to withdraw from a contract, but might request a discount on his lease payment.

There is another reason that allows lessee to withdraw from a contract. It is when the apartment is injurious to health of the people living or staying there. This injury must be objectively proved, e.g. by official opinion of health officer. Lessee has a right to withdraw from a contract, even though he or she had known about this deficiency, before the contract was signed, or while it was being signed. Any contract term that would abolish the right to withdraw from a contract due to health insufficiency of the rented place, is absolutely invalid.

Lessor is entitled to withdraw from a contract if lessee or his or her roommates or sublessees are using an apartment in an improper manner that causes damage to lessor or at least constitutes a threat of possible damage of high seriousness. The damage itself does not have to threaten the apartment itself but must be in a connection with it. A regular amortization shall not be considered as damage. This usually means a breach of lessee's duties too. Firstly, lessor must let the lessee know in writing that such a behavior is unacceptable and request a stop of this behavior, and if lessee continues then the lessor may withdraw from his or her lease contract. The lessor's written note must contain both an exact statement of the undesirable behavior of lessee and a warning of consequences.

The intensity of unacceptable behavior must be much higher than in the case of giving a notice of termination.

The right to withdraw from a contract is subject to three year limitation that starts running on the day when the right might have been exercised for the first time.

The right to withdraw from a lease contract is not used very often in the Czech Republic, especially due to an excessive protection of lessee. The statutory right to withdraw from a lease contract may be understood as a sanction for breach of duties that are arising from a legal relation between lessor and lessee, and this breach must be in principle of the high intensity.

According to the foregoing analysis, there can be these conclusions that can be ascertained. By looking at a lease through European lens, it can be said, that the concept of a lease generally means conflict of two fundamental rights. One is lessor's property right and the other is lessee's right to quality life standard, which is stated in several laws.⁵⁸ This can most easily be seen when looking at the provisions in the Czech Civil Code dealing with what types of housing needs should be made available to the lessee upon termination of a lease contract.

The collision of these two fundamental rights can clearly be seen in the Czech Civil Code sections addressing the issue of substitute housing. The protection of the lessee is of utmost importance and this idea is mainly expressed in section 712 of the civil code, which dictates that in certain cases a lessor must find suitable, substitute accommodation for a lessee. This idea was a part of the law during socialism and has persisted in the post-socialist era. Generally, the notion of the strong protection of the lessee can be seen

⁵⁸ Specifically, in the Czech Charter of Fundamental Rights and Freedoms; Art. 16 of the European Social Charter; and in Art. 11, par. 1 of the International Covenant on Economic, Social and Cultural Rights.

throughout law of European countries. However, this idea that the lessor must provide some kind of substitute housing to the lessee is a unique aspect found in Czech law. This unique aspect remains in the current Czech law because there still remains many lease contracts that have been executed during the Socialist era⁵⁹. This idea of strong protection of the lessee is not often found in the American legal system, which is rooted in the common law. In modern American law, the protection of the lessee is prevalent; however, ideas regarding private property and the sanctity of contracts often overshadow protection of the lessee after a lease termination. It should be noted, that the United States Supreme Court does not recognize a fundamental right in the United States Constitution to housing or tenancy.⁶⁰

In the same vein, the provisions in the Czech Civil Code relating to the breaking of a lease contract with and without court approval also accentuates the differences between the European-based legal system and the common law system in America. In the Czech Civil Code, certain terminations of leases must be done only by court approval. In American legal thought, this notion does not exist in the same manner. A court in America would be a last resort, not a first resort when a lessor seeks to terminate a lease. First and foremost, a lessor's right to own his property and his right to enter into a contract on his own terms would be upheld. If a lessor wished to terminate the contract with lessee, the first step would be to express his wishes to the lessee, and not to a judge. The judiciary would only be asked to step in when a serious conflict arises. In contrast, in the Czech Civil Code the courts are sometimes the first step a lessor must go to terminate

⁵⁹ When referring to lease contracts that still persist from the Socialist era, it should be mentioned that prior to 1991, a traditional lessor and lessee relationship did not exist. During this time, there was only one lessor and this was the government. The relation between lessor and lessee was called "usage right." This special concept was changed in 1991 by the major amendment of the CCC.

⁶⁰ *Lindsey v. Normet*, 405 U.S. 56 (1972).

a lease contract. These differences seek to highlight the aforementioned goals of each legal system. Perhaps one system may be able to benefit from the laws of the other.⁶¹

⁶¹ With connection to what was mentioned above, it is important to make a reference to a new Czech Civil Code that is being prepared by the Czech government. In the proposal of the new CCC, the protection of lease contracts corresponds to the typical European understanding of the legal concept of a lease. The termination of leases shall be without court approval. The proposed version of CCC, however, still contains specified causes for termination of lease contracts that were agreed for indefinite period of time. This bill does not contain provisions about a duty of a lessor to provide a new apartment for lessee.