

SIGNING A RENTAL CONTRACT

Presentation



In Belgium, all accommodation is rented on the basis of a written and signed rental contract (also referred to as a lease or tenancy agreement). Be aware that your signature on a rental contract signifies that you accept all its clauses.

Following the sixth state reform, the special law of 6 January 2014 gives the regions competence to determine regulations for rental contracts, which could deviate from common law (the latter remaining a competence of the federal government). The rules governing rental contract matters vary according to the region in which the accommodation is located and the type of rental contract you sign. In the Brussels-Capital Region, norms relating to rental contracts are contained principally in the Brussels Housing Code (Code bruxellois du logement). It applies both to rental contracts currently running and to those agreed after 1 January 2018.

In the event of disputes, it is the justice of the peace in the judicial district in which the property is located who is responsible for adjudication. It is therefore advisable to draw up a lease agreement in French or Dutch.

You can also find useful information (in FR or NL) in the brochure: « Un mauvais bail, ça peut faire mal – Les baux d’habitation à Bruxelles » (FR) / « Een slecht huurcontract kan pijnlijk zijn - Woninghuurovereenkomsten in Brussel. » (NL).

Don’t rush to sign your rental contract! Contact the Expat Welcome Desk (02/430.66.00 or info@commissioner.brussels) for help from our experienced team, free of charge.

3 TYPES OF LEASE FOR A PRIMARY RESIDENCE



(Art. 237 to 239 Brussels Housing Code - BHC)

A distinction must be made between (1) a very short lease, (2) a short lease, and (3) a long lease.

(1) A rental agreement for a **period shorter than six months terminates, without notice**, at the end of the period stipulated in the lease, unless this has been extended. It cannot be ended earlier. *(Art. 238, AL. 3 BHC)*

(2) A rental agreement for a **period from six months to 3 years** terminates, in principle, by means of notice from the owner (landlord) or tenant at least three months before the end of the period agreed in the lease. In this case, no compensation is due.

By mutual agreement, the parties may extend a short lease in writing, one or several times, under the same conditions up to a maximum period of three years. *(Art. 238, AL. 1 and 2 BHC)*

However, the tenant may terminate the agreement at any time by giving notice of three months and paying compensation equal to one month’s rent. As for owners, they may terminate the lease early, but only after the first year of the lease, and only in order to occupy the accommodation themselves or allow it to be occupied by a member of their family (or the family of their spouse). In this case, the landlord must give the tenant notice of three months and pay him or her compensation equivalent to one month’s rent. *(Art. 238, AL. 4 BHC)*

(3) The lease for a primary residence automatically lasts for a period of **9 years**, even if it is drawn up without mention of the period or for a fixed period of between 3 and 9 years (a lease for a period of 5 years is valid but will be considered to have been agreed for nine years).

The lease terminates at the end of the 9-year period, on condition that one or other of the parties has given notice **at least six months before the expiry date**. Notice can be given without any justification and no compensation is due from the party who takes this initiative. If neither of the parties end the lease after expiry of this period of 9 years, the lease is extended with the same conditions for a period of 3 years. Each of the

parties then has the option of terminating the extended lease every 3 years, without giving any justification and without having to pay any compensation, by giving six months' notice. (*Art. 237, §1 BHC*)

The owner has the right to terminate the lease before its expiry date:

- The owner may end the lease at any time for **personal occupation** on condition that the tenant receives notice of six months. The rental agreement may exclude or limit (for example, as to the time or persons concerned) the right of the owner to terminate the lease in order to occupy it personally. To be valid, the notice must mention the reason given and the identity of the person who will personally and actually occupy the leased property, and his or her relationship with the landlord. (*Art. 237, §2 BHC*)

- The owner may, but **only on completion of the first or second triennium** (three-year period), also terminate the lease if he intends to carry out **reconstruction, transformation or renovation work in the rented property**. The rental agreement may exclude or limit (for example, as to the time) the right of the owner to end the lease in order to carry out work. This option can only be exercised by the owner if he gives the tenant six months' notice and specifies the exact reason. This reason must meet four conditions defined in the Brussels Housing Code. (*Art. 237, §3 BHC*)

- The owner may, but **only on completion of the first or second triennium**, terminate the lease **without having to specify the motive by paying the tenant compensation**. The rental agreement may exclude or limit the right of the owner to terminate the lease without a reason. To be able to exercise this right of termination, the owner must give the tenant six months' notice and pay compensation. This compensation is equal to nine months' rent if notice is served at the end of the first triennium and six months' rent if notice is served at the end of the second triennium. (*Art 237, §4 BHC*)

-The tenant is also entitled to terminate the lease, at any time, by giving notice of three months. In this case, he would also have to pay compensation of three, two or one months' rent depending on whether he ended occupation during the first, second or third year of the lease. From the fourth year of the lease onwards, the tenant is no longer bound to pay compensation if he wishes to terminate the contract early, but the three-month notice period is still required. (*Art. 237, §5 BHC*)

IT IS THEREFORE IMPORTANT TO SIGN A LEASE THAT SUITS THE LENGTH OF YOUR STAY!

RENTAL COSTS



(*Art. 224 - 225 and art. 240 – 241 BHC*)

Individual and common charges associated with renting can be surprisingly high. We strongly advise you, as a future tenant, to find out about the charges you will have to pay.

Common charges

- These include co-ownership maintenance costs (lift maintenance costs, stairway lighting, cleaning costs) excluding major repair work.
- They are calculated based on the surface area of each apartment.

Individual charges

- These relate directly to the tenant's consumption (water, gas and electricity).
- They are invoiced either directly to the tenant by the energy supplier or indirectly via the co-ownership.

Prepayment or flat fee?

- **Monthly payments** are deposits on actual expenditure calculated definitively in the final accounts on an annual basis (method based on the tenant's actual consumption).
- A **flat fee** is a fixed sum specified in the rental contract. This does not have to correspond to the tenant's actual consumption and no final accounts have to be prepared. It is often applied to short-term furnished rental contracts. With a flat fee, the owner is not authorised to request additional payments from the tenant.

Other useful information:

- **There will be additional costs** associated with a rental, such as the rental guarantee, TV/internet subscription, central heating service maintenance, and tenant's liability insurance.
- **Property tax** and the **owner's share of the building insurance** can never be charged to the tenant.

RENTAL GUARANTEE



(*Art. 248 – 249 BHC*)

The rental guarantee is an amount of money which compensates the owner if his property is damaged. Almost all property owners in Belgium demand a rental guarantee equal to a maximum of two or three months' rent. This sum has to be **paid when the rental contract is signed and before occupation**.

Two types of guarantee

- **The transfer of the guarantee onto a "blocked bank account"**, which is the most common system. In this case, the sum is equal to two months' rent. Both the owner and tenant must sign a document to open this type of account. The guarantee remains the property of the tenant and interest earned is due to him up until the time he leaves the property. Tenants should request this document from a bank. (*Art. 248, §3 BHC*)

- **The bank guarantee:** in this case, the sum is equivalent to three months' rent. This system is chosen when the tenant is unable to pay the whole rental guarantee in one payment. When the rental contract has been drawn up, the bank becomes the guarantor on behalf of the tenant. The tenant pays the guarantee (equal to 3 months' rent) to the bank by monthly transfer for the duration of the rental contract, up to a maximum period of three years. This scenario is infrequent today! (*Art. 248, §4 BHC*)

If you pay the guarantee in cash or by bank transfer to the owner's current account, this sum will be considered as payment of a debt and you will lose claim to it in the event of the owner's insolvency.

Avoid paying it in cash but if you do so, request a signed receipt from the landlord in as many copies as there are parties to the agreement.

Release of the guarantee (*Art. 249, §2 BHC*)

The guarantee will only be reimbursed on presentation of a signed agreement between the owner and tenant drawn up when the lease has ended. This agreement may be in the form of a letter or a special form supplied by the bank and signed by the two parties.

Reimbursement of the rental guarantee will only be made on the condition that no rental damage is detailed in the outgoing inventory check or proven by the owner if no incoming inventory check was carried out. The two parties then sign a form prepared by the bank on which details of the calculation of the balance of the rental guarantee are explained. The actual amount reimbursed to the tenant depends on the assessment of rental damage. Once the bank has received this form or letter (signed by both parties), it will credit the tenant with the final sum.

In the event of a dispute, the rental guarantee can be released via an **enforceable judgement from the justice of the peace in the judicial district where the property is located**. This means that the judgement can be enforced in spite of any appeal procedures and in spite of the sum being blocked on an account.

INVENTORY CHECK



(*Art. 1730, §1^{er} C. civ and art. 220 BHC*)

This is a detailed description of the rooms, materials, fixtures and fittings in the rented accommodation, documented after an inspection. It is standard procedure in Belgian rental contracts. The report can be made by an expert appointed by both parties (with the cost shared) or as an amicable arrangement (at no cost). Contact CIBEX or ABEX if you are looking for an expert.

PLEASE NOTE: the tenant has the right to refuse the expert proposed by the owner. It is important that both parties are in agreement on the choice of expert.

We advise you to organise the inventory check **BEFORE** moving into your new accommodation (although this is not required by law). **The law authorises the inventory check to be carried out at any time during the first month of the rental contract**. This document must contain the water, gas and electricity meter numbers. Before signing the document, read it carefully and don't hesitate to add written comments, even if the description has been prepared by an expert. **The incoming inventory check must be attached to the lease and registered with it.**

For those who wish to carry out an amicable check without an expert, you can refer to an example (modèle d'état des lieux) available on the site logement.brussels (FR and NL only).

When the tenant leaves the accommodation, it is important that screws, nails and hooks are removed and that the entire accommodation is cleaned thoroughly. All utility meters should also be read.

This **outgoing inventory check** will be carried out and compared with the incoming inventory check. If both parties agree on the conclusions, the rental guarantee will be reimbursed in full to the tenant, if no rental damage has been incurred in the rented accommodation. Normal wear and tear is acceptable but the length of occupation will be taken into account when assessing this. In the event of a dispute, the matter can be brought before a justice of the peace.

MAINTENANCE AND REPAIRS



(*Art. 223 BHC*)

- The **owner** must carry out major repairs, particularly those due to obsolescence and unavoidable emergencies (force majeure).
- **Tenants** are responsible for carrying out general cleaning and the repair of any damage they have caused.

If there is a problem in the rented property, the tenant must inform the owner as quickly as possible – **verbally or in writing**.

In the event of a dispute, the tenant should never stop paying the rent! Rather, he should send a registered letter to the owner asking him to comply.

REGISTRATION OF THE LEASE



(*Art. 227 BHC*)

1/ Why does your lease need to be registered ?

Registering your lease is a mandatory formality required by its own tax code: the registration fees code. Any subsequent modification or addendum to the lease must also be registered. The aim of registering the lease is to give the contract a "certain date". This means that the other

interested parties cannot claim that they were not aware of the existence of the lease and so they are required to respect it. Leases are said to be “binding on third parties”. This formality provides a certain level of protection for both landlord and tenant.

=> Protection for tenants

- In the event of the property being sold: if the lease on a dwelling used as a principal place of residence **has been registered**, the tenants benefit from protection under the law should the property they are renting be sold. In fact, they are protected from immediate eviction by the new lessor/landlord (i.e. the new owner of the rented property), who is required to respect the current lease that is in place. If the new owner wishes to terminate the lease, he can do so by serving notice to the tenant – but only on the terms stated in the lease itself.
- If the lease on a dwelling used as a principal place of residence (regardless of the length of the lease) **is not registered**, the tenant can terminate the lease without serving notice or paying compensation – although the tenant does have to fulfil a prior formality with the lessor/landlord (see point 6).

=> Protection for the landlord (owner)

- The tenant is always required to serve notice to terminate a lease if the owner has registered it as a residential lease used as the principal place of residence. This is the statutory principle of “protection of the lessor”.

=> Family reunification

- In the context of a residential application based on the procedure for family reunification, the rental lease of the sponsor must sometimes be compulsorily registered (depending on the nationalities of the parties).

2/ Who is required to register the lease ?

The cost of the registration formalities and any attendant fees are to be paid by the **landlord**. The landlord **undertakes** to register the lease **within two months of it being signed**, along with any signed appendices to the lease and the incoming inventory. He will then provide the tenant with proof of registration.

If the landlord registers the lease after the period of two months has expired, he will be required to pay a fixed penalty set at around 25€.

However, **tenants can** – although there is no obligation to do so – have the lease registered themselves.

3/ How do you have a lease registered?

*Important: the lease must always **be signed by both parties**.*

The lease must be registered with the competent Legal Security office (bureau Sécurité juridique) – i.e. the one in whose jurisdiction the building is located.

To find out where these Legal Security offices are located, go to <http://finances.belgium.be/fr/bureaux> using the offices guide > Habitation > Enregistrer un bail de location > CHERCHER or by telephoning the Finance administration Contact Centre on 02.572.57.57.

You can register your lease either:

=> Online via the MyRent application

- Follow the instructions on the screen
- Make a copy of the lease in PDF format and upload it to the application.
- Submit your request.

You will then receive an acknowledgment of receipt of your request. Once your lease has been registered, you will receive proof of registration. You will be contacted if your request is not complete.

=> By post

- Telephone the general switchboard n° for FPS Finance: **02 572 57 57** and tell them what type of lease you want to register.
- An official from FPS Finance will send you a standard form. There are 3 versions of the form (depending on the document to be registered):
 - > Request for the registration of a lease, with or without inventory;
 - > Request for the registration of residential lease inventory, presented separately;
 - > Request for the registration of a sublease or addendum, assignment or termination of lease or sublease.

- Fill in the form and add a copy of the document.
- Send the form with the copy of the document in an envelope with sufficient postage to the FPS Finance scanning centre. You will find the address of the scanning centre on the form.

Once your lease has been registered, you will receive proof of registration (a sort of official stamp from the Authorities). You will be contacted if your request is incomplete.

4/ How much does it cost?

Registering a lease is **free of charge** if the building is used only as the dwelling of a family or of a person who lives alone.

5/ How do you find out if the lease has been registered?

You can check yourself to see if your lease has been registered via MyMinfin

1/ Identify yourself using your e-ID or via itsme

2/ Click on “Consulter mes baux de location” (view my leases) in the section headed “Mon habitation et mes biens immobiliers” (my home and my real estate property)

6/ What happens if the lease (long or short term) has not been registered?

If the landlord fails in his obligation to register the lease, the tenant can terminate the lease, without notice or compensation, **on condition** that the tenant sends the landlord a written notice by registered mail warning the lessor to register the lease and this warning is not acted on for one month. Only if the landlord does not take action within the month, the tenant can quit the property with immediate effect, without having to pay any penalties. However, it is likely that the owner will want to block this mechanism to quit by responding quickly to the registered letter and registering the lease within the timeframe stated. If the owner does not take action within the month, the tenant may then freely, but cautiously, notify the owner of the date of departure from the property – again by registered letter. By doing so, you can prove that you terminated the lease before it was registered (if the owner registers it after you have left the property). Finally, make an arrangement with the owner to set a date for the exit inventory and to hand over the keys.

Important: this method of terminating the lease, which is provided for by article 227 of the Brussels Housing Code, cannot be used before a period of two months has expired following the signing of the lease.

GIVING NOTICE



(Art. 231 BHC)

This point should be read in conjunction with the section “The 3 types of lease for a primary residence” because calculation of the notice period and compensation payment depends on the duration of the rental contract.

The law requires that notice to terminate a rental contract must be given in writing. No specific legal format is required but a registered letter is the surest way. **This notice must be sent by post three (complete) months before the date of the end of the lease.** If you fail to do this, it will be more difficult to recuperate your rental guarantee.

The notice period begins on the first day of the month following the month in which the letter was sent (e.g. if you send the letter on 10 July, the notice period begins on 1 August). The length of the notice period is 3 months.

The "day on which notice is given" is normally the day on which the other party received the mail. However, some judges consider that "the day on which notice is given" is the day of the sending.

To be safe, send your notice several days in advance.

In the event of problems or non-compliance with a lease, only a judge is competent to pronounce the termination of a contract.

USEFUL LINKS



[Justice-belgium.be](https://justice-belgium.be)

logement.brussels
