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Rent control and other aspects of tenancy law in Sweden, Denmark and Finland – how can a balance be struck between protection of tenants’ rights and landlords’ ownership rights in welfare states?¹

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1. Introduction

This article compares the rent regulation in Sweden, Finland and Denmark. Then it turns to rights that the tenants are given that normally rest with the owners, including the right to perpetual use, the right to transfer the apartment, the right to sublet the whole apartment or part of it. These elements of tenant “ownership rights” are compared and leads up to the question of whether they should be assessed as so important in relation to contractual principles that one can state that a tenant has a “right of ownership” to a home. Finally, rent regulation is revisited. If tenants can be viewed as having “ownership rights”, would that affect our attitudes towards rent regulation?

2. Property right or contractual right

Tenancy regulation can be perceived in at least two ways. When the contract expires or is terminated, the property is returned to its owner. According to contract law principles, the tenant is regarded as a renter of the dwelling and only acquires rights in relation to the opposite party in the contract – the property owner.

¹ This paper is based on the three TENLAW national reports for Denmark, Sweden and Finland, as well as the comparative report on the three nations. All reports can be found on the website: www.tenlaw.uni-bremen.de.

An agreement on the renting of a dwelling can also be seen as a right to use a home perpetually. The right to use land, buildings, fences and other structures built on it has always been specially regulated and the legal term for this is *real property*. It follows different sets of legal principles, for example real property often gives the user rights in relation to everyone else (*rights in rem*).

Before the industrial revolution, land was the most important property. The rights to farm it and pass it on to children were the central elements of ownership. There was no self-evident right to sell land to the highest bidder or to convert the use of land from farming to other uses. Giving the owner those rights – as elements in the new, liberal, concept of ownership – was an important part of the industrial revolution.²

The farmer paid the landlord, for instance by maintaining the land, paying a share of the crop as rent, and doing work for the landlord. If the farmer fulfilled his duties, he could have a secure tenancy, which sometimes even included a right to pass it on to a spouse, or children. These rights created a perception of joint ownership between the farmer and the landlord; it was a mix between renting and owning and could be regarded as a real property right. In many EU countries, traces of the old Roman land-lease called *emphyteusis* are still in place, and renting a home is sometimes treated as a kind of real property right.³

Today, the whole of continental Europe applies the principle of ownership as (in principle) undivided. Tenants are not owners of their homes.⁴ Through national law in all of EU, the tenant has some “ownership rights” that cannot be derogated from which can include perpetual use.

Tenancy law originated as contract law more than a century ago in all three Nordic Members of EU and the landlord had full ownership rights.⁵ This happened around 1900 when contract law was at its most liberal and freedom of contract applied in all three countries with regard to rented housing.

Denmark, Finland and Sweden established their first regulation with tenancy protection during the First World War.⁶ Rent regulation was only one of many price regulation laws during the war, and tenancy protection – requiring the landlord to show just cause for terminating a contract – was necessary to render the price regulations effective.

These rights have by and large remained and has been viewed as protection for the weaker party in the contract (just as in the case of consumers or employees), but they have not made us ask whether tenancy may be should be viewed as a real property right.

3. Rent regulation

Today Sweden and Denmark still have rent control in the private sector through legislation, but Finland does not.⁷ In Denmark, only the private sector is bound by the price regulation. Municipal housing companies do not strive to maximise profits and thus do not need to be under any price regulation. In Sweden, almost all rental apartments fall under the same rent regulation.

² Numhauser Henning (1988) p. 31 and 151.

³ Ploeger-de Wolff p. 1.

⁴ Schmidt et al 2005 p. 12.

⁵ Ralli (2014) p. 8, Juul-Sandberg (2014-a) pp. 4 and Bååth (2014) p. 4.

⁶ Bååth (2014) p. 4, Juul-Sandberg (2014-a) p. 5 and Ralli (2014), p. 81.

⁷ Ralli (2014) p. 83.

3.1 The rent regulation regimes in Sweden and Denmark, and Finland

The starting point for determining the rent in Sweden and Denmark (and Finland) is based on the contractual freedom that arises in connection with the establishment of tenancy agreements. However, the legislation contains a number of mandatory rules, which mean that the rent may be reviewed at any time if the agreed rent violates applicable legislation.

3.1.1 Sweden

Today the rents in Sweden are determined through a utility value system (*bruksvärde*system), which sets the reasonable rent for an apartment. Section 55 of the Swedish Tenancy Act⁸ states that the rent cannot be considered to be reasonable if it is substantially higher than the rent for units of equivalent utility value.

If the parties have agreed on an excessive rent, the tenant shall start by informing the landlord of the new terms and conditions he or she wants to establish. If an agreement cannot be reached, the tenant is entitled to apply to the regional Rent Tribunal. When deciding the case, the Rent Tribunal will look at similar apartments with rents determined in collective bargaining agreements and there are many available objects as 90 % of Swedish tenants get their rents set in such collective bargaining agreements between the landlord⁹ and the Swedish Union of Tenants¹⁰. Normally the tenant union agrees either with the municipal landlords first and then that agreement sets the principles for the time period for the private landlords as well, or vice versa, and the agreement with private landlords and the organization representing the private landlords sets the principles for the municipal housing companies. If the parties do not agree, an application to the Rent Tribunal is usually made.

It is reasonably easy for the tenant to challenge a rent that has been set too high. Even if the tenant cannot produce evidence of an apartment of equal value, with rent determined in a collective agreement, the Rent Tribunal will make an assessment of the rent such an apartment would have had, based on the Tribunal's knowledge about local rents. It is almost impossible, however, to challenge the way that rents are set by the Swedish Tenants Union together with municipal or private landlords in collective bargaining agreements. If they agree, for instance, that location shall be very important in one city and of very little importance in another city, both solutions are deemed fair because they resulted from the collective bargaining process.

In the 2011 reform there was intense discussion on whether new provisions should be introduced in the Tenancy Act, on how the price regulation should work. A Government White Book from 2008 suggested the following legal criteria to be introduced in the Tenancy Act: the apartment's size, standard, layout, location and other similar factors. It also suggested that the length of the waiting list or comparison with the prices on apartments in the ownership sector could be used as a tool for assessing the value of such factors objectively.¹¹ However, when the Parliament adopted the new rules the suggested criteria was omitted and so were the references to market prices. At the time the landlords accepted this compromise, partly because the reform still included the obligation for the municipal housing companies to operate on business like principles and partly because a legal list of criteria and guidelines for its operation in preparatory works can be changed whenever there is a new

⁸ Chapter 12 of the Swedish Land Code of 1970:994 (*Jordabalken*).

⁹ The Swedish Property Federation may also be a party to the collective bargaining agreement.

¹⁰ http://www.hyresgastforeningen.se/Om_Oss/vad_gor_vi/Sidor/vi-forhandlar-din-hyra.aspx. Other unions of tenants may conclude collective bargaining agreements with the same effect.

¹¹ Government White Paper (SOU) 2008:33 p. 45 and pp 469-475.

government. A void to be filled out with court practice seemed to provide for a more stable and less political rent regulation.

Therefore there are still no guidelines in Sweden for when a collective bargaining shall be set aside and Svea Court of Appeal (the highest court in these type of cases) understand this as the law giving almost unlimited freedom for the parties to set the principles for the local tenancy market in the collective bargaining agreements and if for instance one party want location or any other factor to count for more the only viable course is to get the opposite party to agree.¹²

3.1.2 Denmark

Four types of rent regulation exist in Denmark for private rental properties, of which market rent is the only one which actually relates to market forces and therefore to supply and demand. Market rates apply in the private sector for houses built from 1991 onward and for a few other types of tenancies, including newly built facilities.¹³ The principal form of regulation is the cost-based rent, which was introduced in 1976 and which still regulates the rent in approximately 79 % of the private rented sector, as the system applies in almost all larger municipalities.¹⁴ It is determined on the basis of the running costs attributable to the property concerned. In addition, the owner can add a number of statutory provisions, a profit, and a surcharge for any improvements made to the rented property since the property was originally constructed. The rent is therefore an estimate and not a direct calculation of the actual cost held. The estimate is not based on actual price of the property when purchased – or any profit gained on it.

This system therefore means that very large numbers of tenancies pay a rent below – or at least without the influence of – market rates. The system is effective; rents are controlled and it is easy for a tenant to challenge the initial rent if it is not set in accordance with the law. Moreover, when properties are located in regulated municipalities, it is not possible, at the commencement of the tenancy, to set the rent or terms and conditions for the rent which, based on an overall assessment, are more onerous for the tenant than the terms and conditions which apply to other tenants in the property.¹⁵

Special rules apply to tenancies in small properties in regulated municipalities, i.e. to tenancies in properties which, as of 1 January 1995, comprised six or fewer residential apartments (not including single rooms).¹⁶ Correspondingly, for properties owned by co-operative housing associations, these rules will apply if there are six or fewer residential apartments in the property which are let by a co-operative housing association, for as long as the property is owned by the co-operative.¹⁷

In the so-called “unregulated municipalities” – no special rules apply regarding the amount of the rent at the time of the signing of the agreement, but following commencement of the agreement, the tenant may demand that the rent be reduced if it substantially exceeds the value of the premises. In these cases, the rent must be determined (on a discretionary basis) through a comparison with tenancies

¹² The central case is RH 2014:43 (*Wåhlin*).

¹³ Danish Tenancy Act Section 53, subsection 3-6.

¹⁴ See: Socialministerens endelige svar af 25. februar 2011 på spørgsmål 75 til Boligudvalget – (BOU Alm. del). Statistics Denmark. A Municipal Council can individually choose to abolish the regulation if it so desires, but this action requires a political majority.

¹⁵ Housing Regulation Act Section 5 (9). E.g. Grubbe-Edlund (2008) p. 185, Dürr et al (2010) p. 48.

¹⁶ Housing Regulation Act Part IV A. See Juul-Sandberg (2014-b) pp. 235.

¹⁷ Ugeskrift for Retsvæsen 2013 p. 2157 Western High Court decision. The case has been appealed to the Supreme Court.

concerning properties in which there are seven or more tenancies and for which the rent has been regulated in accordance with the provisions concerning cost-based rent. The cost-based price control thus affects the rents for these properties as well. This is technically complicated and when stating that Denmark has four rent control systems, we can divide the “unregulated” municipalities into two subgroups. The four groups are thus cost-based rents, two forms of “unregulated” municipalities, and finally dwellings in houses built after 1991 and types of dwellings as specified in Section 53 (3-6) in the Danish Tenancy Act where market rents are allowed.

The rent for properties in unregulated municipalities can be regulated during the period of tenancy in accordance with the rules for the value of the premises.¹⁸ It is also possible to agree on rent increases in accordance with the net retail price index.¹⁹ The increase may be implemented by the landlord's written notice thereof to the tenant – but only if, after the increase, the rent does not exceed a level in accordance with the legislation.

The rent for properties situated in regulated municipalities can be increased in accordance with the rules regarding rent that does not exceed the amount required to cover the necessary operating costs for the property. The rent can also be raised when improvements have been made. The rent of most other tenancies can be raised when the value of the tenancy significantly exceeds the existing rent and similarly when improvements have been made.

3.1.3 Finland – rent control abolished

There is no direct rent control system in the private rental sector in Finland. If the rent exceeds the market rent, the court can at the tenant's request reduce it. In principle, the ground for increasing rents must be agreed upon in the contract, precluding any blanket right for a private landlord to increase rent unilaterally.²⁰ The most commonly used indexes are the cost-of-living index and the consumer-price index.²¹ In 2003, co-operation between the associations of landlords and tenants produced a common guideline called Fair Rental Practices. Along with the recommendations that negotiations must be initiated no later than six months prior to an intended increase and that the increase must be reasonable, the code of good practice says: “Increases may not exceed 15 per cent a year, except in situations where extensive renovations are being made to improve the property and the rental value of the apartment”.²²

3.2. Comparative remarks on rent regulation²³

None of the countries has rents that are totally free. Such rents would allow a landlord to evade all other aspects of tenancy protection and increase the rent to an unreasonable level. In Finland and for some dwellings in Denmark, the landlord is allowed to charge market rents, but the court can reduce them if they become significantly higher or stop termination of an open-ended contract if the landlord demands an excessive rent as a condition for letting the tenancy continue.

¹⁸ In accordance with Sections 47-49 of the Danish Tenancy Act.

¹⁹ The Danish Tenancy Act Section 53. This section was changed by 1 July 2015. Before this date a “stepwise” increase (an increase by a specific amount once a year) was also allowed. The regulation was changed to make the use of rent regulation clauses more transparent. Act no. 310 of 30 March 2015.

²⁰ Act on Residential Leases 27(2); Kanerva-Kuhanen (2011) pp. 34 and 151.

²¹ Ibid p. 150.

²² Fair Rental Practices p. 3.

²³ On the general comparison of the Swedish, Danish and Finnish systems, see: Norberg et al (2015) pp 63-66.

Both Denmark and Finland have systems for automatic increases of the rent when agreed upon in the tenancy contract. In Finland, during the lease, the parties may also freely agree to a higher rent for only a few months, for instance to cover the costs of renovation.²⁴ In Denmark – when the landlord has improved the premises – the landlord may demand a rent increase by an amount corresponding to the increase of the value of the premises.

Sweden is different. The Swedish system is designed to induce landlords to become a part of the collective negotiation system. Within that system, collective bargaining agreements with the tenant union for long time periods (even open-ended ones) are possible, along with regular rent increases according to agreed conditions. Without this, the landlord must go to the Rent Tribunal and start a case each time a tenant disagrees with the requested (annual) increase.

3.3 Preliminary discussion of the rent regulations in their context

The overall conclusion when comparing the rent regulation/rent control system in the three countries is that at a fundamental level, the legislation started out in a very similar way and rent control was implemented during World War One in all three countries for the same reasons.

The way rent control then has evolved has differed, however. One very important difference is the Swedish collective bargaining system, which has its origins in voluntary agreements between the Swedish Tenant Union and both municipal and private landlords after the Second World War; it lies at the core of Swedish rent regulation.

EU or international regulation seems to have had no direct visible effect on the way rent control works in Finland and Denmark. In Denmark, only the private sector is subject to rent control. The rent a private Danish landlord can charge under the cost price-based rent regulation or any of the other three rent setting systems, is thus unaffected by the rents in the municipal housing companies.

In Finland, landlords are either private and have free rents or are part of the social housing system which is open to municipal housing companies and private landlord with a public task. As the two systems are of almost equal size, the private landlords could feel that they are subject to unfair competition by not receiving state subsidies. In the parts of Finland where free rents are similar to price regulated rents, free rents are not an advantage that will compensate for the lack of subsidies. In Helsinki where the difference between market rates and regulated rates is substantial – the risk is that private investment is crowded out if a significant share of land is allocated to social housing.²⁵

In Sweden, the system of collectively bargained rents within the utility-value rent control system applies both to municipal and private landlords. When this form of rent regulation replaced the old cost-based one, the rents charged by municipal landlords were to set the standard in the private sector as well (1975-2010). If a Swedish municipal housing company received a subsidy from the municipality and could therefore keep the rents low, private landlords needed to do the same. This was seen as a possible breach of EU law, and in 2011 the system changed.²⁶

Any rent set in the collective bargaining process nowadays has the same value as a measurement of fair rents. The municipalities no longer have the right to subsidize their housing companies, for instance through helping them to borrow money on more favourable terms. In a system where a

²⁴ Courts can always examine the reasonableness of the rent. Kanerva-Kuhanen (2011) p. 145.

²⁵ See, de Boer-Biletti R (2014) p. 16.

²⁶ Government bill 2009/10:185 pp 14-18, p. 25 and pp. 64-65.

collective bargaining agreement between the tenants' union and the municipal landlords clearly affects the rents of the private landlords – and vice versa – it was regarded as necessary to make sure that the companies competed on a level playing field. So far the visible effects of this change on the rent structure have been small.²⁷

Denmark and Sweden are similar in having a large municipal housing sector – in both countries it is larger than that of the private landlords.²⁸ In Finland the social housing sector is almost as large as the private sector. In Denmark and Finland, a subsidy to the municipal housing company does not have any direct effect on the rents in the private rented sector, and in many places not even an indirect effect can be seen because there is no housing surplus and no direct competition between private landlords and social housing companies. If there is a housing shortage the private landlords will always have potential tenants. A municipal subsidy to construction of new apartments to the social housing sector will not affect the rent of a private Danish landlord because neither the cost-based rent regulation, nor any other rent regulation is based on the cost (or rents) in the municipal sector. In Finland market prices apply in the private sector. All that happens is that there is a price difference between tenants who rent in the municipal/social housing sector and in the private sector

In Sweden, the rent charged by the municipal housing company will – if set in a collective bargaining agreement – become a norm for the private landlords through the rent regulation system. The Courts have (according to Svea Court of Appeal)²⁹ no legal rule permitting a material review of the evaluation of different characteristics such as location. The evaluation agreed on between the municipal housing company and the tenant organisation will form the guiding principles for the private landlord as well. A municipal subsidy that allows a Swedish municipal housing company to lower their rents will thus normally make a Swedish private landlord legally bound to reduce their rents in the same way.

Therefore, it is possible that all three countries have made accurate interpretations of EU law. In Sweden – unlike in Denmark and Finland – the rent regulation ties municipal and private landlords together to a commonly shared rent structure – whatever other market conditions apply. In Finland and Denmark competition problems arise only under certain market conditions (mainly where there is surplus supply of housing).

In many ways, the rules on rent regulation/rent control – especially in Denmark but also in Sweden – are difficult to understand and interpret, for both landlords and tenants. In Denmark it is not possible for lay people to properly calculate the maximum rent applicable to a particular tenancy, which means that in many cases the rent is unintentionally set too high. This is the cause of many legal disputes.

In Sweden, it is reasonably easy for a layperson to show that the rent exceeds that of an apartment in the same municipality with the same utility value and with a collectively negotiated rent. But if the laypersons – or an expert – would demand a reason for the evaluation in the collective bargaining agreement, they would be denied an answer. The parties involved in the collective negotiation process have the right to agree on the value of an elevator, a central location, a nice garden and so on.

²⁷ Ljungkvist (2015) p. 119.

²⁸ <http://www.fastighetsagarna.se/om-oss-se> (2015-08-31). http://www.sabo.se/om_sabo/Sidor/default.aspx. In Sweden there are 700,000 apartments in the private rental sector and 800,000 municipal apartments. In Denmark the private landlords have 700,000 dwellings and the municipal housing companies 595,000 dwellings, Juul-Sandberg (2014-a) p. 26.

²⁹ RH 2014:43.

In 2012, the average rent in Sweden was 5,960 SEK (640 EUR) per month for an apartment.³⁰ The average disposable income per household was 275,200 SEK (29,560 EUR) a year in 2011, or 22,900 SEK a month (2,460 EUR).³¹ That works out to a rent-to-income ratio of 25 %.

In Denmark, the average rent per square metre in 2012 was approximately 1,000 DKK (134 EUR) in Copenhagen (and Aarhus). In general, approximately 29 % of Danish disposable income is used to pay rented housing expenses.³² This is a little higher than in Sweden.

In Finland, the average rent per square metre of non-subsidized rental dwellings was 12.84 EUR per square metre for the whole country and 10.41 EUR the social housing sector.³³ The average tenant uses 27 % of disposable income for rent.³⁴

Even though the technical construction of rent control is very complicated and different, the outcome and effects seem quite similar. All three countries have subsidies, but none of the three can afford to subsidize housing too heavily. Therefore – when looking at the larger picture – the rent control systems in Sweden and Denmark need to achieve rents similar to the free-market rents in Finland. In Finland the rent difference between rent regulated, subsidized housing and freely priced apartments is pronounced in Helsinki (4.82 EUR per square metre) but much smaller in the rest of the country (0.51 EUR per square metre).³⁵

Another consequence of rent control is that in the largest cities, there is a surplus demand for private rented properties. In Sweden there is a general national shortage of housing, with more households than dwellings and very few empty apartments.

In Central Copenhagen, the same types of problems are arising as the demand for cheaper rented dwellings is increasing. More people want to live in the capital and waiting lists for social housing dwellings are very long.

Some of the advantages for the landlords on this matter – that they might not acknowledge – is that a steady high demand may prevent losses from vacant lettings and that they can pick and choose among tenants to get the most stable ones. The downsides from the landlord's point of view are of course reduced profits.

The same situation seems to be present with regard to subsidized housing in Helsinki.³⁶ This indicates that “setting the rent free” is probably not a complete solution. There are also some other barriers for the functioning of the private rental sector market in Finland. In large parts of the country outside of Helsinki there are no large price differences between social and private housing. In these parts of the country the differences might not lead to problems, but in tighter markets – in the larger cities and especially in Helsinki – there are long waiting lists in social housing and in general insufficient supply

³⁰ Statistics Sweden, Statistical Yearbook of Sweden 2013, p. 164.

³¹ http://www.scb.se/Pages/TableAndChart____163552.aspx.

³² Juul-Sandberg (2014-a) p. 26.

³³ http://www.stat.fi/til/asvu/2014/asvu_2014_2015-03-06_tie_001_sv.html (2015-08-31). Finland Statistics figures for 2014.

³⁴ Ralli (2014) pp. 33.

³⁵ See above footnote 54.

³⁶ Ralli (2014) pp. 33. Compare ARA, Översikt av bostadsmarknaden 1/2012, p. 13.

of housing in the metropolitan region of Helsinki is a central concern, where a significant share of land is allocated to social housing, thus potentially crowding out private rental sector investments.³⁷

A favourable tax treatment of owner-occupied housing makes home-ownership attractive for most households in Finland. And the relatively large social housing stock also provides barriers for the private rental sector, as many tenants with moderately high income are still eligible to get an apartment in the social housing sector – about 70 % of the population.

The tenants that can afford market prices will get access to rented housing, but for the rest, waiting for an apartment with a housing company that applies social criteria like need (the major criteria in Finland) and waiting time will become a reality – or sharing space in apartments with other persons so as to be able to pay the market rent. All three countries rely on municipal housing companies or other subsidized housing to achieve affordable housing. The alternative would be for municipalities (or the state) to be ready to subsidize tenants to such a high degree that they can afford the market prices – but such a solution could become very expensive.³⁸

In Denmark, housing policy – especially taxes on the value of private property and rent control on the private rental market – is not on the political agenda. Tenants and their relatives are voters. Therefore the politicians in Parliament do not dare to suggest any changes to the systems. Arguments that a more well-functioning private rental sector may have positive effects on the economy and labour mobility and reduce inefficiencies and risks of owner-occupied and social housing are somewhat ignored.

This means that even though economists recommend setting rents free, this will not happen.³⁹ The economists have failed to develop a more nuanced comprehension of the aim of rent control and the much-differentiated private rental sector. They also fail to take into consideration that public opinion (and not only among tenants) is that rent control is favourable. The Swedish Federation of Property Owners keeps the debate alive on liberalizing rent regulation in Sweden, but so far they have had limited success.

The reasons why abolishment was possible in Finland in 1995 may be seen in the light of the political “climate” at the time – in Finland, it came after a recession in the late 1980s and with a desire for more activities in the construction industry. This aim has been at least partly achieved. The private rental sector has grown from 12 % at the time of the reform to 17 % of the housing stock today.⁴⁰ Similar political agendas were current at the same time in Denmark, with the result that rents for all new, private rented dwellings that came in to use after 1991 could be set free. The overall and main conclusion to be drawn about the rent regulation regimes in Sweden, Denmark and Finland is that it is not possible to establish whether there is a “best practice” because the markets and political situations in the three countries for this specific area of tenancy law do not call for a common solution.

4. Tenancy protection regarding the right to keep, use and transfer an apartment

4.1 The basic protection against termination

³⁷ de Boer-Biletti (2014) p. 26.

³⁸ See Swedish Tenant Union, Den svenska hyresmarknaden: Scenarioanalys (2015).

³⁹ Hede (2006) p. 35.

⁴⁰ de Boer-Biletti R (2014) p. 26.

The right for a tenant to keep a dwelling that serves as a home is the most basic right. It is achieved through a requirement on the landlord to show just cause for terminating an open-ended contract and restrictions on the use of time-limited contracts.

In Denmark, the tenant can stay as long as she or he can afford the rent. Termination of open-ended contracts requires just cause and the right to use time-limited contracts is regulated as well, irrespective of whether rent regulation applies. The court can set aside a time-limit clause if it is not warranted by the personal needs of the landlord.⁴¹

In Sweden, time-limited contracts can be agreed upon – but the time limitation is irrelevant. According to Sections 3, 46 and 49 of the Tenancy Act, the landlord needs just cause to let the tenancy expire at the end of the agreed time period, precisely as just cause is needed for terminating an open-ended contract. Thus, tenancy rights in Denmark and Sweden – in principle – are perpetual.

In Finland the landlord is free to use time-limited contracts to be certain of getting the apartment back at the end of the agreed period.⁴² This freedom means that Finnish tenants do not have as strong “ownership right” as Swedish or Danish tenants.

4.2 Landlord requirements on the dwelling for personal/family use

In the private sector in Finland, freedom of contract applies, and just cause for terminating the tenancy is not needed – all that is needed is that the contract is terminated for an acceptable purpose (*godtagbar orsak*). In Finland a landlord may even terminate a time-limited contract ahead of the agreed time period for family reasons.⁴³

In Denmark, the landlord can terminate an open-ended contract if he or she needs the apartment, but cannot do so on behalf of an adult child starting a family (or any other relative for that matter). This rule applies to both private housing with rent regulation and private housing with market rates.

In Sweden, the main rule in the Tenancy Act is that all personal reasons the landlord may invoke for ending a tenancy are perceived as only a weak justification. If the tenant has his or her home in the apartment, termination is not possible.⁴⁴ Therefore, a large-scale rental company cannot normally evict a tenant to arrange housing for the landlord/owner or a landlord’s family member. However, if the landlord owns a few dwellings and they are bought mainly for family reasons, termination is permitted. In this situation – unlike in Denmark – helping children or parents to obtain a dwelling is allowed.

4.3 The tenant’s right to transfer the tenancy to a family member

The right to transfer property is a natural right for owners, but a right that seldom exists in rental agreements. In all three Nordic EU countries, if a tenant dies, the spouse can take over the tenancy. The same rule applies to co-habitants. In Sweden and in Finland there is no time requirement. In Denmark the cohabitation must have commenced at least two years before the death of the tenant.⁴⁵ In Finland, an adult child, a parent of the deceased or the partner has the same right, if they live in the

⁴¹ Juul-Sandberg (2014-a) p. 79. Examples of personal need are; if the landlord works abroad or if the landlord, in an economic downturn, has problems selling the apartment at a reasonable price and wants to try again later.

⁴² Ralli (2014) p.113. Finnish tenants are protected against abuse in the form of multiple contiguous, short-term contracts. If the time limitation is reasonably long, the principle of contractual freedom applies.

⁴³ Finnish Tenancy Act (*Lag om hyra av bostadslägenhet* 31.3.1995/481), Section 55.

⁴⁴ Bååth (2014) p. 94.

⁴⁵ Juul-Sandberg (2014-a) p 77. There is no time limit for married persons.

apartment at the time of the tenant's death.⁴⁶ In Sweden, any relative who has lived for three years with the tenant before the tenant's death may assume rental possession of the apartment, if he or she is able to pay the rent and has not been a nuisance to the neighbours.

In terms of tenant rights, the rules on death and the rules on divorce or separation are generally the same in all three countries. With regard to divorces or separations, the courts may decide that the person not having the contract needs the apartment (for instance if that person is the prime carer of a common child), but apart from such situations the parties are free to agree on who gets the apartment within the limits above. These rights are mandatory in all three countries.

The protection for tenants is thus extensive in all three countries, with Finland and Sweden giving marginally better protection than Denmark. However, in Finland the landlords can freely use time-limited contracts and the relative will then take over a tenancy that the landlord can terminate at the end of the agreed time – just as for the original tenant.

4.4 The right to sublet part of the apartment

A right to let out the entire property or sublet a part of it is also a natural part of ownership. There is no rule allowing an owner to rent out his or her house. It is allowed unless a legal rule prohibits it. The opposite principle applies to rented property.

In Denmark and Finland the tenant has a right to sublet half of the dwelling's rooms to unrelated persons.⁴⁷ This right is absolute. The tenant need not show that the subletting is necessary to be able to afford the apartment, or any other valid reason. In Finland, a private landlord can freely use time-limited contracts and get the apartment back at the end of the agreed time period, thus limiting the general effect of all aspects of tenancy protection.

In Sweden there is no maximum number of rooms that can be sublet, as long as the apartment is large enough for the number of persons living in it.⁴⁸

4.5 The tenant's right to sublet the whole apartment

As a general rule, it is not allowed to sublet the whole apartment in any of the three countries, but all of them have situations where it is permitted. In Denmark it is permitted to sublet most dwellings for a period not exceeding two years, for reasons such as illness, business, placement, studies etc. The Finnish rule is almost identical.⁴⁹

In Sweden, more situations are expressly mentioned in Section 40 of the Swedish Tenancy Act, for instance starting a relationship. The tenant usually gets permission for one year (six months if trying out living together with a new partner).⁵⁰ New permissions may be given especially for "better" reasons such as work or studies.⁵¹ If, in the case of illness, the tenant has a reasonable chance to

⁴⁶ Ralli (2014) p.112. With regard to parents there is scope to regard the landlord's interest as well.

⁴⁷ Juul-Sandberg (2014-a) p. 77 and Ralli (2014) p. 110.

⁴⁸ See RBD 11/78 and Government bill 1968:91 Appendix A, p. 150.

⁴⁹ Finnish Tenancy Act (*Lag om hyra av bostadslägenhet* 31.3.1995/481), Section 18 mentions "work, studies and illness" and is open, just like the Danish rule.

⁵⁰ Larsson et al p 181.

⁵¹ Edling (2014) p. 260.

become healthy enough to return to the dwelling, the right to sublet can be renewed with no upper limit.⁵²

Sweden seems slightly more generous towards the tenant compared to Finland and Denmark, with regards both to the situations where subletting is allowed and its accompanying time limits.

4.6 Choosing wallpapers and similar interior features

Finally, there is also the tenant's right to alter a rented apartment to his or her liking. The owner of a house may paint it in another colour, but a person renting a dwelling does not have this right. In Sweden, the tenant has a right according to Section 24a of the Swedish Tenancy Act to paint, change the wallpaper, the flooring etc., even if the landlord keeps the apartment in good repair. As long as the tenant stays in the apartment, the landlord has no say in the matter. When the tenant moves out, the landlord is entitled to damages, but only if he or she has suffered a loss. Changing new neutral wallpaper to one with a very special pattern may make the apartment more difficult to rent out again, and the landlord may then be entitled to reimbursement from the tenant for the cost of changing the wallpaper.⁵³ However, if the old wallpaper was so old that the landlord needed to change it anyway, the new wallpaper has not led to any additional cost for the landlord – and there will be no damages.⁵⁴ This Swedish right is really a core ownership-user right. Nobody would dream of changing the colour of a rented car or anything else they rented.

4.6 Protection against new owner of the property

If a person rents a car for a year and that car is sold before the rent contract expires, the buyer will be able to get possession of the car. The renter loses possession of the car because the buyer has a better right to use it. The Latin term to describe this principle is *emptio tollit locatum* (a purchase breaks a rent contract). It applies as the legal rule setting the starting point of renting of normal property (as opposed to real property), because renting of normal property is usually a right in person – a right valid only against the counterpart of the contract.

With regard to real property, the normal legal solution is that tenants keep their rights with respect to the new owner of the property; the renter thus has the better right to use the premises than the new owner. The Latin term for this is that it is a *right in rem* – a right valid against everybody. All three Nordic EU Members have this solution in their tenancy legislation.⁵⁵

5 Ownership versus contract approach

Several individual aspects of the tenancy legislation point towards taking the view that the tenant has a right of ownership to a home with a degree of real property characteristics. These aspects relate both to the termination of the contract and the use of the apartment.

⁵² Government bill 1997/98:46 p. 58.

⁵³ RBD 1978:37. See also Björkdahl, (2013) p. 137.

⁵⁴ Edling (2014) p. 180.

⁵⁵ Bååth (2014) pp. 97, Ralli (2014) p. 107 and Juul-Sandberg (2014-a) p. 29.

However, this might not be the right perspective. In all three Nordic EU Member countries, tenancy law is formally framed as contract law with special protection for the tenant, in the same way that consumers or employees also receive protection in special legislation from a contract-law point of origin.

In all three countries, contract law applies to conclusion and interpretation of tenancy contracts.⁵⁶ There are no special requirements for conclusion; offers (and acceptance) will be binding without further requirements when negotiating, and oral contracts are also binding. This is in contrast to the rules regarding real property, where formal requirements like written contracts (and in some other countries even registration) sometimes are a necessary condition for the validity of contractual terms. Looking at what happens when the tenant enters into a contract; the contract-law approach seems well founded.

The question then arises whether or not it makes a difference if a contract-law or an ownership/real-property law approach to renting of homes is taken.

6. Final remarks: rent regulation revisited from a real-property or an ownership perspective

Looking at rent regulation in Denmark and Sweden makes it clear that the concept is popular among tenants. Tenancies are a large part of the housing sector and this is a group that politicians cannot afford to ignore. However, it is also obvious that there are no concrete ideas about what a just rent is or how it should be calculated. A layperson cannot easily understand how rent is calculated in the Danish cost-based system (or in other Danish rent control systems for that matter). The average tenant, however, trusts the system to come up with a reasonably fair and predictable rent – compared to the ups and downs of market pricing – and therefore supports the system. The same applies in Sweden. The utility values are set in the collective bargaining system and the rents resulting from this process are seen as fair because of the trust the tenants put in the system relative to the trust they put in market pricing.

With regard to both subsidies and rent control, renting a home is very different from owning one. This difference is pronounced if renting a dwelling is perceived as a rent contract, rooted in contract-law principles as opposed to home ownership. Rent contracts then become quite like ordinary contracts, as in Finland (if the landlord use the freedom to impose time-limited contracts), where special legislation applies only as long as the contract is in force and contracts can be terminated at the end of the agreed time period. The tenancy legislation may also give the tenant a right to stay in the apartment perpetually. If this path is taken by the legislator rents cannot be completely free, because an unreasonable rent hike can be a way of forcing the tenant to leave the apartment. Market rents are possible but the landlord cannot be allowed to go beyond that point.

If the fairness of a rent control system is to be judged in relation to other contracts, there really is nothing with which it can be compared. As in the labour market, one has to state that it is a contract *sui generis* (of its own kind).

If, one on the other hand, one takes the view that the tenant has some kind of “ownership” of his or her home and that renting a dwelling creates a right with real-property characteristics, there is a group to

⁵⁶ Bååth (2014) pp. 54, Ralli (2014) p. 86 and Juul-Sandberg (2014-a) p. 61.

compare with: the true owners. In the ownership market, the buyer faces market forces when buying a home, because the prices and the interest paid on the loan are set by market forces. When living in a home the buyer is shielded from increasing prices for homes. Even if the market price doubles, the loan and the interest stay the same. The owner can become unable to afford the home, if the source of income is lost or if the interest on the loan increases too much. If property taxation increases (it may be linked to market prices, for instance) or energy prices go up, a home can become unaffordable too.

A price regulation can be constructed in a way that strives to give the tenant the same protection as home owners against market forces. Such a regulation would have free rents when a contract is first signed, just like the free pricing in the ownership market. Yearly rent increases could then be set according to an index. Such a calculation should try to target true cost changes, such as the energy cost, taxation, inflation on materials and wages, changes of the real interest rate and so on. The tenant would thus be protected if the market gradually doubled the value of a central location, but not if the politicians create taxes that mirror this increase – just like an owner faces cost increases in the latter case but not in the former case.

The same thing could be said about subsidies. The different forms of subsidies that a state applies should be constructed so that they apply equally to rented and owned housing – for instance a set amount for each newly produced dwelling. Special forms that are available only to owners, such as the possibility to deduct interest on a mortgage from income tax, should be avoided.

Maybe it is not possible – or at least very difficult – to create such a rent regulation and subsidy system. Maybe the reader disagrees that the treatment of house owners with regard to taxes, subsidies and market prices is a natural starting point for evaluating the fairness of taxes, subsidies and rent control for tenants.

However, the question of whether or not renting a home is considered as a right related to ownership with real property characteristics – or whether one perceives this as a right mostly connected to contract law – is clearly relevant when forming ideas of a just regulatory balance between landlords and tenants. The more one considers tenancy as a real property and an ownership-user right, the more natural a comparison with the true ownership market becomes.

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