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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

National Report for the NETHERLANDS

Authors from Delft University of Technology:

Marietta Haffner	Section 1-4, 9
Menno van der Veen	Section 5, 6, 8, 9
Hafida Bounjouh	Section 6, 7, 9

Team Leader: Hendrik Ploeger, Delft University of Technology

National Supervisor: Jeroen Wolfrat

Peer reviewers:

Vera Horváth
Montserrat Pareja Eastaway
Nóra Tosics
Age Värvi

National Report for the Netherlands

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1 Housing situation¹

1.1 General features

The rental system in the Netherlands can be characterized with a few relatively unique features.

- With 34% it has the biggest social rental sector in Europe.² It is owned by housing associations. They are registered according to the 1901 Housing Act.
- Tenancy law, especially rent control (found in the Civil Code), is not organized based on dwelling ownership (social rental versus private rental), but dependent of rent level of the dwelling. Therefore, the rent levels of 92% of the rental sector – dwellings with a monthly rent up to 631.73 Euro between 1 July 2008 and 1 July 2009 – are regulated (Section 3.2, 3.6 and 4.1). Dwellings with a rent level higher than the 631.73 Euro at the start of the rental contract have a deregulated or liberalized rent level.
- Rent control is concerned with rent levels at the start of the rental contract (rent setting) and with annual rent increases (rent adjustment). The rent level is dependent on the quality of a dwelling which is expressed in number of quality points.
- Officially, it is the social landlords that have a public task, while private landlords do not. Having a public task or not is therefore irrelevant for tenancy law.

1.2 Historical evolution of the national housing situation and housing policy

- *The historic evolution of the national housing situation and housing policies.*
- *In particular: the evolution of the principal types of housing tenure from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatisation or other policies).*

The housing stock of about seven million units was dominated by the rental sector until 2000, when **homeownership** reached a market share of more than 50%, as Figure 1 shows.³ It continued growing and reached a share of almost sixty percent of stock in 2010. The share of **social renting – renting with a public task; also called housing associations** – increased until the 1980s. The decline thereafter left the sector with a

¹ The information in sections 1, 2, 3 and 4 was compiled in February 2013. In July 2013 further information was added in response to the questions of the Project Officer of the European Union and the leading team. And in February and March 2014 the text was adapted to the comments of the peer reviewers and of the country expert. This exercise included adding in questions that were added to the questionnaire in August of 2013. The information that has been added cannot be considered as full updates of earlier information.

² Kees Dol & Marietta Haffner, *Housing Statistics in the European Union 2010* (The Hague: Ministry of the Interior and Kingdom Relations, 2010), 67.

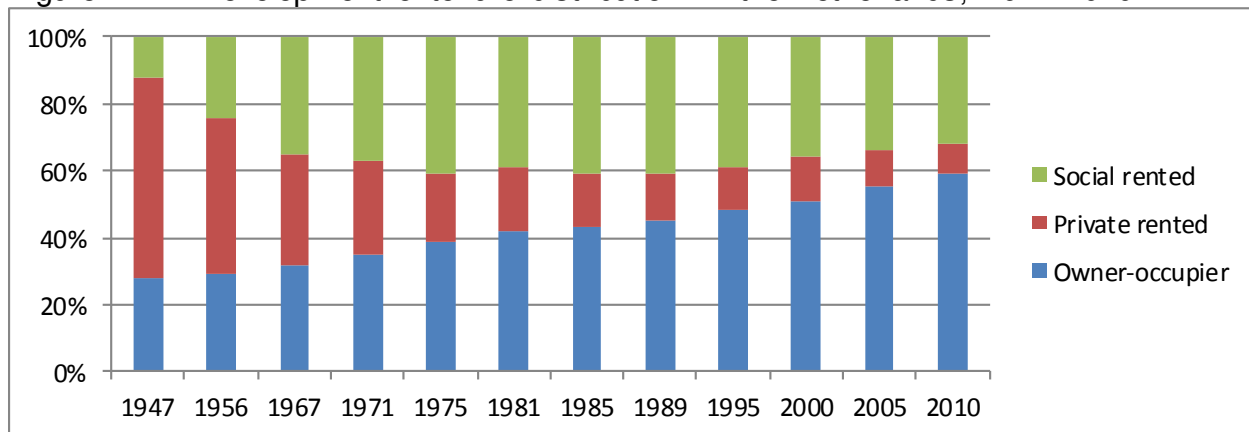
³ From: Marietta Haffner, 'The private rented sector in the Netherlands', in *Towards a sustainable private rented sector. The lessons from other countries*, ed. Kath Scanlon & Ben Kochan (London: London School of Economics, LSE London, 2011), 61.

share of more than thirty percent in 2010. The Netherlands is still the country with the biggest social rental sector in North-western Europe.⁴

Renting

Between the sectors of social renting and homeownership the **private rented sector – renting without a public task** – has been squeezed, its share dropping from 60 percent of stock in 1947 to less than ten percent in 2010, as Figure 1.1 shows. The decline of the private rental sector has largely been the result of a decline in the properties owned by private individual landlords (from 54% in 1947; not shown in this text, but can be found in Van der Heijden et al., 2002⁵). **Private individual (also called private person) landlords** were not subsidized in comparison with social landlords (also called housing associations in this text) and owner-occupiers, while rents have been regulated since the Second World War.⁶ The declining necessity to invest in rental housing in order to produce income in old age because of the introduction of a state pension, will also have contributed to the departure of the individual landlords⁷, as well as the sale of dwellings to social landlords, often as part of urban renewal⁸.

Figure 1.1 Development of tenure distribution* in the Netherlands, 1947-2010⁹



* Social rented implies rented with a public task; private rented is the term for rented without a public task. Statistics do not distinguish any intermediate tenure form (as defined in the questionnaire) or rent free units

As were the private person landlords, **private organization landlords** were also affected by rent regulation, but were compensated as they (mainly the **institutional**

⁴ Dol & Haffner, *Housing Statistics in the European Union 2010*, 67.

⁵ Harry van der Heijden, Marietta Haffner & Agnes Reitsma, *Ontwikkeling van de woonuitgaven in zes West-Europese landen* (Delft: DUP Science, 2002), 13.

⁶ From: Haffner, 'The private rented sector in the Netherlands', 61 and 73.

⁷ Peter Boelhouwer & Harry Van der Heijden, *Housing Systems in Europe: Part I. A Comparative Study of Housing Policy* (Delft: Delft University Press, 1992), 50.

⁸ Hugo Priemus, 'Commercial rented housing: two sectors in the Netherlands', *Netherlands Journal of Housing and the Built Environment* **13**, no. 3 (1998): 276.

⁹ 1947-2005: Marietta Haffner et al., *Bridging the gap in social and market rented housing in six European countries* (Amsterdam: IOS Press, 2009), 207.

2010: ABF Research B.V. Syswov 2010, 23 February 2013.

investors that have to invest the money of their clients¹⁰; e.g. insurance companies and pension funds) took advantage of subsidies that were available, pretty much on the same conditions as for social landlords.¹¹ These subsidies came in the form of periodic bricks-and-mortar subsidies for new construction which were being paid out to the investors in social housing as management subsidies. As they were covering the gap between revenues and expenses for a period of 50 years and the number of subsidized dwellings increased from year to year, by 1988 about 60% of total government expenditure on housing (excluding taxation) resulted from these past obligations.¹²

In the 1980s an idea of privatization and responsible private actors started pervading government policies, as government spending for 'social engineering' in housing continued increasing and was considered as becoming unaffordable.¹³ In the White Paper of 1989 entitled *Housing in the 1990s: from Building to Living*, a greater role for market forces was set out, as well as an intention to reallocate responsibilities and financial risks away from government.¹⁴ When the subsidies for new construction were reduced sharply after 1989 and phased out by the end of the century, large capital gains as a result of rising house prices in the 1990s, partly compensated institutional investors.¹⁵ Their share remained relatively stable in the period 1947-1993 at around six percent of stock, and declined thereafter.

In 1995 and 1998 the annual subsidy obligations (bricks-and-mortar subsidies) that were built up in the past were calculated as net present value per rental tenure and paid to the social and private landlords, respectively.¹⁶ This operation resulted in cutting the financial ties between the government and the landlords. In the social rental sector this cut made the social, non-profit, by government accredited landlords financially independent from government and they were to operate as social entrepreneurs from then on, running the risks of investment themselves while using the societal capital for the public task.¹⁷ In fact, they were to operate as a revolving fund.

The 1989 White Paper, not only changed the financial position of housing associations, it also recommended the transfer of municipal housing to (new) housing associations.¹⁸ As in this new constellation municipalities got the task to supervise housing

¹⁰ Jones Lang LaSalle, *Institutionele beleggers en vastgoedfondsen. Generations in Real Estate* (place of publication not given in document: Jones Lang LaSalle, 2011), 8, http://www.joneslanglasalle.com/MediaResources/EU/Marketing/Netherlands/Rapport_vastgoedbelegging_sbeleid_2011.pdf (last accessed on November 10, 2012).

¹¹ Haffner, 'The private rented sector in the Netherlands', 61 and 72.

And Priemus, 'Commercial rented housing: two sectors in the Netherlands', 275.

¹² Boelhouwer & Van der Heijden, *Housing Systems in Europe*, 73.

¹³ Haffner et al., *Bridging the gap*, 215.

¹⁴ Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, *Volkshuisvesting in the jaren negentig: van bouwen naar wonen* (Den Haag: Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, 1989), 51.

¹⁵ Haffner, 'The private rented sector in the Netherlands', 61 and 72.

¹⁶ Marietta Haffner, 'The Netherlands', in *Private Rental Housing. Comparative Perspectives*, ed. Tony Crook & Peter Kemp (Cheltenham, UK, Edward Elgar, 2014), 58.

¹⁷ Haffner et al., *Bridging the gap*, 216.

¹⁸ Marietta Haffner, 'Dutch Social Rental Housing: the Vote for Housing Associations', paper (plenary) presented at 9th European Real Estate Society Conference (Glasgow, 2002a, 4-9 June), 5.

associations, central (also called national) government thought it important to not also have municipal housing companies compete directly with the housing associations in supplying rental dwellings.

Owner-occupation

The owner-occupied sector developed more or less autonomously; especially from the 1970s on, in line with growing welfare. Home-ownership grew strongly and has become the largest tenure type on the Dutch housing market in 1981 (Figure 1).¹⁹ The second oil crisis in 1978-1982 brought a halt to the construction of new owner-occupied housing.²⁰ Better economic times, however, as a result of economic growth in combination with low interest rates in the 1990s, among others allowed for a further growth of the number of homeowners (see also Section 1.4). As a result of the internet bubble at the turn of the century, the prices of existing owner-occupied dwellings stagnated and turn-over time increased. The demand for expensive owner-occupied dwellings fell sharply, hampering upward mobility. Production collapsed, and in 2004 it had not returned to pre-2000 levels. After the slight stabilization, house prices have continued to rise up until the end of 2008 when the effects of the Global Financial Crisis (GFC) hit the housing market. See Section 2.2 and 2.5.

- *What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)?*

In the period 1980-2000 population in the country had grown from 14.1 million households to 15.9 million households (+13%²¹).²² On 1 January 2013 the population almost totalled 16.8 million.²³ As Table 1.1 shows, population growth has been slowing down since 2001, and since 2005 the positive migration balance (immigration being larger than emigration) has been making a contribution, a little more than one quarter of estimated growth in 2012. The migration balance from the EU-26 (+19,300) and within it from the middle and East-European countries (+12,000) is affecting the positive migration balance (+12,900). The natural population growth is at an all-time low. In 1871 it amounted to 35,000 persons for the last time.

Migration has contributed to a population composition by nationality by 1 January 2012 of almost five percent non-Dutch population (786,057 persons).²⁴ The group of the population with an EU-nationality (EU-26) amounts to almost 46% (360,847) of the non-Dutch population. With more than 110,000 persons, the group of other Europeans forms

¹⁹ Boelhouwer & Van der Heijden, *Housing Systems in Europe*, 48.

²⁰ Haffner et al., *Bridging the gap*, 209.

And: Marietta Haffner & Paul De Vries, 'Dutch house prices and tax reform', in *Housing and Tax Policy*, ed. Miranda Stewart (Sydney, Australian Tax Research Foundation, 2010), 159, republished in Paul De Vries (2010) <http://repository.tudelft.nl/view/ir/uuid%3A57c33fa8-a663-47cf-a63b-dcef16429edc/>.

²¹ Numbers in chapter mostly are rounded off to the nearest whole number.

²² Dol & Haffner, *Housing Statistics in the European Union 2010*, 17.

²³ Centraal Bureau voor de Statistiek, 'Bevolkingsgroei in 2012 ingezakt', *Persbericht* (Heerlen/Den Haag: CBS, 7 februari 2013, 9:30 am), 1.

²⁴ Centraal Bureau voor de Statistiek, 'Statline.Bevolking; geslacht, leeftijd en nationaliteit op 1 januari', <<http://statline.cbs.nl/StatWeb/publication/?DM=SLNL&PA=03743&D1=0&D2=0&D3=0-7.28.88.98.109.129.166&D4=13-16&HDR=T,G3&STB=G1,G2&VW=T>>, 19 February 2013.

the second largest group. There are more than 5,000 immigrants from the region that in the questionnaire is called Ex-Yugoslavia.

Table 1.1 Development of population (x 1,000), the Netherlands, 2001-2012²⁵

	Birth	Mortality	Natural growth*	Immigration	Emigration**	Migration balance**	Population growth***
2001	202.6	140.4	62.2	133.4	82.6	50.8	118.2
2002	202.1	142.4	59.7	121.3	96.9	24.4	87.3
2003	200.3	141.9	58.4	104.5	104.8	-0.3	65.5
2004	194.0	136.6	57.5	94.0	110.2	-16.2	47.5
2005	187.9	136.4	51.5	92.3	119.7	-27.4	28.7
2006	185.1	135.4	49.7	101.2	132.5	-31.3	23.8
2007	181.3	133.0	48.3	116.8	122.6	-5.8	47.4
2008	184.6	135.1	49.5	143.5	117.8	25.7	80.4
2009	184.9	134.2	50.7	146.4	111.9	34.5	89.2
2010	184.4	136.1	48.3	154.4	121.4	33.1	80.8
2011	180.1	135.7	44.3	163.0	133.2	29.8	74.5
2012****	175.5	140.7	34.7	155.7	142.8	12.9	47.7

* Difference between birth and mortality

** Difference between immigration and emigration; including balance of administrative corrections

*** Including other corrections

**** Provisional values

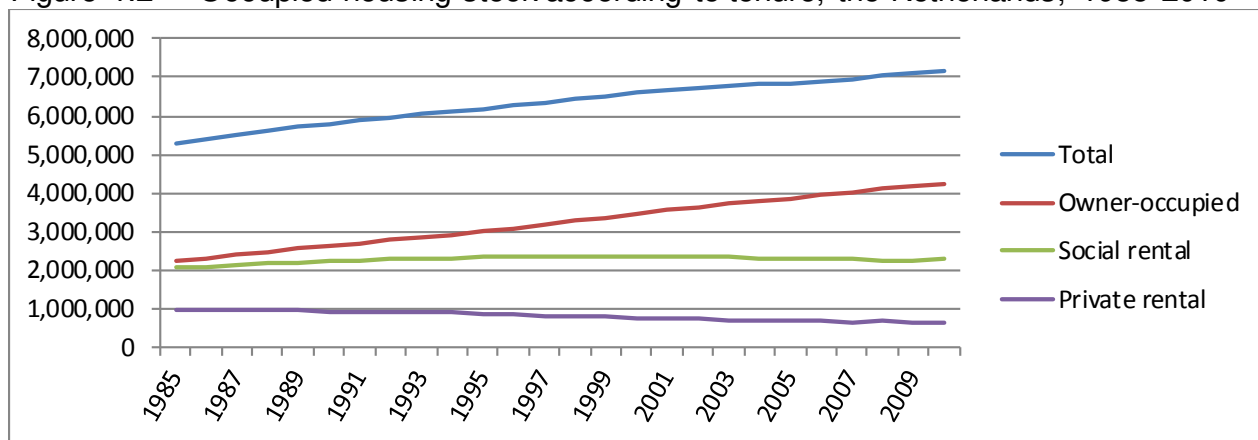
1.3 Current situation

- *Overview of the current situation.*
 - *In particular: What is the number of dwellings? How many of the dwellings are rented vs. owner-occupied? What would be the normal tenure structure (see Summary table 1)? What is the most recent year of information on this?*

Total occupied housing stock has grown from 5.3 million dwellings in 1985 to 7.2 million dwellings in 2010 (+36%). This growth has been produced by the substantial increase in homeownership from 2.3 to 4.3 million dwellings (+89%), while the private rental sector decreased from slightly under one million dwellings to 646,000 dwellings (-34%) and the social rental sector slightly increased from 2.1 to 2.3 million dwellings (+11%). Figure 1.2 shows these developments from the 1985 to the year 2010. In Figure 1.2 the corresponding market shares are shown (see also Summary table 1).

²⁵ Centraal Bureau voor de Statistiek, 'Bevolkingsgroei in 2012 ingezakt', 4.

Figure 1.2 Occupied housing stock according to tenure, the Netherlands, 1985-2010²⁶



1.4 Types of housing tenures

As explained in Section 1.2 (see also Summary table 1) in 2009 the main housing tenures are owner-occupation (59%), social renting or renting with a public task (34%) and private renting or renting without a public task (8%). Private landlords can be distinguished into corporate landlords and private person landlords (see further Section 4.1).

- *Home ownership*
 - *How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)?*

In the EU, the Netherlands can be called champion in mortgage borrowing.²⁷ It has the highest share of residential mortgage debt outstanding compared to GDP, more than 100%. The Netherlands (38,400 Euro) comes in third in the amount of residential mortgage debt per capita.²⁸

Part of the explanation for such extensive mortgage lending will be that most homeowners (about 86% of all homeowners) have mortgage debt outstanding (see also Summary table 1; there the 78% is the percentage of total dwelling stock instead of all homeowners). In an EU-context this is a very high share.²⁹ Next to that the typical LTV (loan-to-value) ratio for first-time buyers is relatively high with more than 100%.³⁰ Technically, the high ratio comes about because the transaction costs associated with the acquisition of a dwelling (e.g. transfer tax and real estate agent costs) can be

²⁶ ABF Research B.V. Sysvov 2010, 23 February 2013.

²⁷ European Mortgage Federation, *Hypostat 2010* (Brussels: European Mortgage Federation, 2010), 69. Any savings in a savings account in the case of an endowment loan, are not deducted from the total; therefore, the total can be regarded as an overestimation of residential mortgage debt outstanding.

²⁸ European Mortgage Federation, *Hypostat 2011* (Brussels: European Mortgage Federation, 2010), 78.

²⁹ Marietta Haffner, Christian Lennartz & Kees Dol, 'Housing', in *Countries compared on public performance. A study of public sector performance in 28 countries. Appendices*, ed. Jedid-Jah Jonker (The Hague: The Netherlands Institute for Social Research, 2012), 253.

³⁰ European Central Bank, *Housing finance in the Euro area* (Frankfurt am Main: ECB, 2009), 27.

financed with the mortgage loan. By 1 August 2011 the government maximized the LTV to 106% of dwelling value.³¹ This LTV still allows financing with the mortgage loan the transfer tax of the transaction of two percent (Section 3.7). By 1 January 2013 the LTV is maximized at 105%, unless it concerns an investment with the aim to save energy; then the limit remains at 106%. Plans are to lower the maximum LTV further in six steps until it will reach 100% in 2018, unless the mortgage loan is used for energy saving measures. Again to stimulate these measures, a higher LTV will be permitted.

However, the reason for such large loans can be found in the tax treatment of owner-occupied dwellings and more specifically in the fact that the mortgage interest is fully deductible for thirty years in income tax against marginal tax rates.³² The benefit is marginally offset by a tax on imputed rent amounting to less than one percent of the market value of the property in unoccupied state (see Section 3.7). The existence of the 30-year mortgage interest deduction caused mortgage types to appear on the market that allowed for the full deduction during the whole loan term, such as is the case with an interest-only mortgage loan. In the case of an endowment loan, no loan repayment takes place. Instead, funds are saved tax-free (under certain conditions) in a separate savings account which allows for the repayment of the mortgage loan in a lump sum after thirty years when the loan term comes to an end.

All these reasons together account for the fact that the Netherlands is considered as 'champion' in mortgage borrowing.

- *Intermediate tenures:*
 - *Are there intermediate forms of tenure classified between ownership and renting (such as condominiums, company law schemes and cooperatives)?³³*

There are diverse intermediate forms of home-ownership.³⁴ These forms can be considered as a 'cheaper' form of owner-occupation for the owner-occupier, as they aim to lower the risk of price change of the dwelling for the owner-occupier in the period from acquisition to sale. These forms, that are not the result of government initiative, are offered by social landlords under different names/schemes. For the most popular forms (***Koopgarant, Slimmer Kopen***), the seller (social landlord) will offer a discount on the sales price to the buyer in exchange for risk sharing.³⁵ This implies that the price change of the dwelling between the first sale and the second one will be shared. In times of rising prices, the buyer and future seller will each only get a share of capital gain, but this will also be the case in the situation of capital loss.

³¹ Rijksoverheid, 'Nieuwe regels hypotheek',

<<http://www.rijksoverheid.nl/onderwerpen/koopwoning/nieuwe-regels-hypotheek>>, 26 June 2013.

³² Marietta Haffner & Kristof Heylen, 'User costs and housing expenses. Towards a more comprehensive approach of affordability', *Housing Studies* **26**, no. 4 (2011): 601 and 602.

³³ Information about condominiums has not been found in the period that this study has been carried out. This also applies to company law schemes.

³⁴ Kees Dol, Joris Hoekstra & Marja Elsinga, *Atlas koop- en financieringsvarianten* (Delft: Onderzoeksinstituut OTB, 2012), 4.

³⁵ Marja Elsinga, 'Intermediate housing Tenures', in *International Encyclopedia of Housing and Home. Vol 4*, ed. Ong Seow Eng, Susan Wachter, Gavin Wood (Oxford: Elsevier, 2010), 128.

Cooperatives have not developed much, since government made the choice for social landlords, in the faith that they would represent the interests of housing, and not necessarily be steered only by the interests of the occupants. This happened around the time when the Housing Act of 1901 was discussed (Section 3.2). The view was put forward that a cooperative association which gave priority to the interests of its members could not be said to be working solely to promote social housing.³⁶ In fact, the Dutch social rental sector has long viewed the cooperative movement with great suspicion, on the grounds that protecting the interests of the sitting tenants was not always considered as consistent with good management of the housing stock.³⁷ The fear was that as in a cooperative the tenant is also part-owner and has more power than a normal tenant, the organization may be steered by individual instead of societal preferences. Even nowadays, this tenure form is not very popular.

- *Rental tenures*
- *Are there tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?*

See Section 1.1 and 1.2 and Summary table 1.

- *How is the financing for the building of rental housing typically arranged?*

Social renting – finance

As explained in Section 1.2, in 1995 the sum of the future annual subsidy obligations of government that were agreed upon with social landlords were calculated as net present value (lump sum) and paid to the social landlords.³⁸ These were traded in for outstanding government loans that were in hands of the social sector. In other words, the social sector had to repay these government loans and take out loans from the capital market. This operation resulted in cutting the financial ties between the government (no more subsidies for new construction) and the landlords (no more government loans for activities). This cut made the social, non-profit, by government accredited landlords financially independent from government and they were to operate as social entrepreneurs from then on, running the risks of investment themselves while using the societal capital that had been build up by the subsidies for the public task. In fact, they were to operate as a revolving fund. The cut in the financial ties implies that the financing of the operations needs to be arranged via own funds of social landlords and the capital market. As explained in Section 3.6, the loans from the capital market can be guaranteed by a sector guarantee institution that in last instance is backed up by the national government. Further information on the subsidization of social landlords is presented in Section 3.6, and information on the taxation of social landlords in Section 3.7.

³⁶ Leo Gerrichhauzen, *Het woningcorporatiebestel in beweging; Volkshuisvesting in theorie en praktijk* 25, (Delft: DUP, 1990) 24.

³⁷ Taco Brandsen & Jan Kees Helderman, 'Volkshuisvesting', in *Maatschappelijke dienstverlening. Een onderzoek naar vijf sectoren*, ed. Huub Dijkstra, Pauline Meurs & Erik Schrijvers (Den Haag: WRR, 2004) 76.

³⁸ Haffner et al., *Bridging the gap*, 216.

Private renting – finance

Financing in the private rental sector largely is a black box. Private persons can be very small scale landlords that would be operating like amateurs (most likely without a strong profit motive) or more large-scale and business-like with a profit aim; the financing options will be adapted to the business model, which may very well be mixed (dwellings next to other investments in immovable property). Presumably, the larger the investor, the more likely it will be that loans are taken out to finance investment.

Institutional investors, like real estate companies, pension funds and other investors, will follow different investment strategies based on their business goals.³⁹ They may aim for stability and continuity in return and timely revenues (institutional investors) to many other reasons (dividend return for stockholders, risk diversification, tax advantages, etc.). Investments might be direct or indirect: renting out housing via investment in investment fund that invests directly in rental housing. For example, pension funds increasingly reduced their direct investment in rental housing between 1996 when about 75% of investments of pension funds were direct and 2008 when the share reached almost 30%.⁴⁰ Financing strategies will also be different, e.g. property funds mainly use secured and unsecured loans as well as bonds, while institutional investors usually do not use any debt⁴¹.

Information on the subsidization of private landlords is collected in Section 3.6, and on the taxation of private landlords in Section 3.7.

- *What can be said in general on the quality of housing provided?*

All dwellings have a bath/shower (2009) and hot running water (2005). Heating which could be central heating and district heating among others is available in 94% (2009) of dwellings.⁴² A number of criteria of housing quality which are more differentiating among tenures than bath/shower etc. are presented in Table 1.2. Generally, the characteristics of the rental dwellings of different owners are more alike than those of owner-occupied dwellings. The latter tenure generally has the better quality: more single-family dwellings, relatively new stock, more dwellings with more rooms and a larger surface. The social rental stock is also relatively young compared to the stock of other landlords, while of the dwellings that the private person landlords own, almost half are from the pre-war period.

³⁹ Vereniging van Institutionele Beleggers in Vastgoed, Nederland, *Vastgoedwijzer 2010* (Voorburg: Vereniging van Institutionele Beleggers in Vastgoed, Nederland, 2010a), 31-37.

⁴⁰ Vereniging van Institutionele Beleggers in Vastgoed, Nederland, *Vastgoedwijzer 2010*, 15.

⁴¹ Jones Lang LaSalle, *Institutionele beleggers en vastgoedfondsen. Generations in Real Estate*, 8.

⁴² Dol & Haffner, *Housing Statistics in the European Union 2010*, 53.

Table 1.2 Dwelling characteristics by tenure (%), the Netherlands, 2009⁴³

	Owner-occupier	Social tenant	Tenant of private individual landlord*	Tenant of private organization landlord*	Private renting, other*	Total
Type of dwelling						
Single family	86	45	32	38	54	69
Multi family	14	55	68	62	46	32
Construction period						
Before 1945	21	10	49	18	30	18
1945-1969	19	33	23	20	27	24
1970-1989	32	39	19	39	27	34
1990 or later	28	18	9	23	16	23
Number of rooms						
1 or 2	3	18	27	17	25	9
3	12	31	31	29	22	20
4	29	37	22	31	26	31
>=5	56	15	20	23	27	40
Total	100	100	100	100	100	100
Surface						
<=60 sqm	7	32	33	23	29	17
61-100 sqm	25	49	42	46	36	34
101-150 sqm	36	16	18	24	20	28
>150 sqm	32	4	8	8	15	21
Total	100	100	100	100	100	100

* Categories of private renting overlap; e.g. real estate agents can also be hired by private persons

- *What is the market share (% of stock) of each type of tenure?*
- *Which actors own these dwellings (private persons, profit or non-profit organizations, etc.)?*

As explained in Section 1.2, social landlords – those with a public task – dominate the rental sector (34% of all dwellings). Summary table 1 gives a detailed overview of the owners of rental dwellings. Within the private rental sector – the sector without a public task – the group of private person landlords (more than 225,000 dwellings amounting to three percent of total housing stock) is slightly larger than the group that is distinguished by tenants as renting from an of organisation (more than 189,000 dwellings also amounting to three percent of total housing stock). An organization could also be a real estate agent, however; therefore the categories of private renting that are distinguished in Summary table 1 overlap. The characteristics of these landlord types and their financing are described in more detail in Section 4. The group consisting of private renting other is mixed including dwellings owned by government, but also those rented from family or with an unknown status (possibly including dwellings for which no rent is paid).

⁴³ Based on WoON 2009, calculations by TU Delft/OTB. Only independent units. Earlier written for Haffner, 'The Netherlands', 54.

1.5 Other general aspects

- *Are there lobby groups or umbrella groups active in any of the tenure types? If so, how are they called, how many members, etc.?*

Association Owner-occupied Home (*Vereniging Eigen Huis*)⁴⁴. Almost 700,000 homeowners are member. This amounts to about 17% of the four million homeowners.

Union for Housing (*Woonbond*)⁴⁵. Almost 900 tenant associations are member. The number of tenant associations existing has not been found during this study.

Aedes⁴⁶. About 95% of housing associations are member of their umbrella organization.

Association for Institutional Property Investors in the Netherlands (*Vereniging van Institutionele Beleggers in Vastgoed, Nederland; IVBN*)⁴⁷. The majority of the almost 190,000 private corporate rental dwellings (more than two in three dwellings in 2010) are in the hands of the thirty one institutional property investors.⁴⁸

Immovable Property Interests (*Vastgoed Belang*)⁴⁹. About 60% of the investments in immovable property in 2008 were represented by the members.

- *What is the number (and percentage) of vacant dwellings?*⁵⁰

Six percent of dwellings were officially vacant on 1 January 2010. Of those 417,000 dwellings, 80,000 were vacant because they were used for other purposes (e.g. a day-care-center) and for 50,000 was not possible to determine whether they were vacant. For 290,000 dwellings it was certain that they were vacant. *Centraal Bureau voor de Statistiek* which is the Dutch statistical office, offers an explanation by stating that these are often found in typical touristic areas where they will most likely be rented out to tourists. Furthermore, in inner-cities of the larger cities, dwellings above shops are often vacant, as the renting out will not be financially attractive. Either renovation will be too expensive or there will only be one entrance, the one via the shop.

Of the 290,000 vacant dwellings, 110,000 are designated as owner-occupied, the remainder as rental. About half of the rental dwellings are owned by housing associations. Presumably, this distinction refers to the situation that either an owner-occupier or a landlord is not able to find a new owner-occupier or new tenant to occupy the dwelling.

⁴⁴ Vereniging Eigen Huis, 'Home', <<http://www.eigenhuis.nl/>>, 22 February 2013.

⁴⁵ Woonbond, 'Vereniging Nederlandse Woonbond', <<http://www.woonbond.nl/>>, 22 February 2013.

⁴⁶ Aedes, 'Thema: Aedes', <<http://www.aedes.nl/content/themas/Aedes.xml>>, 22 February 2013.

⁴⁷ IVBN, 'Home', <<http://www.ivbn.nl/>>, 22 February 2013.

⁴⁸ Vereniging van Institutionele Beleggers in Vastgoed, Nederland, *De vastgoedbeleggingsmarkt in Nederland 2008* (Voorburg: Vereniging van Institutionele Beleggers in Vastgoed, Nederland, 2010b), 22.

⁴⁹ Vastgoed Belang, 'Organisatie', <<http://www.vastgoedbelang.nl/?nr=1188&Organisatie>>, 22 February 2013.

⁵⁰ Centraal Bureau voor de Statistiek, 'Zes procent van woningen officieel niet bewoond', <<http://www.cbs.nl/nl-NL/menu/themas/bouwen-wonen/publicaties/artikelen/archief/2012/2012-3612-wm.htm>>, 22 February 2013.

- Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?⁵¹

The black market phenomena are associated with social renting, as no information has been found about this phenomenon in the private rental sector. In the bigger cities with scarcity of dwellings, social tenant rent out their social rental dwelling illegally for a high rent and live elsewhere where they would pay a cheaper rent. Especially, Amsterdam has been fighting the illegal subletting of social rental dwellings. The Supreme Court confirmed in 2010 that this type of subletting must be considered as illegal.⁵²

Summary table 1 Tenure structure: dwellings by owner*, in the Netherlands,

	Percentage of stock	Percentage of stock	Number of dwellings
Owner-occupier	59		4,12,0429
- With a mortgage ⁵³		78	3,564,000
- Without a mortgage		13	556,000
Social renting: housing associations	34		2,354,151
Private renting	8		521,887
Private persons		3	225,470
Private organizations**		3	189,450
- Institutional investors*** (pension fund, insurance company)			
- Other organizational landlords (also renting via estate agent)			
Private other (including renting from family, but also status unknown)		2	106,965
Total (only bold figures in last column)	100	100	6,996,467

* Different source and year from Figure 1.1 and 1.2; therefore, figures do not coincide

** Categories of private renting overlap; e.g. real estate agents can also be hired by private persons

*** Investing in renting based on the fact that funds received from main task need to be managed

⁵¹ Amsterdam.nl, 'Zoeklicht', <<http://www.amsterdam.nl/wonen-leefomgeving/wonen/opsporing-woonfraude/zoeklicht/>>, 22 February 2013.

⁵² NRC, 'Uitspraak Hoge Raad 'doorbraak' in strijd verhuurders tegen illegale onderhuur', <<http://www.nrc.nl/rechtenbestuur/2010/06/25/uitspraak-hoge-raad-doorbraak-in-strijd-verhuurders-tegen-illegale-onderhuur/>>, 22 February 2013.

⁵³ Distinction with and without from: Berry Blijie et al., *Het wonen overwogen. De resultaten van het WoonOnderzoek Nederland* (Delft: ABF Research, 2009), 55.

2 Economic, urban and social factors

2.1 Current situation of the housing market

- *What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)?*

In 2009 the number of dwellings being constructed (80,000) was enough to cover household growth.⁵⁴ Mostly as a result of impact of the Global Financial Crisis (GFC) on the Dutch economy and the housing market, construction has plummeted since. For 2013 no more than 50,000 new dwellings are forecasted. The number of households, however, is still increasing. ABF Research estimates that the housing shortage has increased with about 50,000 dwellings in the past three years and expects that the shortage will reach about 300,000 dwellings in 2020; a shortage of four percent of dwellings. In cities like Utrecht and Amsterdam, the shortage is estimated to reach seven percent and more. From a mathematical point of view there will be other areas where the shortage will be lower or where there is a shrinking population (see next answer and Section 3.4).

- *How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?*

In the long term, the national statistical office of the Netherlands expects the number of households to keep growing to almost 8.5 million (from about seven million at the time of writing) until 2040.⁵⁵ Growth however will diverge across regions.⁵⁶ The central area – the so-called Rim City (*Randstad*) with the four largest cities of the Netherlands (Amsterdam, Rotterdam, Utrecht, The Hague) – is expected to maintain more than average growth at the cost of more peripheral regions.

- *What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?*

Table 2.1 shows that the dwellings of households with at least one parent that is not born in the Netherlands generally are smaller and more likely to be of the rental type than of households with Dutch-born parents.⁵⁷ If construction period is the topic of interest, little differences can be observed across the groups discerned.

⁵⁴ ABF Research, 'Malaise in de woningbouw: woningtekort verdubbelt', <<http://www.abfresearch.nl/nieuws/woningtekort-verdubbelt.aspx>>, 22 February 2013.

⁵⁵ Centraal Bureau voor de Statistiek, Statline, 'Regionale prognose huishoudens; 2011-2040', <<http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=81275NED&D1=0&D2=0.17-56&D3=3.8.13.18.23.I&HD=111011-0924&HDR=T.G2&STB=G1>>, 22 February 2013.

⁵⁶ Centraal Bureau voor de Statistiek, 'Forse bevolkingsgroei in de Randstad tot 2025', <<http://www.cbs.nl/nl-NL/menu/themas/bevolking/publicaties/artikelen/archief/2011/2011-064-pb.htm>>, 22 February 2013.

⁵⁷ Centraal Bureau voor de Statistiek, 'Begrippen A', <<http://www.cbs.nl/nl-NL/menu/methoden/begrippen/default.htm?ConceptID=88>>, 28 June 2013.

Table 2.1 Households by ethnic group and dwelling characteristics (%) in the Netherlands, 2009⁵⁸

	Dutch born parents	Non-Dutch, non-Western born parent	Non-Dutch, Western born parent	Total number of households
Number of rooms				
1 or 2	9	13	11	9
3	19	26	20	20
4	31	38	32	31
5 or more	42	22	37	40
Construction period				
Before 1945	18	16	20	18
1945-1969	23	29	24	24
1970 and after	58	55	56	58
Tenure				
Owner-occupation	68	29	53	59
Rent	37	71	47	41
Number of dwellings	5,694,900	630,570	669,760	6,995,230

2.2 Issues of price and affordability

- *What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)?*

The expenditure-to-income ratios in Table 2.2 show that housing on average is more affordable in the owner-occupied sector than for the tenant, as expenditure on housing for owner-occupiers as share of income amounts to a smaller share than for tenants. The explaining variable is income and not the level of housing expenditure. For a tenant income on average almost half (23,220 Euro per year) of the income of the owner-occupier (43,580 Euro per year). Average basic rent amounts to 441 Euro per month, while gross housing expenditure for owner-occupiers amounts to 692 Euro per month. Years of housing policy have slowly been resulting in the marginalization by income of the rental sector.⁵⁹ Housing allowance (Section 3.6) has been attractive for tenants with a lower income and favorable income tax treatment has been attractive for homeowners (Section 1.4 and 3.7), especially for those homeowners with a higher income. The rising energy costs of the past years will also be increasingly less affordable for households with a lower income. It must be realized that the ratio as such cannot be used to evaluate housing affordability on average or for a household. It can only be used in terms of better or worse affordability when comparing groups of households or in terms of development in time.

⁵⁸ Rijksoverheid, 'Kenmerken van woningen van allochtonen en autochtonen, 2009', <http://vois.datawonen.nl/quickstep/QSReportAdvanced.aspx?report=cow10_620&geolevel=nederland&geotem=1&period=most_recent_period>, 22 February 2013.

⁵⁹ Marietta Haffner & Harry Boumeester, 'The Affordability of Housing in the Netherlands: An Increasing Income Gap Between Owning and Renting?' *Housing Studies* 25, no. 6 (2010): 818.

Table 2.2 Average housing expenditure for tenants and owner-occupiers, all households, in Euro per month and as share of disposable household income, 2009⁶⁰

Renting		Owner-occupation	
Basic rent	441	Gross housing expenses	692
-/- Housing allowance	58	-/- Income tax effect	199
Net fixed housing expenses (=net rent)	383	Net fixed housing expenses	493
Net rent-to-income ratio	23,0%	Net expense-to-income ratio	15,6%
+Other expenses*	212	+ Other expenses*	314
Total housing expenses	595	Total housing expenses	808
Total expense-to-income ratio	36,1%	Total expense-to-income ratio	26,0%
Disposable household income	23.220	Disposable household income	43.580
Number of households	2.725.000	Number of households	4.072.000

* Other expenses are expenses for energy and local levies

- *To what extent is home ownership attractive as an alternative to rental housing?*

As explained in Section 1.2, homeownership has grown strongly since about 1990. This was caused among others by the stable economic growth, the low interest rates, and the favorable tax treatment (see Section 1.4) of homeownership.⁶¹

- *What were the effects of the crisis since 2007?*

As the GFC has strongly impacted on the owner-occupied market (see further Section 2.5). Generally, construction numbers are not in line with increasing demand (see previous section).⁶² In 2007 (when the financial crisis in the United States started), consumer confidence in the economic situation was crashing and consumer confidence in the owner-occupied market continued the fall that started in 2005, as Figure 2.1 shows. Both indicators were at a low at the end of 2008, when house prices started falling (Figure 2.1 and 2.2). New construction has decreased as well (Figure 2.2) (implying that the sales of new dwellings have fallen as well) and the number of transactions in existing dwellings have also fallen, as Figure 2.3 shows.

Government tried to soften the landing of the housing market (see Section 2.5). However, in the end, one must conclude that the measures have not helped to prevent a crisis on the housing market. Because of falling house prices, the share of owner-occupiers with negative equity has almost doubled from 13% in 2008 to 25% in 2011.⁶³ The number of mortgagors with mortgage payment arrears has increased from 62,000

⁶⁰ Based on WoON 2009, calculations by TU Delft/OTB.

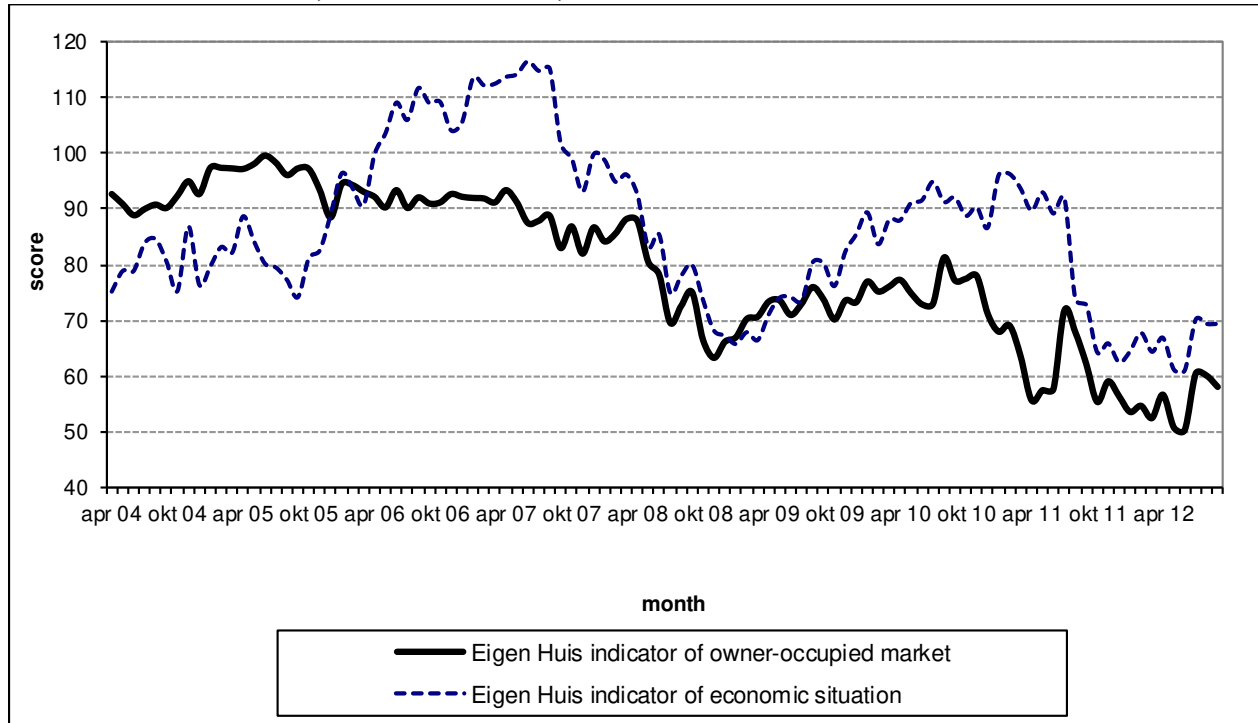
⁶¹ Mostly from: Haffner & De Vries, 'Dutch house prices and tax reform', 158 and 159.

⁶² ABF Research, 'Malaise in de woningbouw: woningtekort verdubbelt', <<http://www.abfresearch.nl/nieuws/woningtekort-verdubbelt.aspx>>, 22 February 2013.

⁶³ Centraal Bureau voor de Statistiek, 'Eigen woning van ruim één miljoen huishoudens onder water', <<http://www.cbs.nl/nl-NL/menu/themas/inkomen-bestedingen/publicaties/artikelen/archief/2013/2013-3802-wm.htm>>, 31 July 2013.

last year to 77,000.⁶⁴ As unemployment increased from 7.2% in January to 7.5% in February of 2013, no improvement is yet expected.

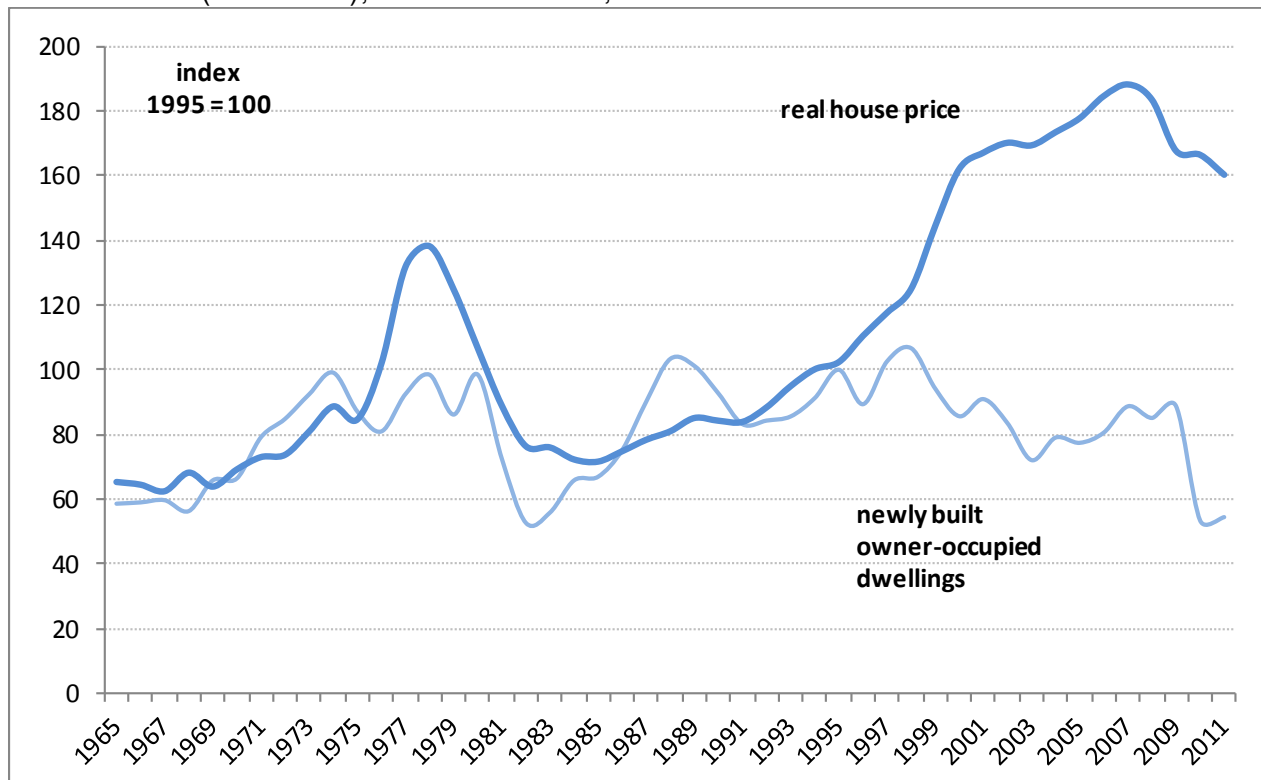
Figure 2.1 *Eigen Huis* indicators of the owner-occupied market and of the economic situation, the Netherlands, 2004-2012⁶⁵



⁶⁴ NRC, 'Kwart meer huiseigenaren heeft hypotheekachterstand', <<http://www.nrc.nl/nieuws/2013/02/22/kwart-meer-huiseigenaren-hebben-een-hypotheekachterstand/>>, 26 February 2013.

⁶⁵ Harry Boumeester & Cor Lamain, *Eigen Huis Marktindicator 3e kwartaal 2012* (Delft: Onderzoeksinstituut OTB, 2012), 1.

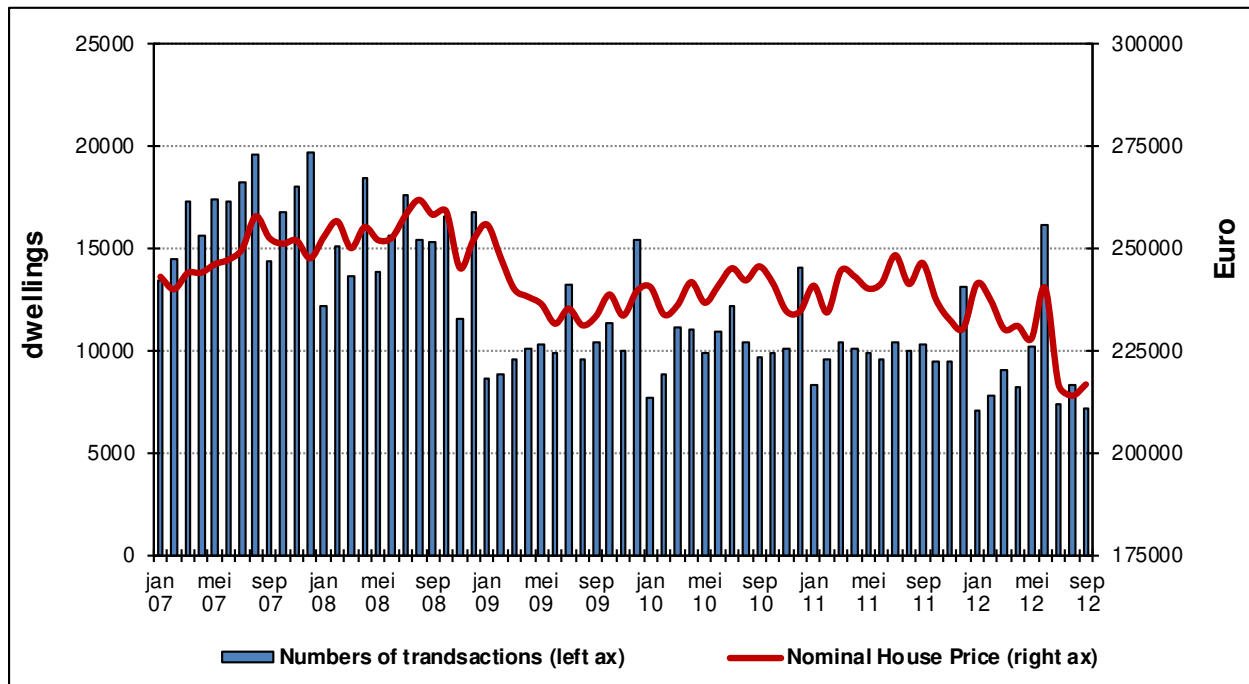
Figure 2.2 Index of real house price and newly-built owner-occupied dwellings (1995=100), the Netherlands, 1965-2011⁶⁶



Taken all these developments together, the expectation is that they will cause a demand to shift towards the rental sector. Although the mobility of households with negative equity will be largely restricted, if they cannot pay off their remaining debt or take it with them. And it is also very likely that tenants will not move in such insecure times, as the decreasing number of transactions indicates (Figure 2.3).

⁶⁶ Cadastre Netherlands and Statistics Netherlands, calculations by TU Delft/OTB.

Figure 2.3 Nominal house price (Euro) and number of transactions in existing dwellings per month, the Netherlands, 2007-2012⁶⁷



2.3 Tenancy contracts and investment

- *Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?*
 - *In particular: What were the effects of the crisis since 2007?*

By 2009 total returns on residential investment have plummeted to the lowest return since 1995. Since 2007 they have turned negative.⁶⁸ Capital losses (negative indirect return) caused this outcome, while return from operation (direct return) stayed stable. However, when the trend is considered, direct return on average has decreased since 1995 as well. One technical explanation may be that it decreased only because of strongly increasing house prices. But rent control largely based on inflation may also have contributed to decreasing direct returns. Decreasing direct returns will have made investors more dependent on returns from capital gains, possibly stimulating (precipitating) investors to sell off their property in order to make their desired return. Their business model would normally involve a sale of individual private rental dwellings after 15 or 20 years of operation, before large investments for renovation and modernisation involving large amount of costs in them became necessary.⁶⁹

- *To what extent are tenancy contracts relevant to professional investors?*

⁶⁷ Centraal Bureau voor de Statistiek Statline, calculations by TU Delft/OTB.

⁶⁸ Vereniging van Institutionele Beleggers in Vastgoed, Nederland, *De vastgoedbeleggingsmarkt in Nederland 2008*, 9.

And: Vereniging van Institutionele Beleggers in Vastgoed, Nederland, *Vastgoedwijzer*, 19.

⁶⁹ Priemus, 'Commercial rented housing: two sectors in the Netherlands', 275.

- *May a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?*

The “tax-free” investment trust (*fiscale beleggingsinstelling*; fbi) exists and can be quoted or not on the stock exchange.⁷⁰ Investments can be direct or indirect. The advantage of the trust as organization form is the zero tariff in corporate tax (no payment of corporate tax). This implies that certain cost deductions that normally would be available when paying corporate tax, are not available to the fbi. There are certain requirements for eligibility, such as on the activities performed (almost no project development) and the regular payment of profits to investors.⁷¹

- *Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?*

Loyens & Loeff informs the reader on its website that it is market leader in securitisation (translated): ‘It concerns the more traditional forms of securitisation of portfolios of housing mortgages and commercial real estate property..., but also the more innovative transactions including care lease revenues.’⁷² In 2008, it was also published on the PropertyNL-website that ING Real Estate intended to prepare the use of the securitisation of commercial real estate in order to follow the lead of competitors.⁷³ No further information has been found on the securitisation of income from tenancy contracts.

2.4 Other economic factors

- *What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)?*

Insurances for owners and tenants are not obligatory. Sellers of insurances advise a fire and theft insurance and third-party liability insurance.⁷⁴ No information has been found on the penetration of insurances in rental markets. However, the Dutch generally are better insured than needed.⁷⁵

- *What is the role of estate agents? Are their performance and fees regarded as fair and efficient?*

⁷⁰ Vastgoedvergelijker, written by Nick Blom, ‘**Niet beursgenoteerde fiscale Beleggingsinstelling (fbi)**’, <<http://www.vastgoedvergelijker.nl/nieuws/niet-beursgenoteerde-fiscale-beleggingsinstelling>>, 24 February 2013.

⁷¹ Overheid.nl., ‘*Vennootschapsbelasting, dividendbelasting, fiscale beleggingsinstelling*’, <http://wetten.overheid.nl/BWBR0026428/geldigheidsdatum_17-03-2011>, 24 February 2013.

⁷² Loyens & Loeff, ‘Securitisatie’, <<http://www.loyensloeff.com/nl-NL/Practice/Pages/Securitisatie.aspx>>, 24 February 2013.

⁷³ PropertyNL – Nieuwsarchief, ‘Onderscheid grote en kleine cliënten bij divisie Finance van ING RE’, <http://www.propertynl.com/nl/nieuws/nieuws_specificatie.asp?id=25412>, 24 September 2013.

⁷⁴ Rabobank, ‘Woning huren’, <http://www.rabobank.nl/particulieren/advies/wonen/woning_huren/>, 24 February 2013.

⁷⁵ Friederike de Raat, ‘Laat het los, al die verzekeringen’, *NRCWeek end*, 8 & 9 February 2014: E18 and E19.

Little is known about the use of the services of real estate agents in relation to the rental market. Lennartz speculates that the smaller and part-time landlords tend to make use of the services of real estate agents.⁷⁶ In Breda (one case study only) the institutional investors also made use of real estate investors which generally also offered management services. It would sound right that institutional investors would not manage their property themselves, as their business would be to invest the funds they receive from their main business (insurance fees, pension savings) from their clients.

2.5 Effects of the current crisis

- *Has mortgage credit been restricted? What are the effects for renting?*

The Dutch financial market was also hit.⁷⁷ Halfway 2008, Dutch banks had already had to write off fifteen billion Euro on American infected securities. The Dutch government invested five percent (30 billion Euros) of the GDP in the system relevant banks (one of the four which was nationalized) and insurance companies. It also gave guarantees to financial institutions up to the amount of 200 billion Euros. Meanwhile a second system relevant bank was nationalized early 2013 because of its losses in the real estate business.⁷⁸ Banks have had to improve their financial position (e.g. increasing capital requirements according to Basel III) resulting in stricter credit requirements on all credit markets.⁷⁹ Less credit will also affect new supply of private rental dwellings, if the supply is dependent on debt capital, as it more than likely will not be for institutional investors with funds from clients that they have to invest, but for other investors. Property funds report that on average the loan-to-value ratio decreased from 38% to 35% in 2010 and that the gross initial yields were on the rise in 2010 in reaction to increased perceived risks since the start of the GFC.⁸⁰ In 2011 they seemed to stabilize for investments in dwellings.

- *Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?*

Distress sales have been falling again after the highest values were reached in in January and December of 2011 where the number of sales almost reached 400 per

⁷⁶ Christian Lennartz, *Competition between social and private rental housing* (Amsterdam: IOS Press BV, 2013), 51 and 71.

⁷⁷ Michiel Bijlsma & Wim Suyker, *De kredietcrisis en de Nederlandse economie ... in acht veelgestelde vragen* (Den Haag: CPB, 2008), 6 and 7.

⁷⁸ NRC, 'Raad van State houdt nationalisatie van SNSReaal (grotendeels) in stand', <<http://www.nrc.nl/nieuws/2013/02/25/raad-van-state-houdt-nationalisatie-sns-reaal-in-stand/>>, 26 February 2013.

⁷⁹ Jan Cees de Jager, 'Najaarsnota 2011', Brief aan de TK (Den Haag, Ministerie van Financiën, 2011, 33 090, nr. 1), no page number, <<https://zoek.officielebekendmakingen.nl/kst-33090-1.html>>, 26 February 2013.

And: Peter Boelhouwer, 'Financiële instituten houden koopwoningmarkt in houdgreep', *Tijdschrift voor de volkshuisvesting* **19**, nr. 1, 23 and 24.

⁸⁰ Jones Lang LaSalle, *Institutionele beleggers en vastgoedfondsen. Generations in Real Estate*, 8 and 10.

And: Vereniging van Institutionele Beleggers in Vastgoed, Nederland, *Vastgoedwijzer 2010*, 13.

month.⁸¹ From the end of 2008 they had gone up slightly to values of more than 200 per month (but not all months), while before (from January 2005 on) they were generally lower than 200 per month. Distress sales produce house seekers.

- *Has new housing or housing-related legislation been introduced in response to the crisis?*

In 2009 government intervened in the housing market with six types of measure; two of those did not need government funds, as they involved the increase of the guarantee limits for homeownership and social renting.⁸² The third measure was the Temporary Stimulating measure Housing Construction Projects (*Tijdelijke Stimuleringsregeling Woningbouwprojecten*) which involved a budget of 351 billion Euro. The budget was allocated in three phases (in fact 3+ phases) aiming to aid the realization of promising projects that were stopped because of the crisis. Three other measures (measures 4 through 6) which focused on energy investments were allocated a budget of more than 350 billion Euro. Next to these financial measures, other measures were taken, such as the facilitation of building procedures, the decrease of transaction tax (Section 3.7), and allowing for the temporary renting out of owner-occupied dwellings which could not be sold (Section 3.3). In the end, one must conclude that the measures have not helped to prevent a crisis on the housing market (Section 2.2).

2.6 Urban aspects of the housing situation

- *What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)*

Table 2.3 shows the tenure distribution according to size of the municipality. As may be expected, renting is relatively popular in the larger municipalities, while homeownership has a relatively stronger position in rural areas.

⁸¹ Kadaster, 'Scorecard: Executie Veilingen', <<http://www.kadaster.nl/web/pagina/Vastgoed-Dashboard.htm>>, 31 July 2013.

⁸² Martin Koning & Michiel Mulder, *Evaluatie stimuleringspakket woningbouw* (Amsterdam: Economisch Instituut voor de Bouw, 2012), 7 and 37.

And: Van der Heijden, Harry, Kees Dol & Michael Oxley. 'Western European housing systems and the impact of the international financial crisis'. *Journal of Housing and the Built Environment* **26**, no. 3 (2011): 300.

Table 2.3 Housing tenure by size of municipality, the Netherlands, 2009⁸³

	Owner-occupier	Social renting: housing association	Private renting*: private person landlord	Private renting*: corporate or organization landlord	Private renting*: other	Total
<20,000	72	24	2	1	2	100
20,000-49,999	67	28	2	2	2	100
50,000-149,999	58	36	3	3	1	100
150,000 and more	41	45	6	5	2	100

* Categories of private renting overlap; e.g. real estate agents can also be hired by private persons

- Are the different types of housing regarded as contributing to specific “socio-urban” phenomena, e.g. ghettoization and gentrification?

Urban policies will generally have consisted of diversification of housing stock by demolishing, upgrading, etc. of dwellings in order to achieve a tenure and population mix in neighborhoods of cities.⁸⁴ The aim of mixed neighborhoods thus implies an undesired too one-sided focus on (rental) tenure and dwelling type in present neighborhoods. Section 3.4 explains more about urban policies.

Results of urban policies (and other measures) on the liveability of neighborhoods can be found on a website (<http://www.leefbaarometer.nl/>). It contains a measurement instrument. The conclusion for the period 2010 to 2012 (1 January) indicates that the liveability on average has improved, but in a limited way compared to the period between 1998-2002. The more correct conclusion is then that liveability seems to be stabilizing since 2008. The volatility in the result has decreased significantly. The national averages, however, cover up regional differences, also in reaction to the economic crisis.⁸⁵

- Do phenomena of squatting exist? What are their – legal and real world – consequences?

Squatting has become illegal in 2010. The Law for Squatting and Vacancies, also called Vacancy Act (Property) (*Wet kraken en leegstand*), which changed the Law on Vacancies, came into force on 1 October 2010⁸⁶ (see also Section 2.2 and Section 6.3). A newspaper article of October 2011 explains that the new law has not yet had much effect.⁸⁷ Municipalities can only enforce the law if the owner reports it.

⁸³ Based on WoON 2009 calculations by TU Delft/OTB.

⁸⁴ Reinout Kleinhans, ‘Social implications of housing diversification in urban renewal: A review of recent literature’, *Journal of Housing and the Built Environment* 19, no. 4 (2004): 368. Citation on p. 371.

⁸⁵ Rigo Research en Advies & Atlas voor gemeenten, *Onderscheid in leefbaarheid. Ontwikkelingen van de leefbaarheid 2010-2012*, no place of publication given (no year of publication given): 7, <http://www.leefbaarometer.nl/publicaties.jsessionid=774998CFFF07FF5E3A4D6B6C6D0069F1>.

⁸⁶ Overheid.nl, ‘Wet kraken en leegstand’,

<http://wetten.overheid.nl/BWBR0028053/geldigheidsdatum_26-02-2013>, 26 February 2013.

⁸⁷ NRC, ‘Een jaar kraakverbod: wat heeft het opgeleverd?’, <<http://www.nrcnext.nl/blog/2011/10/03/een-jaar-kraakverbod-wat-heeft-het-opgeleverd/>>, 31 July 2013.

2.7 Social aspects of the housing situation

- *What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (E.g. is renting considered as socially inferior or economically unsound in the sense of a “rental trap”?) In particular: Is only home ownership regarded as a safe protection after retirement? See Summary table 2.*
- *What is the typical attitude of tenants towards different forms of tenure?*

Table 2.4 shows that the average period of occupation in years did not differ too much across tenures in 2009.⁸⁸ This either implies that households do not have any choices on the housing market, which increasingly can be considered as the case after the crisis, or that households generally are satisfied with their housing consumption. It turns out that almost 90% of households are satisfied or very satisfied with their dwelling.⁸⁹ The lowest rate of satisfaction of 78% can be found for tenants renting from private person. The average period of occupation duration was also a little shorter in this segment than in the other rental segments. However, if there are attitude differences towards the different tenures, they are not expressed in the average period of occupation.

Table 2.4 Average period of occupation by tenure (years), in the Netherlands, 2009⁹⁰

	Owner-occupier	Social renting: housing association	Private* renting: private person landlord	Private* renting: corporate or organization landlord	Private* renting: other	Private renting, total	Total
Average period of occupation	14.6	12.8	11.2	13.0	13.2	12.3	13.8

* Categories of private renting overlap; e.g. real estate agents can also be hired by private persons

Research results based on a survey of social and private rental tenants in the city of Breda at the end of 2011 show that the present tenure plus income explained preferences for social or private renting: the higher the income the better the attitudes towards private renting and the less the intention of a move towards social renting. The lower the income the better the attitudes towards social renting will be, and if living in the private rental sector, the more willing one is to change tenure.⁹¹ The views of social renters were similar, but with stronger negative perceptions about private renting than the other way around. On average, both forms of renting were perceived to be socially accepted, though the housing associations were perceived to be the better landlords providing better services. It must be remembered that these results are based on the survey of tenants in one city at one moment in time. Fact is, however, that the private rental sector nationally has been shrinking since World War II, as shown in Figure 1.1.

⁸⁸ The average period of occupation will not have shortened since the crisis, as a general immobility can be observed. No push factors to move can be identified, unless people are forced to sell (distress sale).

⁸⁹ Haffner, 'The Netherlands', 53.

⁹⁰ Based on WoON 2009 calculations by TU Delft/OTB.

⁹¹ Lennartz, *Competition between social and private rental housing*, 28, 192, 201 and 202.

When households were being asked about their plans to move within two years after the survey, as many households as three years before were intending to move house (1.9 million, almost a third of Dutch households).⁹² The majority of those starting on the housing market will prefer a rental apartment (more than 250,000 households), while a majority of those moving to a next dwelling states to prefer an owner-occupied single-family dwelling (more than 600,000). No distinction is made in the survey between social and private renting.

On the topic of housing and pension, it must be remembered that the Dutch pensions system consists of public scheme in combination with a quasi-mandatory private occupational schemes.⁹³ Generally, it is considered as a good scheme as employees save part of their salary for future pension entitlements. It will not come as a surprise, that research results from the 1990s on show that housing wealth for the most part is expected to remain unused savings for old age. Newer research showed that in 2008 households between the ages of 50 and 64 were more likely to have used mortgage products to increase consumption in retirement.⁹⁴ Furthermore, the results showed that previous financial difficulties suggest a higher propensity to withdraw equity, as well as a younger age. Mortgage equity release to finance care in old age tended to be found a more acceptable reason than just supplementing pension income.

Summary table 2 Social and urban factors in the Netherlands

	Home ownership	Social renting	Private renting
Dominant public opinion	Preference for homeownership		
Contribution to gentrification? Contribution to ghettoization?	Urban policies aim for mixed neighborhoods Aim of mixed neighborhoods implies an undesired too one-sided focus on tenure and dwelling type		

⁹² Blijie et al., *Het wonen overwogen. De resultaten van het WoonOnderzoek Nederland 2009*, 36 and 37.

⁹³ Rachel Ong et al., *Assets, Debt and the Drawdown of Housing Equity by an Ageing Population* (Perth/ Melbourne/Delft: AHURI-Curtin Research Centre, AHURI-RMIT Research Centre, OTB Research Institute for the Built Environment for Australian Housing and Urban Research Institute, 2013): 51.

See also: Marietta Haffner, 'Savings for Old Age? Housing Wealth of the Dutch Elderly', *Housing, Theory and Society* **25**, no. 2 (2008): 129.

⁹⁴ Janneke Toussaint & Marja Elsinga, 'Mortgage-equity release: the potential of housing wealth for future Dutch retirees', *Journal for Housing and the Built Environment* (2012 on I-first): no page numbers.

3 Housing policies and related policies

3.1 Introduction

- *How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?*

Based on the principles of the theory of Esping-Andersen⁹⁵ about welfare state typologies, Hoekstra⁹⁶ classified the Netherlands in housing policy as a mix between corporatist and social democratic welfare state regime at the end of the 1980s.⁹⁷ The traits relating to the former regime were mainly based on the types of subsidy for the owner-occupied sector which were aimed at starters in owner-occupation with certain income levels. Another corporatist element was linked to the allocation system of lower-priced rental and owner-occupied rental dwellings. Municipalities in scarcity areas can apply local social or economic ties to the selection of candidates that a lower-priced rental dwelling or owner-occupied dwelling is allocated to (see Section 3.2).

However, most of the policies relevant for renting could be characterized as social-democratic policies, as bricks-and-mortar subsidies became available to the private rental as well as the social rental sector. This system was set up quite soon after the Second World War, when the already urgent housing shortage was exacerbated by rapid – by Western European standards – population growth and the move away from communal family living arrangements. Homeownership was favoured via the income tax system. The result was a housing policy which accorded high (political) priority to the construction of new dwellings. Aided by its spatial planning policy the government was able to exercise a strong influence on the location, quality and quantity of newly built dwellings. Policy-wise rent regulation did not distinguish largely between both tenures. This ‘almost’ tenure neutral treatment between both rental sectors also applied to the system of housing allowances which was not considered as a system of last resort.

In the 1990s, many of the social-democratic traits of the housing system had disappeared, while the corporatist characteristics had gained importance. The main instruments were kept largely intact (tax relief for homeowners with a mortgage, rent regulation and the system of housing allowances) though, and the country still had the largest social rental sector in the European Union. The direct involvement of government with housing, however, faded with the abolition of all periodic bricks-and-mortar subsidies for new construction and the paying off of the annual future operation subsidies in the 1990s. The direct involvement was changed to a more indirect

⁹⁵ Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Cambridge, Polity Press, 1990).

⁹⁶ Own elaboration based on:

Joris Hoekstra, ‘Housing and the Welfare State in the Netherlands: an Application of Esping-Andersen's Typology’, *Housing, Theory and Society* 20, no. 2 (2003): 58 et seq.

And: Joris Hoekstra, ‘Is there a Connection between Welfare State Regime and Dwelling Type? An Exploratory Statistical Analysis’, *Housing Studies* 20, no. 3 (2005): 475 et seq.

And: Joris Hoekstra & Agnes Reitsma, *De zorg voor het wonen. Volkshuisvesting en verzorgingsstaat in Nederland en België* (Delft: DUP Science, 2002), 1 et seq.

⁹⁷ Text mostly taken from: Haffner, ‘The Netherlands’, 49-50.

governance of housing by defining the policy framework within which local government, social landlords and private actors have to operate.

The issues of tax law in the context of housing is dealt with in Section 3.7.

- *What is the role of the constitutional framework of housing; in particular, does a fundamental right to housing exist?*

The Dutch Constitution (*Grondwet*) does not include the right to adequate housing. It includes the provision that encouraging an adequate housing supply belongs to the responsibilities of the government (article 22.2).⁹⁸

3.2 Governmental actors

- *Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?*

Central government steers housing policy via the instruments of rent regulation, housing allowances and tax relief for owner-occupiers. Then there are various other ways, such as in spatial planning, land policy, regulation and supervision of social landlords, regulation and provision (in last instance) of loan guarantees, rent policy, tax policy and urban renewal. Local governments (425 municipalities in 2012) still are able to promote affordable rental housing supplied by social landlords via the provision of favorably-priced development sites. How these instruments work, is described in this section (see also Section 3.6).

The local housing policies, especially in relation to investments in social housing in the local housing market will often be agreed on in “co-governance” between **local governments** with the housing associations.⁹⁹ In negotiations, these actors will have agreed on the necessary investment plans for social housing in the municipality in question. *Co-governance* therefore allows municipalities to be involved relatively strongly (as embedded in Dutch public and administrative law) in the implementation of national housing policies. This situation has evolved since the 1990s when social housing was one of the first policy areas that has been decentralized; in other words has been made financially independent from government, as is explained in Section 1.2.

Municipal legislation is sometimes also created with the cooperation of the local tenant association; for instance in Amsterdam an agreement exists between the municipal government, the umbrella organization of Amsterdam social landlords and the umbrella association of Amsterdam tenants. It is called the Amsterdam Framework Agreement on Renewal and Improvement (*Amsterdamse Kaderafspraken bij vernieuwing en*

⁹⁸ Rijksoverheid, ‘Grondwet’, <http://wetten.overheid.nl/BWBR0001840/geldigheidsdatum_13-02-2013#Hoofdstuk1>, 13 February 2013.

⁹⁹ Marja Elsinga & Gerard van Bortel, ‘The future of social housing in the Netherlands’, in *Social Housing across Europe*, ed. Noémie Houard (Paris: La Documentation française, 2011), 100.

verbetering) and it governs the rights of all tenants of social landlords in the case of large scale renovation.¹⁰⁰

The tier of government in-between the central and local level consists of twelve **provinces**. One of their seven key tasks is the responsibility for a sustainable spatial development which includes housing and urban renewal.¹⁰¹ In a letter of the umbrella organization for provinces, the director apparently replies to a call of the minister responsible for housing in 2003 'to actively contribute to the realization of the quantitative task of housing, care and well-being' (translation).¹⁰² In reaction the provinces state that they are already taking action; especially via the subsidy budget for urban renewal (*Investeringsbudget Stedelijke Vernieuwing*; ISV; see Section 3.4), but also via their spatial obligations in developing strategic provincial housing plans (*woonvisies*) to direct developments in housing.

- Which level(s) of government is/are responsible for designing which housing policy (instruments)?

Housing instruments are discussed in Section 3.3 and 3.6; taxation instruments are the focus of Section 3.7.

- Which level(s) of government is/are responsible for which housing laws and policies? See Summary table 3.

With article 22.2, the Dutch Constitution created the possibility of the introduction of different laws which regulate housing policies. The first one was the national **Housing Act** (*Woningwet*) of 1901.¹⁰³ National government is responsible for its content which regulates building activities and housing provision. Under the terms of this law, the social landlords called the legally-private housing associations came under state supervision and a number of basic requirements were laid down.¹⁰⁴ If an organization met these requirements (if it was accredited or registered), it could gain access to certain facilities such as government loans and subsidies for the building and management of rental dwellings. One requirement was that the sole objective of the organization must be the promotion of social (affordable) housing.

The Housing Act delineates the responsibilities of and operating conditions for housing associations. Central government has laid down the responsibilities of housing associations more in detail as a national framework within which housing associations have to work. The piece of regulation is the 1992 **Social Rented Sector Management**

¹⁰⁰ From country expert.

¹⁰¹ Interprovinciaal Overleg, 'De zeven kerntaken van de provincies', <<http://www.ipo.nl/over-de-provincies/de-zeven-kerntaken-van-de-provincies>>, 8 February 2013.

¹⁰² Gerard Beukema, *Brief met onderwerp Wonen, Zorg en Welzijn aan Minister Dekker* (Den Haag: IPO, 8 december 2003), 1-2.

¹⁰³ Overheid.nl, 'Wet- en regelgeving. Grondwet', <http://wetten.overheid.nl/BWBR0001840/geldigheidsdatum_08-02-2013>, 8 February 2013.

¹⁰⁴ E.g. Marja Elsinga & Frank Wassenberg, 'Social Housing in the Netherlands', in *Social Housing in Europe*, ed. Christine Whitehead & Kathleen Scanlon (London School of Economics, 2007), <http://vbn.aau.dk/files/13671493/SocialHousingInEurope.pdf>, 133 and 134.

And: Elsinga, & Van Bortel, 'The future of social housing in the Netherlands', 99 and 102.

Order (*Besluit Beheer Sociale Huursector*; abbreviated to BBSH in Dutch).¹⁰⁵ The BBSH stipulates as key task that housing associations are responsible for the provision of affordable housing for people who are unable to pay market prices. The five other tasks are formulated as follows:

- To justify their policy on housing quality;
- To consult with the tenants (as laid down in the Tenants and Landlord Consultation Act);
- To be a financially sound organization;
- To contribute to livable neighborhoods (added in 1997);
- To provide housing (but not care) for the elderly and handicapped (added in 2001).

The regulation to guide the activities of housing associations which is contained in the BBSH has intentionally not been made very specific.¹⁰⁶ The results expected from social landlords and to be evaluated were to be agreed upon on a local level in so-called local performance agreements (*prestatie-afspraken*) between housing associations and **local authorities**. Market discipline and competition between the local social landlords were intended to produce performance incentives. In practice, because many housing associations and municipalities never made these agreements, supervision on societal outcomes has almost been non-existent. Central government with the help of the Central Fund for Housing (*Centraal Fonds voor de Volkshuisvesting*; CFV) mainly focuses on supervising the financial viability of housing.¹⁰⁷

Not only as a result of cases of fraud and mismanagement,¹⁰⁸ government made plans to strengthen governmental supervision, also by putting the regulation in the Housing Act instead of the BBSH. Municipalities were to get a stronger role, as well as a new financial authority.¹⁰⁹ These proposals are included in the Revision Law of Accredited Housing Institutions (*Herzieningswet toegelaten instellingen volkshuisvesting*) – which comprised a complete revision of Chapter V of the Housing Act that the Second Chamber of Parliament passed in July of 2012.¹¹⁰ The fall of the coalition government in April of 2012 prevented that the law proposal was also discussed in the First Chamber of Parliament.

The national **Tenants and Landlord Consultation Act** (*Wet op het overleg huurders verhuurder*) of 1998 that is mentioned in the housing association task about consultation

¹⁰⁵ Overheid.nl, 'Wet- en regelgeving. Besluit Beheer Sociale-Huursector', <http://wetten.overheid.nl/BWBR0005686/geldigheidsdatum_08-02-2013>, 8 February 2013.

And: Haffner et al., *Bridging the gap*, 223.

And: Elsinga, & Van Bortel, 'The future of social housing in the Netherlands', 101.

And: Marietta Haffner, Marja Elsinga & Arjen Wolters, *Het stedelijke vernieuwingsnetwerk. Verkenning in theorie en praktijk* (Gouda: Habiforum, 2005), 39.

¹⁰⁶ From: Elsinga & Van Bortel, 'The future of social housing in the Netherlands', 101.

¹⁰⁷ Haffner et al., *Bridging the gap*, 224.

¹⁰⁸ From: Elsinga & Van Bortel, 'The future of social housing in the Netherlands', 101 and 103.

¹⁰⁹ Piet Hein Donner, *Herziening van de regels over toegelaten instellingen en instelling van een Nederlandse Autoriteit toegelaten instellingen volkshuisvesting (Herzieningswet toegelaten instellingen volkshuisvesting)*.

Memorie van Toelichting (Den Haag, Tweede Kamer der Staten General, Vergaderjaar 2010-2011, 32 769, nr. 3), 1 et seq.

¹¹⁰ Leo Gerrichhuizen & Guus Terlingen, 'Woningcorporaties: legitimeren door investeren', *Tijdschrift voor de Volkshuisvesting* **19**, no. 1 (2013): 11.

with tenants (see above) describes the rights and responsibilities of tenants and landlords in their communication with each other.¹¹¹ It gives tenants the possibility to influence policies and action of housing associations, but only in an advisory role. Central government is responsible for the content of this law.

Access to affordable housing is not only regulated by the BBSH, but also by the national **Housing Allocation Act** (*Huisvestingswet*) of 1992.¹¹² It is based on the principle of freedom of choice in the decision where to live, but gives municipalities the possibility to draw up rules for the allocation of housing in a local or a regional allocation act (*huisvestingsverordening*). One example is the possibility of municipalities to reserve a share of the vacant stock for specific groups that need affordable housing, such as immigrants that have been granted asylum (see Section 3.3), individuals released from prison or patients that have been dismissed from mental care facilities.¹¹³

In the municipality rules a distinction can be made between “housing-market access” and “housing allocation”.¹¹⁴ The former gives municipalities in areas with a tight housing market the power to set aside dwellings for local residents with rents and house prices under a given limit. In practice, this means that these dwellings will only be available to tenants and owner-occupiers that have so-called social or economic ties to the region, the municipality or the district. Social ties are about living in the area, while economic ties are about working in the area. These ties are formalized by a housing or residence permit that the candidate buyers or tenants need before being able to occupy a dwelling (see Section 6.1).

Once, it is settled whether a household will be able to access a dwelling in principle in a certain housing market, the allocation system (if a municipality or collection of municipalities has/have designed such a system) will become relevant. Owner-occupied dwellings are usually sold to the highest bidder, while for private rental dwellings there will also not be an allocation system. Who will get to rent the dwelling will depend on the private landlord.

In the social sector, however, one of the main tasks of the landlords is to give priority to the candidates with a low-income, as was explained above (see BBSH description above). There may be other criteria applied, next to income, depending on the framework that the municipality designed (like household size or age-related conditions).

¹¹¹ Overheid.nl, ‘Wet- en regelgeving. Wet op het overleg huurders en verhuurders’, <http://wetten.overheid.nl/BWBR0009810/geldigheidsdatum_08-02-2013>, 8 February 2013.

¹¹² Overheid.nl, ‘Wet- en regelgeving. Huisvestingswet’, <http://wetten.overheid.nl/BWBR0005674/geldigheidsdatum_08-02-2013>, 8 February 2013.

And: Haffner et al., *Bridging the gap*, 221.

¹¹³ Elsinga, & Van Bortel, ‘The future of social housing in the Netherlands’, 103.

¹¹⁴ Haffner et al., *Bridging the gap*, 221 and 222

And: Marietta Haffner & Joris Hoekstra, ‘Housing allocation and freedom of movement’, *TESG* 97, no. 4 (2006): 443 et seq. These authors conclude that this formal organization of access and allocation which allows for locational ties is special compared to a number of other countries in the sense that it is not only restricted to subsidized dwellings.

Instead of giving priority to households with a lower income, it is also possible to give priority to households with a higher income. The aim would be to prevent neighborhoods in the major Dutch cities from turning into low-income neighborhoods. The 2006 **Law on Special Measures for Metropolitan Problems** (*Wet bijzondere maatregelen grootstedelijke problematiek*) allows a municipality to develop rules, after central government consent (see Section 3.4).

The national **Implementation Law on Rents for Housing** (*Uitvoeringswet huurprijzen woonruimte*) regulates rent setting at the start of a rental or lease contract and rent adjustment during the rental contract.¹¹⁵ This law is rooted in two laws that came into existence in 1979¹¹⁶ and that were combined in 2002. The first one was the Rent Act and the second one was the Law on Rent Tribunals. It mainly focused on the tasks of the rent tribunals (*huurcommissies*). Part of the Rent Act was moved to **Book 7 (titel 7.4)** of the **Civil Code** (*Burgerlijk Wetboek*) which is entitled Special contracts or agreements. It regulates the rental contract and rent setting.

The Netherlands is different in rent regulation in two ways: first, in other countries mostly only rent increases are regulated. Second, in other countries rent regulation usually is much stricter for social than private renting.¹¹⁷ To start with the last difference, rent regulation in the Netherlands is not related to the ownership of dwellings (social versus private owner), but to rent levels based on the quality of the dwelling. **The rent level that is relevant at the start of the tenancy contract determines whether a dwelling will be considered as a dwelling with or without a regulated rent.**¹¹⁸ In the case of a newly-built dwelling this applies for contracts that started after 1 July 1989 and in the case of an existing dwelling this applies for contracts that started after 1 July 1994. **Rents of dwellings with a rent up to or equivalent to the so-called ‘liberalization’ rent level¹¹⁹ (of 631.73 Euro between 1 July 2008 and 1 July 2009; see Section 1.1) are regulated; and the rents of dwellings with a rent above that level are deregulated or ‘liberalized’.** The latter concepts imply that these rents are not regulated.

The liberalization threshold rent level is crucial in housing policy in several other ways. Any subsidies that still exist (e.g. land subsidies and guarantees; see Section 3.6) will be aimed at dwellings with a regulated rent, owned by social landlords.¹²⁰ And as discussed

¹¹⁵ Overheid.nl, ‘Wet- en regelgeving. Uitvoeringswet huurprijzen woonruimte’, <http://wetten.overheid.nl/BWBR0014315/geldigheidsdatum_08-02-2013>, 8 February 2013.

Book 5 of the Dutch Civil Code that is entitled Rights ad rem contains the immovable property ownership rights: Wetboek-online.nl, ‘Burgerlijk Wetboek Boek 5, Zakelijke Rechten’, <<http://www.wetboek-online.nl/wet/Burgerlijk%20Wetboek%20Boek%205.html#1>>, 11 February 2013.

¹¹⁶ Priemus, ‘Commercial rented housing: two sectors in the Netherlands’, 273.

¹¹⁷ From: Marietta Haffner, ‘The Netherlands’, 58.

And: Marietta Haffner, Marja Elsinga & Joris Hoekstra, ‘Rent Regulation: The Balance between Private Landlords and Tenants in Six European Countries’, *European Journal of Housing Policy* 8, no. 2 (2008): 217-233.

¹¹⁸ Rijksoverheid, ‘Vrije sector huurwoning (geliberaliseerde huur)’, <<http://www.rijksoverheid.nl/onderwerpen/huurwoning/vrije-sector-huurwoning>>, 11 February 2013.

¹¹⁹ From country expert: As of 1 July 2013 the threshold is 681.02 Euro per month.

¹²⁰ From: Marietta Haffner, ‘The Netherlands’, 59.

in the next section, housing allowances will be available to those in need (e.g. a low income) in the rental sector that live in dwellings with a regulated rent.

Dwellings with a regulated rent are subject to the dwelling valuation or quality points system; dwellings are given points on the basis of their quality (e.g. a certain number of points for a balcony) and access to local amenities (like trains, shops, etc.). It is generally accepted that local amenities are undervalued in this scoring system of the quality that dwelling delivers. Years of discussion about how to mend this, ended in the measure that by 1 October 2011 the access to local amenities would be included in the total number of quality points added up for a dwelling. In fact, in the ten areas that are indicated by central government the scarcity of dwellings was used as a proxy of the quality of the dwelling in the outside area. This would deliver extra quality points per dwelling (15 or 25 depending on the ratio of the dwelling value to its square metres) for new tenants – new contracts – only.¹²¹

Based on the number of points, which amount to about 140 points at the most for the maximum rent for a dwelling with a regulated rent, a maximum rent per dwelling is determined (rent setting at the beginning of the contract). However, landlords need not to set rents at this maximum, but they can at the start of each new contract (new tenant moves in) and if the market will bear that maximum rent. When a new tenant does not agree with the rent set by the landlord, a rent tribunal can be approached within a certain period to solve this dispute between the tenant and the landlord.

During the tenancy period (occupation), a maximum annual rent increase is set annually by central government based on a decision of Parliament. This increase which is expressed as a percentage of rent level is applied on 1 July of each year. Since 2001, formally the annual rent increase set per dwelling is applicable to the dwellings with a regulated rent. These are owned by both social landlords and private landlords, as shown in Section 4.1. For social landlords, central government can also set an average rent increase per landlord, thus for the total of its portfolio.¹²² Tenancy contracts usually run indefinite (see Section 4.3)

Rents of dwellings with a rent above the 'liberalization' rent level are not regulated, neither the initial rent level nor the annual rent increase, only the number of rent increases per year (one as with the dwellings with a regulated rent).¹²³ It is however, possible to have a rent tribunal check whether the rent indeed can be considered as liberalized (also called deregulated) within six months after the start of a contract.¹²⁴

¹²¹ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, *Huurbeleid 2011/2012* (Den Haag: Directoraat-Generaal Wonen, Bouwen en Integratie, 2011), 46 and 47.

¹²² Elsinga & Van Bortel, 'The future of social housing in the Netherlands', 109.

¹²³ Rijksoverheid, 'Vrije sector huurwoning (geliberaliseerde huur),

<<http://www.rijksoverheid.nl/onderwerpen/huurwoning/vrije-sector-huurwoning>>, 11 February 2013.

And: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, *Huurbeleid 2011/2012* (, 6.

¹²⁴ From country expert: After the six month period, it still possible for the tenant to have the rent lowered, in a special situation. This is the case when the rent exceeds the maximum rent according to the points awarded, but does not exceed the liberalization threshold of 681.02 Euro which is applicable as of 1 July 2013 to 30 June 2014. Contrary to the six month's procedure, this reduction is not retroactive.

The national **Law on Housing Allowances** (*Wet op de huurtoeslag*) is the framework for the core instrument of housing affordability nowadays (since the 1980s). It was last passed in 1997.¹²⁵ The aim of this last important change was to counter social segregation on the housing market.¹²⁶ The levels of housing allowance were increased across the board to make new neighbourhoods and new dwellings in regenerated urban areas accessible to low-income households in both rented sectors. It became the core housing instrument for guaranteeing affordability.

The amount of housing allowance depends on a household's income, rent and its composition. All tenants in need and in rental dwellings with a monthly rent up to the liberalization rent level can get it. The amount will depend also on the age (up to the age of 23; 23-65 years of age; 65 plus) and household composition (one or more persons). Furthermore, the system works on the assumptions that everyone pays a basic rent and that the amount above the basic rent is subsidized fully up to a certain rent level. Above that rent level, so-called quality discounts are applied: a maximum of half or three quarters of rent is subsidized depending on the age, household composition and rent level. See Section 3.6.

3.3 Housing policies

- *What are the main functions and objectives of housing policies pursued at different levels of governance?*

The previous section explained about the laws that are relevant in housing policy at different levels of governance. They convey the aims of housing policy. Policy is about the rental sector and in the first instance, it is about putting down a framework that stimulates (the privatized) housing associations provide for affordable housing and liveable neighborhoods.

Policy is about affordability in another way: providing housing allowances to lower-income tenants. Housing allowances are set up as an open-ended system, allowing everyone that needs help and applies to receive aid, will be able to get help. However, housing allowances will be reduced when the housing allowance budget comes under pressure (e.g. when unemployment increases). Thus they cannot be considered as a fully secure subsidy for tenants. Such a reduction comes about because Dutch ministries operate under medium-term spending caps fixed in the government's coalition agreement. Unexpected financial setbacks on the spending side must be offset within the budget of the ministry in question.¹²⁷ This rule regularly puts the ministry responsible for housing under considerable pressure as expenditure on housing allowances rise

¹²⁵ Overheid, 'Wet op de huurtoeslag', <http://wetten.overheid.nl/BWBR0008659/geldigheidsdatum_11-02-2013>, 11 February 2013.

¹²⁶ Hugo Priemus & Marja Elsinga, 'Housing allowances in the Netherlands: the struggle for budgetary controllability', in *Housing allowances in comparative perspective*, ed. Kemp, Peter A. (Bristol: The Policy Press, 2007), 196.

¹²⁷ OECD, *Advancing Structural Reforms in OECD Countries: lessons from 20 Case Studies, Annex 6: Draft Case Studies –Netherlands* (Paris: OECD Working Party No. 1 on Macroeconomic and Structural Policy analysis, 2009), 52.

during economic downturns. As a result, rent regulation has also become a budget policy instrument in the sense that not allowing rents to increase aids in controlling the rise in housing allowances. Rent regulation has been shown to also subsidize the rents of tenants on average (see Section 3.6).

Finally, housing policy is about protecting tenants and giving them a stronger position in negotiations with landlords.

When in 2010 a new coalition government of Conservatives and Christian Democrats started under the leadership of a Conservative prime minister, its aim for housing comprised that a move towards 'more market' and a more marginal social rental sector. The latter should be more focused on housing those in need, while a bigger group of other landlords should be able to supply dwellings as well, allowing for a 'better' development of supply than in the past. In short, the 2010 government was aiming for what it called a better balance on the rental market by curtailing social renting and allowing for better yields for investors in rental housing with more market-conforming rents.¹²⁸ When the government fell in April of 2012, the only proposal that had been accepted by Parliament was for rent control to take into account more of the popularity of dwellings: in areas where dwellings are scarce a number of quality points will be added, allowing for higher rent levels once a new tenant moves in, as explained in Section 3.2.

Another proposal that meanwhile has been accepted is the so-called landlord-levy for 2013.¹²⁹ The aim of the levy was to have owner-landlords of more than ten dwellings with a regulated rent pay a landlord levy.¹³⁰ This would go hand in hand with an annual increase of rents for households with a higher household income.¹³¹ The levy that was intended to be an annual levy has been limited to 2013 in anticipation of the government's comprehensive proposals about rent increases based on household income.¹³² Based on the Budget for 2013, there would be in total three groups of households, the target group (up to 33,000 Euro per year), the target group plus (an income between 33,000 Euro to 43,000 Euro) and the group of households with the higher income (above 43,000 Euro).¹³³ Therefore the rent increase is linked to household income: the higher the income, the higher the annual income increase. In effect, this implies that the households with a higher household income will pay a more

¹²⁸ Piet Hein Donner, *Woonvisie. Brief van de Minister van Binnenlandse Zaken en Koninkrijksrelaties* (Den Haag: Tweede Kamer, vergaderjaar 2010-2011, 32847, nr. 1), 3-4.

¹²⁹ Rijksoverheid, 'Verhuurderheffing voorlopig tot 2013 beperkt', <<http://www.rijksoverheid.nl/nieuws/2012/12/21/verhuurderheffing-voorlopig-tot-2013-beperkt.html>>, 11 February 2013.

¹³⁰ Volkspartij voor Vrijheid en Democratie (VVD) – Christen Democratisch Appèl (CDA), *Vrijheid en verantwoordelijkheid. Regeerakkoord VVD-CDA, VVD-CDA. Bijlage Begrotingsbeleid* (place of publication not given in document, 2010), 28.

¹³¹ See also: Centraal Planbureau, *Economische effecten pakket Commissie Van Dijkhuizen. Uitgevoerd op verzoek van de Belastingcommissie Van Dijkhuizen* (Den Haag, Centraal Planbureau, 2012a), 17 and 18.

¹³² Rijksoverheid, 'Verhuurderheffing voorlopig tot 2013 beperkt', <<http://www.rijksoverheid.nl/nieuws/2012/12/21/verhuurderheffing-voorlopig-tot-2013-beperkt.html>>, 11 February 2013.

¹³³ Centraal Planbureau, *Economische effecten pakket Commissie Van Dijkhuizen*, 17 and 18.

market-conforming rent (and may in due course move out of the social rental sector). In February 2013, the government was in discussion with the Parliament about these plans with the government's aim of getting the agreement of Parliament before 1 March 2013 in order to be able to implement in the rent increase round of 1 July 2013.^{134,135}

- *In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation))?*

Except for the goal to create a balance on the rental market, the central government has also been confronted with the effects of the Global Financial Crisis (see Section 2.2 and 2.5). These imply that budget cuts are needed to control the increase of national debt by bringing the budget back into balance; all according to EU-benchmarks. The landlord levy that is described in the answer to the previous question can, inter alia, be regarded as one of those measures.

An instrument that officially is not part of housing policy, but of tax policy, – the favorable tax treatment of owner-occupied dwellings – has not escaped the search for budget cuts either, as explained in Section 3.7.

- *Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?*

In 1980 the **Law on Vacancies** was proposed.¹³⁶ Its aim was to fight what was called 'socially unacceptable vacancies'. In the end only parts of the law were actually introduced and since 1993 it is only concerned with the temporary renting out of dwellings.¹³⁷ In an environment where a rental contract runs indefinitely (see Section 4.3), temporarily renting out of dwellings can be considered as a loosening of regulation, stimulating renting out of dwellings temporarily, which otherwise would not have been rented out, when full rent control applied. In the case of temporary renting out, the loosening of regulation consists of the fact that tenant protection from the Civil Code will not be applicable. The contract, however, must be for at least six months and a notice period of at least three months for the landlord is required. The tenancy contract needs to show that the contract is based on a special case of renting based on the Law of Vacancies and it needs to show the rent. To start with temporary renting – e.g. as a result of not being able to sell an owner-occupied dwelling in the aftermath of the GFC¹³⁸ – the potential landlord needs to get a permit from the municipality which should contain

¹³⁴ Rijksoverheid, 'Verhuurderheffing voorlopig tot 2013 beperkt',

<<http://www.rijksoverheid.nl/nieuws/2012/12/21/verhuurderheffing-voorlopig-tot-2013-beperkt.html>>, 11 February 2013.

And: Stef Blok, 'Afspraken woningmarkt', *Brief aan de Tweede Kamer* (Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 2013), 1 et seq.

¹³⁵ These plans were implemented by government in July 2013, as the country expert states. However, this part of the questionnaire was finished in February 2013 and it has not been systematically updated.

¹³⁶ Vereniging van Nederlandse Gemeenten, *Tijdelijke verhuur via de Leegstandwet* (Den Haag: VNG, 2013), no page numbers.

¹³⁷ See also: Overheid.nl, 'Leegstandwet',

<http://wetten.overheid.nl/BWBR0003403/geldigheidsdatum_12-05-2009>, 12 February 2013.

¹³⁸ Limited contracts can be issued also in situations of urban renewal when the dwelling will be demolished, renovated or sold in the near future. See: Carla Huisman, 'A Silent Shift?- The Precarisation of the Dutch Rental Housing Market', paper presented at RC43 Conference (Amsterdam, 2013, 10-12 July), 5.

the maximum rent based on the quality of the dwelling (quality points; see Section 3.2), generally if is a dwelling with a regulated rent. It will have throughput time of two years, with possible extensions of one year each up to a total period of five years at the most.

The part of the law that was moved out of the Law on Vacancies in 1993 was added to the Housing Allocation Act (*Huisvestingswet*). It offers municipalities the possibility to claim the use of vacant dwellings and to oblige the report of vacancies that last longer than two months.

- *Are there special housing policies targeted at certain groups of the population (e.g. elderly people, migrants, Sinti and Roma etc.)?*

Since 2007 there is the National Program for the Care of the **Elderly** (*Nationaal Programma Ouderenzorg*).¹³⁹ In this program different organizations for care, work and housing work together in projects and experiments that help to make it possible for the elderly to live independently in older and older ages. In 2013 75 projects were managed that involved 27,000 elderly and 3,000 volunteer aids. In 2012 a national umbrella organization for the elderly put forward the observation that Dutch policy for the elderly was missing strategy and active government policy. The result would be that Dutch policy for the elderly would not be elderly-proof by 2020.¹⁴⁰

Immigrants that have received a residence permit must quickly take part in Dutch society.¹⁴¹ To that aim, central government based on the Housing Allocation Act (see Section 3.2) will set a task for each municipality twice a year about the number households to be housed. Municipalities will usually make use of the social rental stock to house the immigrants with a residence permit. This procedure should take no longer than sixteen weeks.

Information on **Sinti and Roma** has not been found during the fact finding phase of this study.

3.4 Urban policies

- *Are there any measures/incentives to prevent ghettoization?*

Urban policies will generally have consisted of diversification of housing stock in general (and not of private rental stock by itself) by demolishing, upgrading, etc. of dwellings in order to achieve a tenure and population mix in neighborhoods of cities:¹⁴²

¹³⁹ Overheid.nl, 'Ouderenzorg', <<http://www.rijksoverheid.nl/onderwerpen/ouderenzorg/kwetsbare-ouderen>> 3 March 2014.

¹⁴⁰ Algemeen Nederlandse Bond voor Ouderen, 'Nederland mist actief ouderenbeleid', <<http://www.anbo.nl/belangenbehartiging/participatie/nieuws/nederland-mist-actief-ouderenbeleid>>, 3 March 2014.

¹⁴¹ Overheid.nl, 'Huisvesting vergunninghouders', <<http://www.rijksoverheid.nl/onderwerpen/asielbeleid-en-immigratie/huisvesting-vergunninghouders>>, 12 February 2013.

¹⁴² Kleinhans, 'Social implications of housing diversification in urban renewal: A review of recent literature, 368. Citation on page 371.

Many Dutch post-war urban neighbourhoods have been the setting for a radical restructuring of the housing stock. The national Urban Renewal Policy, since 1997, has aimed to increase the variation of residential environments, improve the attractiveness of the housing stock, and strengthen the area's reputation and position in the housing market.

The 2000 Law on Urban Renewal (*Wet Stedelijke Vernieuwing*) got defunct in 2011¹⁴³ because of the decentralisation of the Urban Renewal Investment Budget number 3 (*Investeringsbudget Stedelijke Vernieuwing; ISV*).¹⁴⁴ Decentralisation implies for the period 2010-2014 that the funds from ISV-3 no longer come as specific payments from national government to the municipalities, but as payments that run via the Funds for Local Financing, either directly to the four big cities (Amsterdam, The Hague, Rotterdam, and Utrecht) or via the provinces to the municipalities.

The three aims of the ISV-3 are:

1. To stimulate the quality and differentiation of the housing stock, but take into consideration the expected shrinking of the number of households;
2. To stimulate the physical quality of the dwelling environment;
3. To stimulate a healthy and sustainable dwelling environment in general, and in relation to land, noise and urban air quality in particular.

When aiming for an income mix in a neighborhood, with the 2006 **Law on Special Measures for Metropolitan Problems** (*Wet bijzondere maatregelen grootstedelijke problematiek*) it is also possible to give priority to households with a higher income instead of giving priority to households with a lower income when allocating social rental housing (in urban renewal areas). The aim of this law that is described in Section 3.2 would be to prevent neighborhoods in the major Dutch cities from turning into low-income neighborhoods.¹⁴⁵ The law allows a municipality to develop rules, after central government consent. Up until now, only the city of Rotterdam has been applying this law in four neighborhoods. The law will be extended for four more years and to five neighborhoods.¹⁴⁶

As the above shows, urban policies have focused on transformation and urban renewal; more specific, building within Dutch cities usually is about these types of activity and not about large-scale new construction, because there are not so many plots of land left within cities to do so.¹⁴⁷

¹⁴³ Overheid.nl, 'Wet stedelijke vernieuwing',

<http://wetten.overheid.nl/BWBR0011788/geldigheidsdatum_12-02-2013>, 12 February 2013.

¹⁴⁴ Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, *Beleidskader ISV-3*, (Den Haag: Directie Stad en Bouw, not dated), 1 et seq.

¹⁴⁵ It is not clear how and when this law may no longer be possible to implement, since the annual rent increases also based on household income have been applied for the first time in 2013 (Section 3.3).

¹⁴⁶ Liesbeth Spies, *Evaluatie en wijziging Wet bijzondere maatregelen grootstedelijke problematiek* (Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, Kamerstukken II, 2011-2012, 33 340, nr. 1), 2.

¹⁴⁷ Joost Tennekes & Arjan Harbers, *Grootschalige of kleinschalige verstedelijking? Een institutionele analyse van de totstandkoming van woonwijken in Nederland, Vlaanderen en Noordrijn-Westfalen* (Den Haag: Planbureau voor de Leefomgeving, 2012), 42-60.

New construction usually is a relatively large-scale activity (in order to reap scale advantages), with integrated functions (housing plus) and financing (cross-subsidization), on plots of land adjacent to cities (*uitleglocaties*), with a few large-scale actors, such as developers and housing associations, often directed by the municipality which is concerned and which usually also runs development risks.

The location of new construction will be designated via municipal zoning plans (*bestemmingsplan*).¹⁴⁸ When making such a plan, the municipality will have to take into account the structure plans of the central government with strategies such as the improvement of accessibility and of the provinces which contain the strategies and locations for urbanization and land scape management.

- *Are there any policies to counteract gentrification?*

Policies to counteract gentrification have not been found during the course of this study.

- *Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms?*

On housing quality generally, it is the **Building Decree** (*Bouwbesluit*) together with the Building Regulation which regulates the minimum quality of construction, renovation and demolition of buildings.¹⁴⁹ It and its regulation were last renewed in 2012, when separate rules were combined (e.g. those on inspections for fire safety and some European Union rules).

On sustainability in general, the energy label been integrated in the dwelling valuation system (see also next section). A low energy label ('F' or 'G' for instance) can result in less or no points and therefore in a lower rent. All landlords, in fact owners of dwellings, are required to have their dwellings labelled by an official energy label appraiser. If a dwelling does not have a label, the year of construction is used as indication of the number of points awarded; with dwellings built before 1976 being awarded zero points.¹⁵⁰

- *Does a regional housing policy exist?*

Regional housing policies may start to be more popular, once the demographic and economic developments among regions start to diverge strongly.

¹⁴⁸ Rijksoverheid, 'Wat houdt de Wet ruimtelijke ordening (Wro) in?', <<http://www.rijksoverheid.nl/onderwerpen/ruimtelijke-ordening-en-bereikbaarheid/vraag-en-antwoord/wat-houdt-de-nieuwe-wet-ruimtelijke-ordening-wro-in.html>>, 13 February 2013.

¹⁴⁹ BRISbouwbesluit online, 'Bouwbesluit 2012', <<http://www.bouwbesluitonline.nl/Inhoud/docs/wet/bb2012>>, 12 February 2013.

¹⁵⁰ From country expert.

3.5 Energy policies

- *To what extent do European, national and or local energy policies affect housing?*

In 2012 the three agreements of 2008 were updated. The parties to the agreements were the national government and actors on the housing market. The first agreement is about sustainable new residential construction where the aim is to have new construction 50% more energy-friendly in 2015 than in 2007. The path towards energy-neutral new construction will be followed as of 2020. The second agreement is about the existing stock and aims for at least 300,000 dwellings and buildings per year that will move up two energy classes, and thus be more energy-friendly. The third agreement is with the landlords and aims for energy label B or higher for the total stock in 2020 for social stock, while for private rental dwellings the aim is formulated as eighty percent of stock with a label C or higher in 2020.

It is not known to what extent European energy policies affect housing.

Summary table 3 Dutch housing laws and policies, brief interpretation, 2013

	National laws and decrees	Aim	Actors: government, landlord and tenant
Policy aims		To balance rental market income wise and provision wise	Central government
		To enforce budget cuts as a result of the Global Financial Crisis	Central government
Laws	Constitution	Statement of government support to adequate housing supply	All levels of government
	Housing Act	Framework for building activities and housing provision	Central government
	Social Rented Sector Management Order	Statement of tasks of social landlords and the regulation of their governance and supervision	Social landlords and municipalities based on performance agreements
	Tenants and Landlord Consultation Act	Regulation of rights and responsibilities of tenants and landlords	Landlords and tenants
	Housing Allocation Act	Framework for local authorities to develop regional or local housing allocation rules	Local authorities (and central government in the case of housing immigrants with a residence permit)
	Law on Special Measures for Metropolitan Problems	Law to prevent low-income neighborhood	Rotterdam is only one of big cities that applies it (consent needed by central government)
	Implementation Law on Rents for housing and Civil Code, Book 7	Framework for rent regulation and tenant security	Central government via rent tribunals
	Law on Housing Allowances	Regulation of income support in the rental sector	Central government, tenants
	Law on Vacancies	Law to prevent unneeded vacancies	Municipalities
	Building Decree	Regulation of minimum quality standards for buildings	Central government

The instruments are discussed in the next section

3.6 Subsidization

- *Are different types of housing subsidized in general, and if so, to what extent?*
- *Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?*

In this study the classification of subsidies applied is according to the point in time that they take place. Subsidization could take place before acquisition, as for example in the case of a subsidized savings scheme. Subsidization can also take place at the point of purchase in the form of e.g. a once-only grant. When subsidization takes place during the occupation phase (during tenancy), it is usually in the form of some type of recurrent subsidies. The latter subsidies could be designed as a monthly income supplement or in the case of a loan a lower than market interest rate. They could also come in the form price deduction as may be the result in the case of rent regulation.

Subsidies can be classified further. They can be focused on demand or on supply; the occupier or the owner. They could be focused on either tenure or could be applicable in more than one tenure. Furthermore, they can be connected to the dwelling as is the case with objectsubsidies which are also known as bricks-and-mortar subsidies. Subsidies can also be connected to persons. In that case they are called subjectsubsidies or personal subsidies. Last, but not least, subsidies can be given by different levels of government but can also be achieved by regulation whereby the cost of housing without regulation would be higher than the cost with regulation.

When focussing on the Netherlands, it must be concluded that compared to object subsidization efforts in the decades up and including the 1990s, little is left nowadays of supply side subsidization in the rental sector (as explained in Section 1.2) and the owner-occupied sector.¹⁵¹ The remaining instruments are now described briefly.

Subsidy before start of contract or acquisition of dwelling

Generally, these types of subsidy or not available, except in the social rental sector, as the Summary table 4, 5 and 6 show. For social rental dwellings within locations for construction, the municipality will usually lower the price for land. As this subsidy is not paid for by government, it can be ascribed to 'regulation'. This implies that other dwellings in the construction project in question will cross-subsidize the land price of the social rental dwellings.¹⁵²

Subsidy at start of contract or period of occupation

A moving house subsidy for tenants in case of renovation is available if rental dwellings are to be renovated or demolished, mostly in urban renewal situations and a tenant is forced to move. The tenant has the right to get a moving house subsidy from

¹⁵¹ Haffner et al., *Bridging the gap*, 205, 214-219.

¹⁵² From: Haffner et al., *Bridging the gap*, 225.

the landlord.¹⁵³ As of 1 March 2012 the minimum amount is set at 5,520 Euro in case of the tenant has to leave an independent dwelling.¹⁵⁴

Subsidy during the tenancy period

Housing allowances for tenants are the only type of subsidy that is directly paid for by central government. It is the typical demand side instrument in housing and became an important national instrument in the 1980s. Next to keeping rents affordable in a general sense, in 1997 a second objective of housing allowances became the prevention of social segregation.¹⁵⁵ The levels of housing allowance were increased across the board to make new neighbourhoods and new dwellings in regenerated urban areas accessible to low-income households in both rented sectors. It became the core housing instrument.

About one-third of tenants received housing allowances in 2010.¹⁵⁶ This amounts to 15% of Dutch households. On average the amount per recipient of housing allowances was 173 Euro per month; implying an average reduction of 41% of rent. Recipients of housing allowances can either have income from work or from income support. Income support recipients almost all receive housing allowances, on average 188 Euro per month or on average 45% of rent paid. The average for social tenants will be much higher than in private renting. This is in line with income differences in both tenures in 2008.¹⁵⁷

The amount of housing allowance depends on a household's income (which could be from work or from other sources, like income support), rent and its composition. All tenants in need and in rental dwellings with a monthly rent up to the liberalization rent level can get it. The amount will depend also on the age (up to the age of 23; 23-65 years of age; 65 plus) and household composition (one or more persons). Furthermore, the system works on the assumptions that everyone pays a basic rent and that the amount above the basic rent is subsidized fully up to a certain rent level. Above that rent level, so-called quality discounts are applied: a maximum of half or three quarters of rent is subsidized depending on the age, household composition and rent level.

The other type of subsidies are indirect subsidies, e.g. not directly paid for by government, as is the case with **government guarantees for social renting and owner-occupation**. The Dutch landscape comprises two types of guarantee funds. The Guarantee Fund for Social Housing (*Waarborgfonds Sociale Woningbouw*, known by its Dutch abbreviation, WSW) is a private fund established by social landlords in 1983.¹⁵⁸ A social landlord pays a relatively low interest rate when a loan is guaranteed by the

¹⁵³ Rijksoverheid, 'Huurwoning. Wanneer heb ik recht of verhuiskostenvergoeding?', <<http://www.rijksoverheid.nl/onderwerpen/huurwoning/vraag-en-antwoord/wanneer-heb-ik-recht-op-verhuiskostenvergoeding.html>>, 7 February 2013.

¹⁵⁴ From country expert: As of March 2013 the minimum amount is set at 5,658 Euro.

¹⁵⁵ From: Priemus & Elsinga, Housing allowances in the Netherlands: the struggle for budgetary controllability', 196.

¹⁵⁶ Marion van den Brakel & Linda Moonen, 'Huurtoeslag: wie krijgt hoeveel?', *Sociaaleconomische trends* (1^e kwartaal 2012), 10, 11, 15. Estimates, as income data were not final at the time of publication.

¹⁵⁷ From: Haffner, 'The Netherlands', 57.

¹⁵⁸ And see: WSW, 'Profile', <<http://www.english.wsw.nl/profile>>, 6 February 2013.

Guarantee Fund. Together, the central government and the local authority act as a safety net and will step in if the WSW encounters financial difficulties. There is also the Central Fund for Housing (*Centraal Fonds voor de Volkshuisvesting*; Dutch abbreviation CFV). This independent public body which was established in 1988 supervises the financial affairs of the housing associations and initiates the restructuring of financially weak housing associations. All housing associations pay a fee to the CFV. CFV thus draws up reorganisation plans and provides support in the form of interest-free loans. The aim is early detection and intervention, so that financial problems are minimised. Hence, since 1988, the WSW has never been required to pay any guarantee claim. The excellent financial soundness of the sector and the government safety-net contribute to the Triple A status of the fund and enable housing associations to take out low-interest loans for social housing objectives.

In the owner-occupied sector the Homeownership Guarantee Fund (*Stichting Waarborgfonds Eigen Woningen*; WEW) is a private organization with a public task.¹⁵⁹ The non-profit private foundation was established in 1995 as the successor of the schemes collectively called the Municipality Guarantee. The main objective of the foundation is to promote home-ownership. The Homeownership Guarantee Fund issues the National Mortgage Guarantee (*Nationale Hypotheek Garantie*; NHG). The guarantee is limited to loans granted to purchase an existing or newly built dwelling, up to a maximum price. Issuing guarantees to homeowners has been delegated to all lenders who have a deed of surety with the Guarantee Fund. In principle, all lenders are allowed to take part. Housing consumers who wish to have their loans guaranteed are assessed by the lender to ensure that they meet the guarantee rules. The municipalities and the central government function as a back-up.

From an economic point of view, if rents are set below rents based on costs, an economic subsidy is created, as would be the case by **Rent regulation and rent setting in the regulated rental sector**. If rents are lower than market rents as a result of rent regulation, then economists identify an implicit subsidy to the tenant. Even though market rents are not charged, because most rental dwellings have a regulated rent, calculation results indicate that on average regulated rents are lower than market rent.¹⁶⁰ As explained in Section 3.3, rent regulation has come to be regarded as an affordability measure. Rents in the regulated rental sector are strictly regulated by national rules, as explained in Section 3.2. Dwelling quality will determine the maximum rent level possible at the beginning of a contract which will be indefinite, while the level of annual rent increase is determined by politics.

¹⁵⁹ From: Marietta Haffner & Harry van der Heijden, 'Government Sponsored Enterprises in the United States', in *International Encyclopedia of Housing and Home, Vol. 2*, ed. Susan Smith, Marja Elsinga, Lorna Fox O'Mahony, Ong Seow Eng, Susan Wachter, Richard Ronald (Oxford: Elsevier, 2012), 314. And see: NHG, 'Home', <<http://www.nhg.nl/>>, 6 February 2013.

¹⁶⁰ Gerbert Romijn & Paul Besseling, *Economische effecten van regulering en subsidiëring van de huurwoningmarkt* (Den Haag: Centraal Planbureau, 2008), 10. And: Frans Schilder & Johan Conijn, 'How housing associations lose their value: the value gap in The Netherlands', republished in *Essays on the Economics of Housing Subsidies*, PhD of Frans Schilder (Amsterdam: Universiteit van Amsterdam, 2012), 29 et seq.

National rent regulation will not be the only cause of the implicit subsidy to tenants, if landlords in the regulated rental sector set rents lower at the start of the rental contract than the maximum allowable rent level based on quality (see Section 3.2). Rents of private landlords are on average almost 85% of the maximum rent allowed in 2010; while in social renting they are on average almost 70% of the maximum rent allowed.¹⁶¹

Last but not least there are some indirect subsidies available to **subsidize the financing for new-comers on the owner-occupied market**. So-called starters' loans are available in some municipalities.¹⁶² Funds from the municipality are being used, as well as a contribution by central government. The subsidy element in these loans is cheaper finance in the beginning of the loan period (e.g. no interest costs) in order to counter the front-loading of the loan. Later during the loan term, the full costs for the loan will still have to be paid. This fund of government contribution thus works as a revolving fund.

- *Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?*

The state aid and level playing field regulation of the European Union, led the private investors in housing to file a complaint with the European Commission (EC) about an unlevel playing field in the rental sector, as a result of state aid being given to the social rental sector. One such subsidy the investors opposed was the loan guarantees by the WSW which were guaranteed by central government (see above in this section).¹⁶³ According to European Union (EU) rules, state aid aimed at activities that are used to fulfil a public task is not to leak away for market activities as this would create an unlevel playing-field for these market activities. And as social landlords can also construct owner-occupied dwellings for sale or construct and rent out dwellings with an unregulated (or deregulated) rent, the threat of subsidies leaking away was deemed realistic by the European Commission.

Negotiations started between the European Commission and Dutch government. The result of the negotiations between the Dutch government and the European Commission was the **decision of the EC** issued in December 2009 in which it was announced that the Dutch government intended to bring the social housing system in line with state aid regulations by adopting a new procedure ensuring that the allocation of dwellings is conducted in a transparent and objective manner without any subsidies leaking away to

¹⁶¹ Companen, *Feiten en achtergronden van het huurbeleid 2010* (Den Haag: DGWWI, 11 november 2010), 15.

¹⁶² Dol, Hoekstra & Elsinga, *Atlas koop- en financieringsvarianten*, 5.

And: Stimuleringsfonds Volkshuisvesting, 'Starterslening', <<http://www.svn.nl/producten/Starterslening/Paginas/Home.aspx>>, 27 February 2013.

¹⁶³ Marja Elsinga, Marietta Haffner & Harry van der Heijden, 'A unitary rental market in the Netherlands? Theoretical exploration and empirical evidence', paper presented at the ENHR-conference 'Housing in Europe: New Challenges & Innovations in Tomorrow's Cities', Reykjavik, 29 June–3 July, 2005.

And: Hugo Priemus. 'Real estate investors and housing associations: level playing field? The Dutch case', *European Journal of Housing Policy* 8, no.1 (2008): 85.

market activities.¹⁶⁴ This agreement entailed setting an income limit for the allocation of social rental housing. According to this rule housing associations were to allocate at least 90% of their vacant homes to households with a certain maximum income (41% of all households) as of 1 January 2011. As this limit is only applicable at the moment of allocation, and not at a later moment, households cannot be evicted, if income surpasses the limit. The remaining 10% of dwellings can be allocated to those with a higher income than the limit.

Furthermore, it was agreed that state support is only allowed for the development of social rental housing and real-estate intended for supporting housing or to improve neighborhood facilities, such as primary and secondary schools and neighborhood centers.¹⁶⁵

Summary table 4 Typology of subsidization of landlord in the Netherlands, 2013

	Social renting	Private renting
Subsidy before start of contract (e.g. savings scheme)	Cross-subsidization of land costs within project development may take place	No
Subsidy at start of contract (e.g. grant)	No	No
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	Lower debt interest rate than market interest rate possible because of guarantee on loan	No

Summary table 5 Typology of subsidization of tenant in the Netherlands, 2013

	Social renting	Private renting
Subsidy before start of contract (e.g. voucher allocated before finding a rental dwelling)	No	No
Subsidy at start of contract (e.g. subsidy to move)	Possible in the case of forced move in the case of urban renewal	No
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	Housing allowance possible for tenant in regulated rental sector	Housing allowance possible for tenant in regulated rental sector

¹⁶⁴ Tuna Tasan-Kok, Danielle A. Groetelaers, Marietta E.A. Haffner, Harry M.H. van der Heijden & Willem K. Korthals Altes, 'Providing Cheap Land for Social Housing: Breaching the State Aid Regulations of the Single European Market?' *Regional Studies* 47, no. 4 (2013), pp. 628-642.

¹⁶⁵ Elsinga & Van Bortel, 'The future of social housing in the Netherlands', 103.

Summary table 6 Typology of subsidization of owner-occupier in the Netherlands, 2013

Subsidy before the purchase of the house (e.g. savings scheme)	No
Subsidy at start of the tenancy (e.g. grant)	No
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	No general subsidies Lower interest rate than market interest rate possible because of mortgage loan guarantee Starter's loan possible in some municipalities
Subsidy at end of tenancy	Negative equity may be waived in the case of a mortgage loan guarantee

Depending on how the EU income limit will be corrected with inflation in the future, the social rental sector may be set to be marginalized income-wise. The rent adjustment that took income into account and that took place for the first time in 2013, as explained in Section 3.3, may also contribute to higher income households leaving the social rental sector (see also Section 7.2).

3.7 Taxation

- *What taxes apply to the various types of tenure (ranging from ownership to rentals)?*
 - *In particular: Do tenants also pay taxes on their rental tenancies? If so, which ones?*

Owner-landlords or owner-investors are the actors on the housing market that owe taxes. This implies that **tenants** do not pay any taxes at any moment in time related to the rental agreement; there may be costs, like administration costs, but no taxation. During the period of occupation there will be no taxation for the tenant, unless the tenant is paying for renovation or maintenance works (VAT).

- *What taxes apply to the various types of tenure (ranging from ownership to rentals)?*
- *In particular: is the value of occupying an owner-occupied house considered as taxable income in income tax?*
- *In particular: is the profit derived from the sale of a residential home taxed?*
- *Is there any subsidization via the tax system? If so, how is it organised?*

In this study taxation for housing is described according to the three moments in time that it can play a role: at the point of acquisition (construction or acquisition of dwelling or start of contract), during the period of occupation of the dwelling and at the end of the tenancy (sale, end of contract).¹⁶⁶ These phases are distinguished in the description of the tax system that follows and are summarized in Summary table 7. Different ways of acquiring the dwelling can be relevant: buying, building, getting a present and getting an inheritance. Inheritance and gift tax at the point of acquisition will not be discussed here, however.

Taxation at the point of acquisition

Taxation at the point of acquisition of real estate (thus also a dwelling) is focused on the purchaser or builder (investor in) of the dwelling. At the point of acquisition the investor, regardless of whether it will be the owner-landlord, the owner-occupier or the owner-builder, will have to pay either Value Added Tax, which is generally known as VAT or a tax called transfer tax (*overdrachtsbelasting*).

VAT is due on the construction, repair and maintenance of residential immovable property.¹⁶⁷ It is also due on the acquisition of building land and new buildings. The standard rate of VAT in 2010 was 19%; the reduced rate of 6% was applicable to painting and plastering of immovable property where it was older than 15 years. The website of the tax authorities reveal that the reduced rate of 6% is still applicable in 2013, also for insulation works.¹⁶⁸ Furthermore, the age requirement of the dwelling is no longer applicable. Finally, the standard rate of 19% was increased to 21% as of 1 October 2012.

The increase of the standard VAT-rate for construction with two percentage points has increased the cost price of new construction, while on the other hand the rate of the transfer tax that is applicable to the acquisition of existing dwellings (only dwellings) with land has been reduced from 6% to 2% as of 15 June 2011.¹⁶⁹ This decrease was

¹⁶⁶ Marietta Haffner, 'Fiscal treatment of owner-occupiers in six EC-countries: A description', *Scandinavian Housing & Planning Research* 10, no. 1 (1993): 49.

¹⁶⁷ Sybren Cossen, *Three VAT Studies* (The Hague: CPB Netherlands Bureau for Economic Policy Analysis, 2010), 80 and 81.

And: Michael Oxley & Marietta Haffner, *Housing taxation and subsidies: international comparisons and the options for reform* (York: Joseph Rowntree Foundation, 2010), 47-68.

And: Overheid.nl, 'Wet op de omzetbelasting 1968', <http://wetten.overheid.nl/BWBR0002629/geldigheidsdatum_09-11-2012>, 27 February 2013.

¹⁶⁸ Rijksoverheid, 'BTW-tarieven en btw-vrijstellingen', <<http://www.antwoordvoorbedrijven.nl/regel/btw-tarieven>>, 5 February 2013.

¹⁶⁹ Frans Weekers, *Overdrachtsbelasting. Verlaging tarief bij verkrijging woningen. Besluit van 25 mei 2012, nr. BLKB 2012/863M*, (Den Haag: Ministerie van Financiën, 2012), 1.

introduced in response to the effects of the Global Financial Crisis. As of 1 July 2012, this decrease was made permanent in the 2013 Budget.

Taxation during the period of occupation

During the period of occupation, income and property taxes may be relevant for owners of dwellings.¹⁷⁰ Dutch tax authorities are responsible for the personal income tax and the corporate income tax, while the municipalities are responsible for the property taxation within the national framework.¹⁷¹ These rules of these taxes affecting the housing market are described in the following.

The income tax paid by private landlords differs, according to the type of landlord.¹⁷² There are four main types of tax on income from private rented dwellings, two for organization landlords and two for private individual landlords with some variations.

Organization landlords in principle pay corporate income tax. These professional landlords (companies) are subject to corporate tax – 20% on profits up to €200,000 and 25% on amounts of profit above that amount (2011). This also applies to social landlords since 2008. Revenues (including capital gains) are subject to corporate income tax but costs are tax deductible. Fiscal depreciation is however limited. Two kinds of organizations are exempt from corporate income tax. Pension funds are one type of organization that does not pay corporate income tax. Then there are institutions, which exclusively invest in real estate (such as insurance companies) that are exempted from this tax, provided they pay a dividend to the shareholders. They are called Fiscal Investment Institutions (FBIs) which are similar investment vehicles to Real Estate Investment Trusts (REITs).

For private individual landlords there are two main income tax options for their rental activities: one being taxed as a more or less professional entrepreneur, the other being taxed as an investor in rented housing.¹⁷³ In practice, it is the tax inspector who decides which applies. In the first situation the landlord is treated as running a business and has to pay personal income tax like any other business which is subject to personal income tax: taxation of actual income (including capital gains) net of costs against a progressive tax rate (52% being the highest rate). The 'real professional' which is determined by the number of hours spent on the business (at least 1,225 per year) and an age of less than 65 years when the period starts, will be able to profit from an entrepreneur's deduction depending on the profits achieved. The professional with fewer hours spent on the business cannot take advantage of such a deduction.

As an investor, the private individual landlord is subject to taxation on the income from his properties in the same way as owners of other personal wealth. Since the tax reform of 2001, the fiscal authorities tax imputed instead of actual returns.¹⁷⁴ The (net¹⁷⁵ total)

¹⁷⁰ Marietta Haffner, 'Fiscal treatment of owner-occupiers in six EC-countries: A description', 50-52.

¹⁷¹ Oxley & Haffner, *Housing taxation and subsidies*, 49-68.

¹⁷² From: Haffner, 'The Netherlands', 71 and 72.

¹⁷³ For director-large shareholders, there would be a different personal income tax treatment.

¹⁷⁴ Marietta Haffner, 'Dutch Personal Income Tax Reform 2001: An Exceptional Position for Owner-occupied Housing', *Housing Studies* 17, no. 3 (2002b): 521 et seq.

¹⁷⁵ The net rate implies notional cost deductions.

return is imputed as 4% of the market value of the property corrected for debt. The latter difference can be called net wealth or equity. The amount of return that is imputed is then taxed at 30%. This 4% of 30% delivers an effective rate of taxation of 1.2% on net wealth. The tax liability is calculated regardless of the actual income and costs of the landlord in relation to wealth components. This also means that there is no separate capital gains tax. If the dwelling is sold and the equity is put into a savings account, the amount of income tax to be paid will not change.

Even though an owner-occupied dwelling is part of personal wealth, it is not treated the same way as the income from second homes or other wealth (such as savings accounts or stock), although the systematic is similar. An imputed rent is taxed in income tax for as long as mortgage interest is being deducted (maximum of thirty years). The amount of imputed rent taxed can never be higher than the amount of interest deducted. The tax rate is progressive and amounts to 52% at the most.

The fact that income from an owner-occupied dwelling is treated differently from income from other personal wealth in income tax is not regarded as a tax expenditure (or deviation from the primary structure of income tax). The fact that imputed rent is not taxed (when the mortgage loan is repaid) and only taxed partially (once the amount of mortgage interest is lower than the amount of imputed rent) is considered as a tax expenditure in the Budget of 2011 by Dutch government.¹⁷⁶ Another tax expenditure that is listed is the tax exemption on savings when saving the repayments of the mortgage loan in a special savings account (e.g. for an endowment loan; see Section 1.4).

This description shows that the matter of tax subsidies goes beyond this study.¹⁷⁷ It is a complex matter and depends on the benchmark that is being used to determine the extent of subsidization; especially in income and corporate tax. A benchmark implies that there is some kind of 'normal' tax treatment for a group of tax payers or a group of taxed activities. A deviation of that normal tax treatment can then be called a subsidy. Determining the normal tax treatment, however, will not always be as clear-cut as it may seem. For instance, as can be observed from the list of tax expenditures given, the Dutch government does not consider the mortgage interest deduction a subsidy, even though it involves probably the biggest sum of money of all housing instruments.

As of 1 January 2013, the mortgage interest deduction is only available for new mortgage loans with at least a repayment rhythm as of an annuity loan.¹⁷⁸ There are further coalition plans to reduce the tax rate of the mortgage interest deduction with 0.5 percentage points to a rate of 38% in 2040.¹⁷⁹

¹⁷⁶ Rijksoverheid, 'Rijksbegroting 4. Toelichting op belastinguitgaven', <http://www.rijksbegroting.nl/2011/kamerstukken.2010/9/14/kst147870_4.html>, 5 February 2013.

¹⁷⁷ Haffner, 'Dutch Personal Income Tax Reform 2001: An Exceptional Position for Owner-occupied Housing', 523 and 524.

¹⁷⁸ Rijksoverheid, 'Eigen woning', <<http://www.rijksoverheid.nl/onderwerpen/belastingtarieven/inkomstenbelasting/eigen-woning>>, 5 February 2013

¹⁷⁹ Centraal Planbureau, *Actualisatie analyse economische effecten financieel kader Regeerakkoord. Uitgevoerd op verzoek van de Minister-president* (Den Haag: CPB 2012b), 23.

Municipal property tax is payable by the owner of the dwelling on the estimated market value of a dwelling.¹⁸⁰ Municipalities can determine the rates, but need to take the total increase of local levies into account.

Taxation at the end of tenancy

Generally no transaction taxes are due on sale by the seller of the dwelling, but only by the buyer at the point of acquisition, as was explained earlier in this section. However, the question becomes how capital gains will be treated at the point of sale. The Netherlands does not have a separate capital gains tax. Any gains (and losses) are to be included in total income of the tax payer. Capital gains from owner-occupied dwellings are not included as income in income tax.

- *In what way do tax subsidies influence the rental markets?*

Nothing specific has been found during this study on how taxation influences behaviour of landlords.

- *Is tax evasion a problem? If yes, does it affect the rental markets in any way?*

Tax evasion will generally not be regarded a problem, as tax authorities often are able to cross-check the data that they get from tax payers with the data from other sources.

¹⁸⁰ Rijksoverheid, 'Wat is de onroerendezaakbelasting (OZB)?', <<http://www.rijksoverheid.nl/onderwerpen/koopwoning/vraag-en-antwoord/wat-is-de-onroerendezaakbelasting-ozb.html>>, 5 February 2013.

Summary table 7 Tax treatment of owners of dwellings, 2013

	Homeowner		Social landlord		Private landlord	
	Name of taxation	Does it contain an element of subsidy, if any? If so, what?	Name of taxation	Does it contain an element of subsidy, if any? If so, what?	Name of taxation	Does it contain an element of subsidy, if any? If so, what?
Taxation at point of acquisition						
National VAT	VAT for new construction	No	VAT for new construction	No	VAT for new construction	No
National transfer tax	Acquisition of an existing dwelling	No	Acquisition of an existing dwelling	No	Acquisition of an existing dwelling	No
Taxation during tenancy						
National VAT	VAT for renovation	Yes, for certain works (e.g. painting)	VAT for renovation	Yes, for certain works (e.g. painting)	VAT for renovation	Yes, for certain works (e.g. painting)
National personal income tax	Personal income tax	Yes	Not applicable		Private person landlord	Yes, in case of entrepreneur's deduction under certain conditions
National corporate income tax	Not applicable		Organization landlord	No	Organization landlord	Pension funds are exempted
Municipal property tax	Property tax	No	Property tax	No	Property tax	No
Taxation at the end of tenancy						
Capital gains tax: not a separate tax; capital gains will be included in total income	Income tax	Not included	Corporate income tax	No	Personal income tax Corporate income tax	No No

4 Regulatory types of rental and intermediate tenures¹⁸¹

4.1 Classifications of different types of regulatory tenures

- Which different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare Figure 1.1 and Summary table 1 with Summary table 7 and 8)?

The Netherlands has been a country of tenants for many decades after World War II. Only since the year 2000, homeowners have been dominating the housing market (see Figure 4.1). Summary table 1 shows that in 2009 their share has reached 59%, while social renting's share amounted to 34%, and private renting's to eight percent.

Within the rental sector, social renting with a share of 82% dominated in 2009, as Table 4.1 shows (see also Summary table 1). The number of dwellings owned by private person landlords is a little higher than the number owned by institutional investors and real estate agents.

Table 4.1 Tenure structure by dwellings by landlord type, in the Netherlands, 2009¹⁸²

Renting from:	Percentage of stock	Percentage of renting	Number of dwellings
Housing associations	34	82	2,354,151
Private persons	3	8	225,470
Private organizations	3	7	189,450
- Institutional investors* (pension fund, insurance company)			
- Other organizational landlords (investor, estate agent**)			
Private other (including renting from family, but also status unknown)	2	4	106,965
Total	42	100	2,876,037

* Investing in renting based on the fact that funds received from main task need to be managed

** The real estate agent can also be hired by private persons. As explained in Summary table 1, the different types of private landlord overlap

As explained in Section 1.1, 3.2 and 3.6, **it is not the ownership of the dwelling (social versus private landlord) that is relevant for rent regulation, but the type of rent – regulated versus unregulated or liberalized – that determines which regulation is relevant:**

- The rent levels of 92% of the rental sector – dwellings with a monthly rent up to 631.73 Euro between 1 July 2008 and 1 July 2009 – are regulated. Dwellings with a rent level higher than the 631.73 Euro have a deregulated or liberalized rent level.
- Rent control is concerned with rent levels at the start of the rental contract (rent setting) and with annual rent increases (rent adjustment). The rent level is dependent on the quality of a dwelling which is expressed in number of quality points.
- Officially, it is the social landlords that have a public task, while private landlords do not. Having a public task or not is therefore irrelevant for tenancy law.

¹⁸¹ I.e. all types of tenure apart from full and unconditional ownership.

¹⁸² Based on WoON 2009 calculations by TU Delft/OTB.

Tenant protection relating to the indefinite contract and the limited number of reasons for eviction does not differ between segments or ownership types, as Section 4.3 explains.¹⁸³

What has been called rental tenure with a public task in this study, would be describing the dwellings with a regulated rent that are owned by social landlords (housing associations). The dwellings with a regulated rent that are owned by private landlords can be considered as not having a public task, if one leaves aside that rent control may deliver a subsidy to the tenant, if the regulated rent is lower than the market rent would be. However, there is no allocation system to organize the distribution of dwellings to the most needed in the case of private regulated renting. If regulation is to be regarded as making rental housing more affordable, it is not targeted, and it can therefore not be regarded as rental housing with a public task.

In Table 4.2 the two types of distinctions – the distinction of **social-private** on the one hand, and the distinction of **regulated-deregulated** on the other hand – is disentangled. The top part of the table shows the share of the dwellings with a regulated rent and a deregulated rent by owner categories (which overlap in the private sector). The share of dwellings with a regulated rent is 92% of the rental sector, while the share of dwellings with a deregulated rent is eight percent. In the case of housing associations, the share is 96% versus four percent. For 2009 social and regulated turn out to be largely synonymous. Therefore, the share of rental dwellings with a deregulated rent is much higher in the private rental sector than in the social rented sector.

As indicated before, the rent level at the start of the contract is relevant for the rent regulation scheme that is to be applied. However, if the same exercise is repeated in the bottom part of the Table 4.2 with the number of quality points, the share of 'regulated' versus 'deregulated' dwellings is different. The latter share is much higher, and former share much lower compared to the classification according to rent level. More precisely, the numbers show that social landlords based on quality points on average own relatively more dwellings with a regulated rent than private landlords which would be in line with their respective missions: non-profit versus profit. However, the numbers show also that 40% of the rental dwellings could have a deregulated rent, if the points are the basis for rent setting and adjustment. With the plans of the present government to increase rents, this scenario cannot be considered as unrealistic. The different distribution of the dwellings based on quality points (as compared to the distribution based on rent levels) implies that there is a large growth potential for the deregulated or liberalized sector, also owned by social landlords.

¹⁸³ Rijksoverheid, 'Huurbescherming', <<http://www.rijksoverheid.nl/onderwerpen/huurwoning/huurbescherming>>, 13 July 2013.

Table 4.2 Dwellings with regulated and deregulated rent according to quality points and rent level, in the Netherlands, 2009¹⁸⁴

	Tenant of* housing association	Tenant of* private individual landlord	Tenant of* private organization landlord	Tenant of* other private landlord	Total
% Regulated/de-regulated according to rent level					
Regulated rent (rent up to 631.73 Euro** per month as of 1 July 2008)	96	77	59	86	92
Possibly deregulated** rent (rent higher than 631.73 Euro** per month)	4	24	41	14	8
% Regulated/de-regulated according to quality points					
Up to about 140 points: must be a regulated rent	60	41		51	57
From about 140 points and more: rent could be set as deregulated rent	40	60		49	43

* The survey asks tenants who they rent from. Therefore the classifications in the private rental sector are not mutually exclusive

** Liberalization rent level between 1 July 2008 and 1 July 2009

*** The numbers do not take into account the contracts that have not been renewed since the reference dates of 1 July 1994 for existing dwellings and 1 July 1989 for new construction. If they are not renewed, the rents would be regulated

4.2 Regulatory types of tenures without a public task

- *Different types of private rental tenures*

As explained in the previous section, for tenancy law the main distinction is between a dwelling with a regulated and a dwelling without a regulated rent. It is not the distinction social versus private landlord or tenant. As explained earlier in this report (e.g. in relation to Summary table 1), **no other type of tenure** (as mentioned in the detailed questionnaire is relevant on the Dutch market.

Any landlord – social or not – could own stock with a deregulated rent. Tenant protection (length of contract and eviction rules) for a tenant renting a rental dwelling with a deregulated rent is as strong as for a tenant renting a dwelling with a regulated rent (see further Section 4.3). The social landlords are described in the next section as they generally would be considered as having a public task to fulfil and their stock mostly

¹⁸⁴ From: Haffner, 'The Netherlands', 59.

coincides with the regulated rental stock according to Table 4.2.

As also shown in Table 4.2, the largest share of deregulated stock can be found with the organization landlords (institutional investors and real estate agents). Their motive will be profit making. The majority of the almost 190,000 dwellings (see Table 4.1) – 133,000 in 2009 – were owned by the 31 members of the Association for Institutional Property Investors in the Netherlands (*Vereniging van Institutionele Beleggers in Vastgoed, Nederland*).¹⁸⁵ Generally, their dwellings are bigger, newer and relatively expensive compared to those of the private person landlords (see Table 1.2).¹⁸⁶ The latter group lets out almost 226,000 dwellings in 2009.

- *Are there regulatory differences between professional/commercial and private person landlords?*

There will not be any special regulation in tenancy law based on organizational form of the landlord. Regulation concerning supervision and taxation will depend on the legal form of the organization. Financing is discussed in Section 1.4. As indicated, not much is known about the private rental sector.

- *Are there different intertemporal schemes?*

There are also no intertemporal tenancy law regimes.

- *Are there different schemes of tenancy law and rent regulation?*

See Section 1.1, 3.2, 3.6 and 4.1.

4.3 Regulatory types of tenures with a public task

As explained in the previous two sections, any landlord – social or not – could own stock with a regulated rent. As the private owners are described in the previous section, this section focuses on the social landlords, the Dutch housing associations which are non-profit legally-private organizations that are accredited by Dutch government according to the Housing Act in order to fulfil a public task. According to Table 4.2, most of their stock is found in the regulated rental sector.

Since the mid-1990s they have been financially independent from government and almost all municipal housing companies (from more than 200 in 1989 and 1990 to 24 in 1999) have been turned into social landlords (these developments are described in Section 1.2).¹⁸⁷ The process of turning public housing into non-profit private housing implies that housing associations nowadays should also be providing social rental

¹⁸⁵ Vereniging van Institutionele Beleggers in Vastgoed, Nederland, 2010a, 2.

¹⁸⁶ Haffner et al., *Bridging the gap*, 208

And: Haffner in Scanlon & Kochan, 65

¹⁸⁷ From: Haffner, 'Dutch Social Rental Housing: the Vote for Housing Associations'.

And: Elsinga & Wassenberg, 'Social Housing in the Netherlands', 135.

And: Elsinga & Van Bortel, 'The future of social housing in the Netherlands', 99 and 100.

housing to the most vulnerable households in society. This task historically was one of the municipal housing companies.

In 2009 there were about a little more than 400 housing associations.¹⁸⁸ This number is almost half the number of housing associations that existed in 1997; the result being that the average size of the housing association has increased with more than 80% from 3,138 dwellings to 5,752 dwellings per association. The size however does diverge: in urban areas the average size amounts to 9,600 units; and in not urban areas to 3,500 units. The largest housing associations, however, own 50,000 to 80,000 dwellings.¹⁸⁹ The achievement of better efficiency and economies of scale were the reasons for the mergers. The mergers also have resulted in more housing associations that operate on a regional or national level, contrary to the old days when they operated mainly at the municipal level.¹⁹⁰

The regulation to guide the activities of housing associations which is contained in the Social Rented Sector Management Order (BBSH; see Section 3.2) has intentionally not been made very specific.¹⁹¹ The results expected from social landlords and to be evaluated were to be agreed upon on a local level in so-called local performance agreements (*prestatie-afspraken*) between housing associations and local authorities. In practice, because many housing associations and municipalities never made these agreements, supervision on societal outcomes has almost been non-existent. Central government (with the help of the CFV, see Section 3.2) mainly focuses on supervising the financial viability of housing associations and only intervenes in cases of gross mismanagement and fraud.

- *Specify for tenures with a public task*
 - *Selection procedure and criteria of eligibility for tenants;*
 - *From the perspective of prospective tenants: how do I proceed in order to get “housing with a public task”?*

As described in Section 3.2, municipalities or groups of municipalities can – based on the Housing Allocation Act – design an allocation system for regulated rental dwellings of social landlords. In rural areas where dwellings are scarce for the own population, municipalities are also allowed make rules for housing market access for all lower-priced owner-occupied and rental dwellings. Last, but not least, since 1 January 2011, housing associations are to allocate 90% of their dwelling to the EU-target group with a certain maximum income. As explained in Section 3.6, this is in order to prevent what the European Union calls an unlevel playing field.

Housing allocation refers to the regulations that govern the distribution of housing among home-seekers, also called prospective tenants or **candidate-tenants**, who meet the criteria.¹⁹² These will be drawn up in a local or a regional allocation act

¹⁸⁸ Rijksoverheid, ‘Aantal corporaties en gemiddeld woningbezit’, <http://vois.datawonen.nl/report/cow10_903.html>, 17 February 2013.

¹⁸⁹ Elsinga & Wassenberg, ‘Social Housing in the Netherlands’, 137.

¹⁹⁰ Haffner et al., *Bridging the gap*, 206.

¹⁹¹ From: Elsinga & Van Bortel, ‘The future of social housing in the Netherlands’, 101.

¹⁹² Haffner et al., *Bridging the gap*, 221.

(*huisvestingsverordening*). Since the 1990s, in most municipalities the system of allocation will be the so-called ‘advertisement’ or ‘choice-based letting’ model.¹⁹³ The vacant social rental dwellings are advertised in a housing bulletin and/or on internet, complete with the requirements.¹⁹⁴ Interested candidates can then apply for the dwelling or dwellings that best reflect their preferences. Criteria for allocation usually are waiting time or length of residence in current dwelling. The dwelling will be offered to the candidate who best fits the selection criterion. Usually, the candidate will have no doubt that he is rightfully offered a social rental dwelling. The candidate also has a choice not to accept the dwelling. Waiting time varies between dwelling types, neighborhoods and municipalities, but can last up to ten years in a tight housing market like Amsterdam, the capital city of the Netherlands.

Statistics show that in 2009 housing associations managed to allocate 90% of their dwellings appropriate to income, while in four percent of cases did not fulfil the income requirement in the sense that the dwelling rent should be regarded as too cheap in relation to income and in five percent of cases as too expensive in relation to income.¹⁹⁵ Most dwellings are allocated to singles with a low income (more than one third of the 181,000 dwellings that were allocated in 2009) that are younger than 65 years of age and couples that are younger than 65 years of age (almost 24,000).

- *Specify for tenures with a public task: typical contractual arrangements and regulatory interventions into rental contracts.*

Not only rent control (see Section 3.2 and Section 3.6), but also tenant security – which implies how secure a tenant is from eviction from the dwelling – is regarded as strong in the country.¹⁹⁶ A tenancy agreement in the rental sector is usually for an indefinite period of time.¹⁹⁷ If the dwelling is sold the tenancy is not affected. The tenant has to give one month’s notice. This implies that from the moment the tenant hands in the notice, he will have to pay rent for another month. Some lease contracts in the private rented sector, however, require the tenant to rent the dwelling for at least one year, before he can hand in his notice.

A landlord can terminate a current tenancy agreement under five circumstances listed in the Dutch Civil Code, and if it is confirmed by a court.¹⁹⁸ An example would be the

¹⁹³ Jeanet Kullberg, ‘From Waiting Lists to Adverts: the Allocation of Social Rental Dwellings in the Netherlands’, *Housing Studies* **12**, no. 3 (1997): 393-403.

And: Jeanet Kullberg, ‘Consumers’ Responses to Choice-based Letting Mechanisms’, *Housing Studies* **17**, no. 4 (2002): 549-579.

And: Gelske van Daalen & Marco van der Land, ‘Next Steps in Choice-based Letting in the Dutch Social Housing Sector’, *European Journal of Housing Policy* **8**, no. 3, (2008): 317-328.

And: Haffner et al., *Bridging the gap*, 222.

¹⁹⁴ Haffner et al., *Bridging the gap*, 222.

¹⁹⁵ Rijksoverheid, ‘Woningtoewijzing door corporaties’, <http://vois.datawonen.nl/report/cow10_906.html>, 17 February 2013.

¹⁹⁶ Dan Andrews, Aida Caldera Sánchez & Åsa Johansson, *Housing Markets and Structural Policies in OECD Countries*, *OECD Economics Department Working Papers*, No. 836 (no place of publication: OECD Publishing, 2011): 47.

¹⁹⁷ Rijksoverheid, ‘Huurbescherming’,

<<http://www.rijksoverheid.nl/onderwerpen/huurwoning/huurbescherming>>, 13 July 2013.

¹⁹⁸ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, *Huurbeleid 2011/2012*, 32 and 33.

landlord urgently needing the dwelling for his 'own use'. The reason of the tenant not being a 'good' tenant would include being in rent arrears or causing nuisance. Notice periods for landlords will be three months to six months depending on length of the tenancy; for the tenant it will be one to three months depending on payment rhythm.¹⁹⁹

A property right as a right to buy for social tenants does not exist. Social landlords however will be selling dwellings within the framework of their financial model. Without these sales' revenues, social landlords may not be able to realize new social rental construction.²⁰⁰

- *For which of these types will you answer the questions in the remaining part of this country study; which regulatory types are important in your country?*

Summary table 8 Characterization of types of Dutch rental dwelling to be included in the remainder of this report, 2009 (derived from Table 4.2)

	<p>Main characteristics:</p> <ul style="list-style-type: none"> • Type of landlord (estimated size of market share within rental market (2009))
Rental housing without regulated rents	<p>Rental housing owned by:</p> <ul style="list-style-type: none"> • private landlords without public task (about 35% of their stock) • social landlords with public task (4% of their stock)
Rental housing with regulated rents	<p>Rental housing owned by:</p> <ul style="list-style-type: none"> • social landlords with public task (96% of their stock) • private landlords without public task (about 65% of their stock)

Bold: types of tenancy law to be described in the remainder of this report

From Summary table 8 (Table 4.3) which is derived from Table 4.2, it is clear that the rental dwellings with a regulated rent dominate the Dutch rental market, while the rental dwellings with a deregulated or liberalized rent comprise a minority. The former tenancy type will be offered mostly by social landlords, and private person landlords and less so by private organization landlords. For dwellings with a deregulated rent, this distribution will be the other way around. Thus type of landlord does not determine the rules that apply under tenancy law, but the type of rent that a dwelling offers. Both types of tenancy regulation are presented in more detail in the remainder of this study.

¹⁹⁹ Rijksoverheid, 'Hoe moeten huurder en verhuurder de huur opzeggen?', <<http://www.rijksoverheid.nl/onderwerpen/huurwoning/vraag-en-antwoord/hoe-moeten-huurder-en-verhuurder-de-huur-opzeggen.html>>, 11 February 2013.

²⁰⁰ Elsinga & Wassenberg, 'Social Housing in the Netherlands', 131.

5 Origins and development of tenancy law

- *What are the origins of national tenancy law and where was and is it laid down (civil code, special statute, case law)?*

Originally, national tenancy law was covered by the civil code that was a copy from the French code civil. The section on tenancy law covered all kinds of tenancy contracts, including tenancy of labour. The most important principle was that of the liberal perspective of equality of parties, even when this turned out to be a dangerous fiction when the industrialization of the country in the 19th century resulted in a severe shortage of affordable housing for the working class. During the war-eras there were specific statutes that regulated the rents. The statutes were abandoned when the wars were over. However, they did influence the system as it stands now. In 1950, the situation changed permanently when the *Huurprijswet (Rent Act)* was adopted to regulate the rents. From hereon, many statutes were incorporated to protect the weaker party to the contract (the tenant)²⁰¹. The statute as it stands now was laid down in 2003 in Title 4 of Book 7 of the Dutch Civil Code that deals with 'special contracts'. The new statute mostly combines the various previously existing rules into one systematically ordered set of rules. Prices of socially rented houses are covered by the *Uitvoeringswet Huurprijzen Woonruimte (Housing Rents (Implementation) Act)*. On the lower level the *Besluit Huurprijzen Woonruimte (Residential Tenancies (Rent) Decree)* covers the more specific issues, such as the percentage that the (regulated) rents may yearly increase and how these rents should be calculated.

- *Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of the tenant's home as in Scandinavia vs. just a place to live as in most other countries)*

Tenancy law stems mostly from the War-eras during the 20th century. During the first World War, in which the Dutch did not actively participate but were suffering from an economic crisis and a shortage of dwellings, the government decided to freeze the rents. After WWI, the statute expired and the limits on price increases were lifted. During WWII the prices were again frozen. After the war, at first a more flexible regime was installed, but this was replaced in the 1950s with a regime that is ideologically based on the liberal principle of freedom of contract and flexibility. However, in reality, this freedom is confined by specific statutes and regulations that cover the larger part of the legal relation between tenant and landlord.

More specifically, 70 % of the market is named the 'social sector' which means that prices are regulated by the law as well as most of the obligations of the landlord and the tenant. For dwellings outside this regime ('liberalized dwellings') most of the obligations of landlord and tenant are still codified but there is no strict price-regime. As a general rule, it is almost impossible for a landlord to terminate a lease contract for other than strictly defined urgent reasons, and under strictly defined exceptional situations. One could argue that the name of the two categories: 'liberalized rental units and social units' suggests that the liberalized units are considered to be the exception to the rule.

²⁰¹ J.L.R.A. Huydecoper, 'Ontwikkelingen in het huurrecht: waren die er maar', *WR* 12, (2012/140), 558-564.

- *What were the principal reforms of tenancy law and their guiding ideas up to the present date?*

In the 1950s the separate system of tenancy law was introduced. This was done in a separate act, the *Huurwet*²⁰² (*Lease Act*). This act, that was introduced to protect the interests of tenants in a time of severe shortage of dwellings, set aside the regime of the Civil Code. It regulated the prices, notice and the end of the contract. In the 1960s some areas were 'liberalized' meaning that they were not longer covered by the Lease Act. In 1979 the Lease Act, not longer covered contracts regarding living space, instead the Civil Code from now on regulated tenancy dwellings together with two important acts for the 'social sector', the previously mentioned Rent Act as well as the *Wet op de Huurcommissies* (*Act on the Rent Committees*).²⁰³

Also in 1979, the concept of the co-tenant was introduced for the protection of the partner in a relationship. In practice, this meant that the partner could stay in the house, if the relationship was over.

In 2003, a new statute was incorporated in Book 7, title 4 of the civil code. The statute mostly reformulated the obsolete old text and laid down the rules as they had evolved by practice and court-rulings²⁰⁴. In addition, the landlord could from then on terminate a contract in a limited amount of 6 (categories) cases. This however, was a codification of standing practice. The new regulation incorporates the Rent Act and came with some important changes regarding defects. As these rules are now standing law, they will be dealt with in the specific sections below.

In 2006, a provision was included on 'campus-contracts' for students that have to proof (yearly) that they are enrolled at a University. If not, the landlord can terminate the contract and expel the student on the condition that he will rent the apartment to a student.²⁰⁵

In 2013, temporary rules that were made because of the economic crisis that hit the European continent in 2008 became permanent. The new rules include a new regime for price and termination of contracts for non-institutional landowners (private citizens) that have moved out to a new dwelling, but have not yet sold their former dwelling. They need a permit from the municipality and the consent of the bank (in case of a mortgage) and can then rent their house for a market price and for a short term.²⁰⁶

- *Human Rights:*
 - *To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in the national constitution and international instruments, in particular the ECHR*

²⁰² 13 Oktober 1950, Stb. K. 452

²⁰³ See P. Abas, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijk recht. 5, Bijzondere overeenkomsten, Deel IIA, Huur*, 9th ed. (Deventer: Kluwer, 2007), No 7

²⁰⁴ F. Van der Hoek 2013, *Burgerlijk Wetboek 7, Titel 4, Afd. 5*, 3644, in J. H. Nieuwenhuis, C.J.J.M. Stolker & W.L. Valk (eds), *Burgerlijk Wetboek: Tekst & Commentaar* 10th ed (Deventer: Kluwer 2013).

²⁰⁵ Art. 7:274 §1 sub c CC.

²⁰⁶ Vacant Property Act (*Leegstandwet*), arts 15-16 (21 May 1981), Stb. 1981, 337.

The explicit influence of fundamental rights is limited and can only be found in the rare cases. The same can be said about the influence of the ECHR, although the convention is gaining in importance as the Court rules more cases. Most specifically in cases regarding ownership, family life, the right to information and fair trial²⁰⁷

Some examples of how fundamental rights have influenced tenancy law are:

- Non-discrimination;
There is an Equal Treatment of Disabled and Chronically Ill People Act that specifically deals with the rights of tenants that are disabled.²⁰⁸
In the past the right to apply for co-tenancy has been explained as a way to promote the right of the non-working partners (housewives) to keep the family house after a divorce.
More generally, non-discrimination prevents the landlord to refuse a tenant based on his ethnical background.
 - Family life
In some cases the courts have decided that the constitutional rights of tenants (Article 8 ECHR) that were legally evicted resulted in a duty of the local government to provide an alternative living space for them.²⁰⁹
 - The right to privacy/ to not enter somebody's house
This constitutional right has resulted in a specific provision in the civil code that allows the landlord to enter the premises to show an interested (new) tenant or buyer his property when the contract with the existing tenant is reaching its end.²¹⁰
- *Is there a constitutional (or similar) right to housing (droit au logement)?*

There is no constitutional right to housing. The constitution determines²¹¹ that the government has a duty to make sure that there are enough houses for its population in which it can live in a safe and healthy manner.²¹² However, this right does not include any right to housing for citizens²¹³.

²⁰⁷ A.S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 1.4.9

²⁰⁸ Art. 6 Wet Gelijke behandeling op Grond van een Handicap of Chronische Ziekte (3 April 2003), Stb 2003, 206.

²⁰⁹ Pres. Rb. Rotterdam, 11 July 2000, *WR* 2000, 69.

²¹⁰ Art. 7:223 CC, R.A. Dozy & J.L.R.A. Huydecoper (eds), *Tekst & Commentaar Huurrecht*, 5th ed. (Deventer: Kluwer, 2012), comment on Art. 7:223 CC.

²¹¹ Grondwet voor het Koninkrijk der Nederlanden, Art. 22 § 2 sub c, (24 August 1815), Stb. 1840, 49.

²¹² J. Breevoort & J. van den Mosselaar, Huur en Overheid, in *Huurrecht Woonruimte*, eds J. van Breevoort & P. van der Sanden, 4th ed. (Den Haag: Sdu 2009), 319-341.

²¹³ Gerechtshof 's-Hertogenbosch 2 March 1994, KG 1994, 192 and ECHR, 21 November 1995, NJ 1996/416, with commentary from P.A. Stein).

6 Tenancy regulation and its context

6.1 General introduction

- *As an introduction to your system, give a short overview over core principles and rules governing the field (e.g. basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased)*

Short Introduction

Dutch tenancy law is extensively regulated in the Dutch Civil Code (Book 7, Title 4). Dutch tenancy law is characterised by a strong protection of tenants, as they are regarded as the weaker party to the contract. Most of the rules are of a semi-obligatory nature, which means that parties cannot deviate from the provisions to the detriment of the tenant.

The courts do not allow many exceptions to the statutory regime. Generally speaking: if a legal relation, seems to be that of a landlord –tenant relation, the courts will apply the specific provisions of the statute, even if parties have agreed in their contract to apply a different regime. The rationale for this is that the system was introduced to ensure a strong protection of tenants.²¹⁴ There are no specific formal requirements for the closing of a lease contract: an oral agreement is sufficient.

A notable characteristic of Dutch tenancy law is that, as a general rule, a contract does not end on its terms. Landlords cannot terminate a lease agreement, solely on the grounds that the period that is named in the contract has expired. The tenant, on the other hand, can usually terminate the agreement by one-month notice.

Another significant element of Dutch tenancy law is that it uses an obligatory price regime that is applicable to most dwellings. The applicability of the price-regime does not depend on the nature of the landlord (e.g. professional/non-professional/housing corporation), but on the characteristics of the dwelling. For the dwellings that are controlled by this regime, the Minister of housing sets a yearly maximum percentage of rent-increase. For dwellings that do not fall within the regulated category, there are no specific rules to determine the price, except that the rent can only be increased once per year.²¹⁵

Recent developments involve a more market-oriented approach of the government that will result in some reforms of tenancy law.

To summarise, the most notable characteristics of Dutch tenancy law are:

- Strong protection of tenants;

²¹⁴ M. Van Schie, *Huur en Verhuur*, in *Huurrecht Woonruimte*, eds J. van Breevoort & P. van der Sanden, 4th ed. (Den Haag: Sdu 2009), 15-29.

²¹⁵ A. Kloosterman, *Huurprijzen en servicekosten*, in *Huurrecht Woonruimte*, eds J. van Breevoort & P. van der Sanden, 4th ed. (Den Haag: Sdu 2009), 261-307.

- Most of the legal issues are regulated in a semi-obligatory manner that does not allow for deviations that are to the detriment of the tenant;
- The price of most of the dwellings is regulated by the national government;
- The rules of tenancy law apply to all landlords; the law does not make a distinction between professional landlords and private landlords or housing corporations;
- Lease contracts do not end on their terms, and can only be terminated by the landlord in exceptional situations;
- Most objects of lease will qualify as 'living space', as the legal regime aims to protect all tenants.

Lease contracts; requirements, price,

Title on rent in Book 7 of the Civil Code (specific contracts), states in Article 201 §1 that lease and hire is a contract whereby one party, the lessor, undertakes to provide the other party, the lessee, with the use of a thing or a part thereof and the lessee undertakes to perform a counter-obligation.²¹⁶ Article 7:237 Civil Code determines that the 'rent' is to be regarded as the whole of counter-obligations that the lessee has accepted with regard to the lease.

This means that for all types of lease contracts, it is required that the lessee undertakes a counter-obligation. The rent does not have to exist of a financial sum. The counter-obligation could also be the duty to take care of somebody (e.g. the landlord's mother, that lives in the same apartment block) or to carry out some renovation works. It is however, required that the counter-obligation is specific (determinable). It is not sufficient that the tenant carries out some works of which the landlord could profit (such as maintenance works) but to which he did never agree.²¹⁷ It is possible that the rent consists partly of money, and partly of other obligations. Lease contracts do not need to be in writing.

(no) duty to register

There is no duty to register a contract. It is common practice that if a tenant starts to pay rent, which is not refused (sent back) by the landlord, a rental contract in the sense of Book 7, Title 4, Chapter 5 (tenancy law) has come into existence.²¹⁸

Social orientation²¹⁹

The social orientation of Dutch tenancy law is that it aims to protect the interests of the tenant. Although contractual freedom is the starting point, tenancy law is mostly concerned with the interests of tenants that are considered to be the 'weaker party' to the contract even when this is not the actual case. Two examples are typical hereof: - most of the rent falls within the regulated regime and only in very rare cases are landlords allowed to increase the rent because the exploitation costs of the dwelling are

²¹⁶ In Dutch: 'Huur is de overeenkomst waarbij de ene partij, de verhuurder, zich verbindt aan de andere partij, de huurder, een zaak of een gedeelte daarvan in gebruik te verstrekken en de huurder zich verbindt tot een tegenprestatie'.

²¹⁷ *Drost v Van Donselaar*, Hoge Raad 16 May 1975, NJ 1975/437.

²¹⁸ G. Emerencia, *Huurovereenkomst en Tussenpersonen*, pp 41-49, in *Huurrecht Woonruimte*, eds J. van Breevoort & P. van der Sanden, 4th ed. (Den Haag: Sdu 2009).

²¹⁹ P. Abas, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijk recht. 5, Bijzondere overeenkomsten, Deel IIA, Huur*, 9th ed. (Deventer: Kluwer, 2007), no 6

higher than the actual rent²²⁰; - it is very difficult - and in most cases impossible - to rent out an apartment for a fixed period.

Conclusion of contracts; negotiation phase and good faith

There are, as stated above, no specific requirements for the conclusion of a lease contract.

This means that the general rules of Book 3 and Book 6 of the Dutch Civil Code for the closing of contracts apply. Dutch law applies the 'will-reliance-doctrine'. This means that a contract is closed when both parties have a legitimate reason to trust that the will of the other party is to close the contract with them on the terms as he has understood them to be.²²¹

Content of contracts: some general characteristics

Like many Western legal systems, Dutch contract law starts from the premise that parties are free to determine their own rules within the borders of the law.

The generally accepted doctrine for the interpretation of a contract is referred to as the will-reliance-doctrine (Articles 3:33 and 3:35 Civil Code). The best known interpretation of this doctrine is found in the so-called Haviltex-formula that states that the content of a contract (or contractual provision) is not only provided by its wordings, but is also to be based on the meaning that parties could in the given circumstances reasonably ascribe to the provisions and on what they could reasonably expect of each other.²²²

Dutch courts are therefore obliged to not only look at the written text but also at all the circumstances that are of relevance for the interpretation of a contract. This is called a subjective interpretation of the contract as it follows the intention of parties, and not the (objective) interpretation that an outsider would give. It implies that courts have a duty to investigate the meaning of a contract (as opposed to the mere wording), especially when they have to determine if a contract has to be supplemented with a certain provision or that it can be said to include a rule for a certain situation, that is to be based on the meaning that parties could reasonably ascribe to the contract.

For tenancy law, which is often of an obligatory nature, this rule is of importance for the qualification of a contract. When a certain space is qualified as, for example, a working place in a contract, but it is clear to both parties that the tenant will live there, these intentions make it will result in the qualification of the space as a living space.²²³ Because of the strict regime that comes with living space,²²⁴ there have been many examples where landlords aimed to circumvent the regime.

²²⁰ T. Barkhuysen, M.L. Emmerik, & M.M. Hielkema, *Onrendabele huurwoningen en het Europese Eigendomsrecht: is ons huurrecht in strijd met de fundamentele rechten van de eigenaar?* WR 8, (2008/291).

²²¹ P. Abas, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijk recht. 5, Bijzondere overeenkomsten, Deel IIA, Huur*, 9th ed. (Deventer: Kluwer, 2007), no 6.

²²² *Ermes v Haviltex*, Hoge Raad 13 March 1981, NJ 1981/681.

²²³ Van der Hoek 2013, T & C (Huurrecht), art. 7:233, note 3; and *Amsterdam-Semarang v Geelhoed*, Hoge Raad 24 december 1993, NJ 1994/215

²²⁴ P. Abas, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijk*

Generally speaking, the courts will take a more formal approach to interpretation when third party interests are involved, as third parties will usually have to rely on the text of the contract and not on the mutual behaviour of the contracting parties. In tenancy agreements, this is often not the case.

Recently, a so-called 'entire agreement-clause' that was included in the contract to make sure that a strictly semantic explanation of the contract would be chosen based only on the objective interpretation of the language of the contract was said to have no specific meaning for Dutch law.²²⁵ Even when an objective interpretation should guide the interpretation, it cannot fully set aside the subjective interpretation- rule.²²⁶

Content of tenancy contracts

Tenancy law starts from the freedom-of-contract-premise, but in practice tenancy contracts are dealt with in Book 7 of the Civil Code that includes specific rules for specific contracts that are mostly (semi-) obligatory. Therefore, what can be expected of tenants and landlords can be found in the extensive regulation of Book 7 Title 4 Civil Code. In formal terms, the provisions are of so-called 'regulatory law' which means that they apply only when parties have not agreed otherwise. In practice however, most of the provisions of tenancy law are 'semi-obligatory' which means that the parties cannot set them aside in a manner that would result in a disadvantage for the tenant when the agreement is compared to the statutory provision. Most of the obligations of tenants and landlords are therefore controlled by the statutory terms. This includes the provisions on defects and renovation, on price and price-increases, on termination, on co-tenancy, and on sub-letting. An example of this semi-obligatory nature is the implementation of a so-called 'wind- and watertight clause' in the contract, meaning that a landlord agrees to rent out his apartment for a reduced price, if the tenant does not hold him accountable for the defects of the apartment. In the case of tenancy law, this provision is voidable for tenant and can be set aside by the court which would mean that the landlord will have to repair the defects but cannot ask for a higher rent in return.²²⁷

Prices

For agreements on rent, a distinction has to be made between the regulated rent system that covers the majority of Dutch rental dwellings and the liberalized rental dwellings. The specific section in the Civil Code on rents starts from the premise of contractual freedom.²²⁸ However, in practice, most rents of (independent) dwellings are regulated because they do not exceed the 142 points required to qualify as a

recht. 5, Bijzondere overeenkomsten, Deel IIA, Huur, 9th ed. (Deventer: Kluwer, 2007), no112

²²⁵ *Lundiform v Mexx*, Hoge Raad 5 April 2013, ECLI:NL:HR:2013:BY8101.

²²⁶ Example of Haviltex-formula in rental agreement (store), Rechtbank Rotterdam 15 January 2013, ECLI:NL:RBROT:2013:BZ0279.

J.P.M. Jansen, with respect to the interpretation of the tenancy contract based on the Haviltex criteria <http://www.quafi.eu/weblog/2013/02/01/uitspraak-uitleg-inhoud-huurovereenkomst-obv-haviltex-criteria/> (accessed 31 December 2013).

²²⁷ A.S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2013), No. 1.4.2

²²⁸ Art. 7:246 CC.

liberalized.²²⁹ In the regulated rent sector points awarded to a dwelling determine the maximum rent. These are covered, along with the rent increases, by the subsection of the civil code²³⁰ on rent.²³¹ Based on this system, the Minister of housing decides yearly the allowed percentage of rent increase²³² and the price per point.

Point system

Dutch tenancy law qualifies the value living space in an objective manner, meaning that the price depends on the characteristics of the object and not on the nature of landlord. This system determines whether a dwelling falls in the regulated sector or is 'liberalized', which means that parties are free to set the price themselves.

As a result, most of the rents are regulated by the national government. The government applies a point system to determine the maximum price that is applicable to all rentals that fall within the regulated regime.

Within this system, there are four different categories:

- Independent living space;
- Dependent living space (such as rooms);
- Mobile homes and their stands
- Service flats

If a dwelling that is qualified as independent living space has more than 142 points, it falls in the liberalised category. However, contracts that were closed before or on 1 July 1994 fall within the regulated system as long as they were not closed for houses that were realised after or on 1 Jul 1989.²³³ All other houses that are governed by the section on tenancy law in the civil code also fall within the regulated system.

Termination

The general rule of Dutch contract law is that a contract expires on its terms. However, this is not the case for tenancy agreements that do not expire unless they are terminated by notice of the tenant or the landlord, whereby the landlord is bound to a limited number of legal grounds for notice.²³⁴ The rule causes (private) landowners therefore to find ways to circumvent the regime. In practice this means that they look for tenants that guarantee that they will leave the dwelling after a fixed period, even when this promise is not binding by law.

²²⁹Rijksoverheid, puntensysteem zelfstandige woning.
<http://www.rijksoverheid.nl/onderwerpen/huurwoning/puntensysteem-huurwoning/puntensysteem-zelfstandige-woning> (accessed 30 December 2013).

²³⁰More specifically: the Rent Act on Living Space, which was mostly integrated in the Civil Code in 2002 as were the Execution Act on the Rental Commission Act and Rent for living space, see http://wetten.overheid.nl/BWBR0014315/geldigheidsdatum_19-09-2013 (accessed 31 December 2013).

²³¹ Book 7, Title 4, Chapter 5, Subsection 2 CC; Art. 7:246 and further CC.

²³² Arts 7:252-253 CC.

²³³ Art. 7:247 CC.

²³⁴ Art. 7:271 §1 CC.

For the termination of contracts, the general rule is that the tenant can terminate the lease contract for a period that is equal to the period of the rent payment (but never longer than 3 months), which is usually 1 month.²³⁵ This rule cannot be set aside.

The landlord can only terminate a lease-contract in specific situations that are spelled out in the civil code. The law distinguishes between the statutory grounds for notice²³⁶, that apply specifically to dwellings and the general grounds for rescission of a lease contract by courts²³⁷.

The statutory grounds for termination are limited to 6 specific cases:

- Bad behaviour of tenant²³⁸.
The tenant does not behave as can be expected from a good tenant.
- Rent out and move back (diplomat- clause)²³⁹
A tenant or landlord wants to move back in his apartment after the agreed fixed period of the contract (so-called 'diplomat-clause,').
- Urgency²⁴⁰
The landlord needs the dwelling for such an urgent reason for his own needs that his interest should prevail over that of tenants or sub-tenants. In this situation, he will have to provide an alternative for his tenant.
- Refusal or reasonable offer²⁴¹
A tenant refuses to accept a reasonable offer for the same dwelling when that dwelling has been renovated or, in case of a dwelling that falls in the liberalized category, a reasonable offer for a rent-increase is refused by the tenant.
- Realisation of land use plan²⁴²
The landlord wants to realise the use for the dwelling, as determined by the municipal land use plan.
- Dependent living space: interests of landlord outweigh those of tenant
The lease concerns a living space that is not independent but depends on other spaces in the dwelling where the landlord has his main residence, and he can reasonably argue that his interests for the termination of the contract outweigh the interests of the tenant to continue the lease.
- Extra-judicial rescission; Enjoyment of good is impossible
In addition, there is a situation in which the contract can be rescinded: when the enjoyment of a leased good has become impossible because of a deficit that the lessor is not required to repair, the contract can be set aside by the lessee or the lessor without the obligation to ask the court to set aside the contract.²⁴³ This is

²³⁵ Art. 7:271 § 5 sub a CC.

²³⁶ Art. 7:274 CC.

²³⁷ Art. 7:213-214; 7:231 in conjunction with 235, 236 CC.

²³⁸ Art. 7:274 §1 sub a CC.

²³⁹ Art. 7:274 §1 sub b CC.

²⁴⁰ Art. 7:274 §1 sub c CC.

²⁴¹ Art. 7:274 §1 sub d CC.

²⁴² Art. 7:274 §1 sub e CC.

²⁴³ Art. 7:210 §2 CC.

the case when repair is either impossible or involves (high) financial investments that cannot be expected of the lessor.²⁴⁴

Duties of tenants²⁴⁵

The most important duty of any lessee is that he has to perform the counter-obligation by the time and manner agreed²⁴⁶; for tenancy law, this will usually mean that he has to pay a monthly sum. A lessee has to conduct in a manner that befits a good lessee.²⁴⁷ For tenancy law this means, mostly, that he should not cause nuisance. The lessee may only use the thing that he has leased in the agreed manner or, in the absence of an agreement, in the manner that it is destined to be used for by its nature.²⁴⁸ For tenancy law, this means that a tenant has to (actually) live in his apartment and may not change its main function into (for example) a hotel, store or office.

Termination by landlord; due the tenant's bad behaviour

In case of 'bad behaviour' of tenant, the landlord can either give notice to tenant, as bad behaviour is one of the grounds for notice or he can choose to rescind the contract based on breach of contract.

Breach of contract that will allow the landlord to terminate the contract exists if: the lessee is sub-letting his apartment to someone else without the landlord's consent, or if the lessee has failed to pay the rent for three months or more.²⁴⁹ There can also be a breach of contract if a lessee is not acting in accordance with other contract's provisions or is causing nuisance to other tenants in his block. However, not every breach of contract is reason for termination of the contract and the contract can, in these cases, not be terminated without a court-decision.²⁵⁰

Habitability

The special section of the Civil Code on rent of dwellings only applies to living space. Living space is defined as 'a built immovable good that is rented as independent or dependent living space (...)'.²⁵¹

Courts have adopted a very broad interpretation of living space. Basically, every space that is rented as living space and fulfils some minimum conditions will be considered living space.²⁵² Generally speaking, if a space is rented out as living space it will usually be qualified as such, when that qualification results in protection for the tenant.

Subject of tenancy law are therefore 'immovables' that contain independent or dependent living units, as well as mobile homes or the stand where the mobile home

²⁴⁴ Art. 7:206 §1 CC.

²⁴⁵ Art. 7:212-214 CC; A.S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 5.1-5.12

²⁴⁶ Art. 7:212 CC.

²⁴⁷ Art. 7:213 CC.

²⁴⁸ Art. 7:214 CC.

²⁴⁹ Art. 7:231 §1 CC in conjunction with Art. 7:212 CC

²⁵⁰ A.S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 17.2

²⁵¹ Art. 7:233 CC.

²⁵² Van der Hoek 2013, T & C (Huurrecht), art. 7:233, note 1-3.

can be located. Note that (of some importance for the Dutch situation) houseboats are excluded as they are considered to be movable.²⁵³ Requirements for the habitability of new dwellings are found in the Woningwet (*Housing Act*)²⁵⁴. Based on these statutes, more specific decisions are being taken by either the minister of housing (internal affairs), the provinces (mostly in case of environmental sustainability policies) and municipalities. These requirements are mostly relevant for new buildings or for renovation projects that require new permits.

Existent dwellings that have a severe number of defects, can be declared unfit for habitability by the mayor & aldermen of the municipality where the building is located.²⁵⁵ There is not one specific element that determines habitability; the decision is based on a combination of factors of which risks for health or safety naturally the most relevant ones. For tenancy law, the relevancy of ‘habitability’ should not be overestimated. The general condition of living space is good (see Part 1). On the other hand as a housing shortage exists in some of the larger cities (mostly Amsterdam and Utrecht), a discussion exists on whether to lift some of the requirements on habitability to make it possible to transform office space-buildings into living space.

- *To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)*

Tenancy law is national law. However, some practices may differ by region as cases usually are litigated in the lower courts. The policies that municipalities apply for the assignment of (regulated) dwellings may also differ.

Table 6.1 Court structure and Rental Commission

Court structure Tenancy law	State law; subdistrict sector (<i>sector kanton</i>) of regular legal courts is competent court
	Rental Commission for regulated rents; prices and service costs

- *Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?*

The tenant’s position is treated as a personal right. It is governed by the rules on contracts of the Books 3, and 6 of the Civil Code and the specific title on rent in Book 7 (Title 4) of the Civil Code.

An exception, one may argue, is the provision that determines that when the object of a lease is sold to a third party (not the lessee), the buyer has to accept all rights and obligations that stem from the lease contract.²⁵⁶ This obligation is specified (and more

²⁵³ Art. 7:233 CC; M. Van Schie, *Huur en Verhuur*, in *Huurrecht Woonruimte*, eds J. van Breevoort & P. van der Sanden, 4th ed. (Den Haag: Sdu 2009), 49.

²⁵⁴ Housing Act (*Woningwet*) (29 August 1991), Stb. 1991, 439.

²⁵⁵ Art. 17 Woningwet.

²⁵⁶ Art. 7:226 CC

strict) for tenancy law that states that the buyer of a house where he wants to live himself has (as a general rule) to wait three years before he can give the tenant notice of termination.²⁵⁷

This means that a lease contract is a personal right with property right-traits as it is focused on the object that is being leased, instead of on the personal rights and obligations of landlord and tenant. For example, if the object of lease is transferred, only the rights and obligations that are directly connected to the lease are transferred.²⁵⁸ In practice, one could argue that because of the general rule that a rental contract is for an indefinite period, a lease can be a strong property right in a market where rentals are scarce. As a result, tenants with dwellings in popular areas are often 'bought of' for large amounts of money.

Table 6.2 Position of the tenant

Position of tenant	general	Exception
	Personal right	Transfer of the thing that is object of the lease results in the transfer of the rights of the lessor to the transferee
		Rental contracts are, as a general rule, for an indefinite period and often need to be bought of by a landlord

²⁵⁷ Art. 7:275 §5 sub b CC.

²⁵⁸ P. Abas, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijk recht. 5, Bijzondere overeenkomsten, Deel IIA, Huur*, 9th ed. (Deventer: Kluwer, 2007), no 68.

- To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?

Table 6.3 Where is tenancy law laid down in?

Tenancy law	General	
	Civil Code	Rules for tenancy law; includes the statute on rents for living space
	Housing Rents (Implementation) Act (<i>Uitvoeringswet huurprijzenwet woonruimte</i>)	Rules on the functioning of the Rental Commission
	Residential Tenancies (Rent) Decree (<i>Besluit huurprijzenwet woonruimte</i>)	Determines rules for rents of various categories of dwellings, consists of rules for rent increase, categories of defects (A-B-C)
	Tenants and Landlords (Consultation) Act (<i>Wet op het Overleg huurders verhuurder</i>)	Rights for committees of tenants and tenant-organizations to advice on landlord policies regarding their building ²⁵⁹

- What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?

Table 6.4 Court structure in tenancy law

Lower Court	Appeal	Type of cases
Section Kanton (rechtbank) District Court, Subdistrict sector (<i>Rechtbank, sector kanton</i>)	Supreme Court (<i>Hoge Raad</i>)	All cases in first appeal with the exception of the ones that fall under rent committee jurisdiction; appeals from rent committee cases
Rental Committee (<i>Huurcommissie</i>)	District Court, Subdistrict sector (<i>Rechtbank, sector kanton</i>)	For regulated rents: Prices, defects, service costs, & conflicts between tenant-committees/ organizations and landlord

²⁵⁹ Applies only when a landlord possess 25 or more living units.

For regulated rents there is a specific, low-cost, jurisdiction: the Rental Commission. This is an independent administrative body, which is established by the state-department of internal affairs. It is one national institution that takes seat in various cities across the country. It rules about 8000 cases per year. These cases are generally about defects, service costs, the height of the rent (about 60 % of the cases), the height of the yearly increase of the rent, so-called rents subsidy-declarations, and the conflicts that stem from the Wet op het Overleg Huurders en Verhuurder (Tenants and Landlords (Consultation) Act) (see further Section 6.8).

- *Are there regulatory law requirements influencing tenancy contracts*

There are various regulatory law requirements that influence tenancy contracts. The most important ones are the price-system for dwellings that are governed by the regulatory regime and the housing permit policies.

Housing Permits; policies

The rules on housing permits are found in the Huisvestingswet (*Housing Allocation Act*)²⁶⁰. A city council can decide that for dwellings that fall under the regulated regime, a housing permit (*huisvestingsvergunning*) is required.²⁶¹ The permit-requirement does not apply to boarders, houseboats, and mobile homes.

If the permit-regime applies to the dwelling, its owner is under a duty to give notice if the dwelling is empty.²⁶² If he does not want to live there himself, the mayor & aldermen can, under some circumstances, force the landlord to accept a candidate of their choice for the house.²⁶³

The Housing Allocation Act determines that the municipality can decide to implement a system of housing permits for the 'balanced and just division of living space'.²⁶⁴ This system makes it possible to set requirements for social and economic tightness to the Municipality where an applicant wants to rent a dwelling that falls within the regulated rent regime.

The decision to implement a system of housing permits can also be based on the highly debated, Wet Bijzondere Maatregelen Grootstedelijke Problematiek.²⁶⁵ (*Urban Areas (Special Measures) Act*). This act determines²⁶⁶ that, in a number of metropolitan areas, a policy can be adopted that a housing permit will not be granted to people that want access to the housing market for regulated rental dwellings that have not already lived for six years or more in the neighbourhood. In addition, the policy can determine that the housing permit will only be issued if the applicant has a means of income.

²⁶⁰ Huisvestingswet (1 October 1992), Stb. 1992, 548.

²⁶¹ The system can also apply the rules to houses that are sold with government subsidy.

²⁶² Art. 19 Huisvestingswet.

²⁶³ This happens if they propose a candidate that is more urgent than the candidate of the owner or when the owner's candidate cannot get a housing permit (see art. 20 Huisvestingswet)

²⁶⁴ Art. 5 Huisvestingswet.

²⁶⁵ Stb. 2005, 726.

²⁶⁶ Hoofdstuk 3, Wet Bijzondere Maatregelen Grootstedelijke Problematiek.

This decision is made by the minister of housing on request of the city council and applies only to specific (poor) neighbourhoods.²⁶⁷

There are some limitations for this policy: a municipality cannot, for example, refuse a foreigner who has been granted asylum, a permit because he does not fulfil the social and economic tightness requirement^{268; 269}

A city council can also determine that a certain class of people (based on socio-economic characteristics) will receive housing permits with priority, if it can base its decision on 'specific large city problems'. The intention of the policy is that a city can change the population of neighbourhood by refusing specific classes of people, and attracting others.²⁷⁰

In the second largest city of the Netherlands, Rotterdam,²⁷¹ the housing permit requirement also applies to dependent living spaces (such as student rooms). The requirements are laid down in the Housing Regulations (*Huisvestingsverordening*) of the specific municipality. Municipalities use their permit-policies to enforce their own housing and neighbourhood policies. They are used to set demands for social and/ or economic tightness to the city. This means that if somebody from the city of Utrecht intends to move to Rotterdam and wishes to rent an apartment that falls under the regulated regime, he will not receive permission to do so, if he does not have any family or acquaintances in the city, or a job.

In addition, income demands are set for houses, to 'spread' income groups over city to prevent ghettoization. Policies to spread groups of people over the city of Rotterdam, based on ethnicity, have been declared unconstitutional by the Dutch Committee for Equal Treatment (now the commission for human rights) but that did not stop the city to move forward with the policies as it is convinced that these policies do create more chances for the less well-off.²⁷²

Waiting list and urgency

Municipalities can opt for a waiting list system for those who look for a rental house. In addition, city councils can determine that certain groups, such as disabled persons, will be fast tracked through the procedures for (certain types of) houses because of their urgent situation²⁷³. Such urgency may for example exist of medical urgency, or urgent social circumstances such as a family or single-mother that is threatened with homelessness.

²⁶⁷ See Art. 5 and Art. 8.

²⁶⁸ see Art. 13 §1 sub C Huisvestingswet.

²⁶⁹ It can also not do so for: (sub a) those who cannot be expected to work anymore (such as disabled people); (sub b) remigrants; (sub d and e) those in urgent need of living space because of a divorce.

²⁷⁰ Art. 9 §3 Wet Bijzondere Maatregelen Grootstedelijke Problematiek.

²⁷¹ see Huisvestingsverordening Aangewezen Gebieden, Rotterdam, Gemeenteblad 2008, nr. 1, pp.73, Art. 2.4f.

²⁷² See for example, Barkany, EI (2005), Rotterdam door met spreidingsbeleid, Volkskrant, 9 July, <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/685950/2005/07/09/Rotterdam-door-met-spreidingsbeleid.dhtml>. The controversy happened just before the wet bijzondere maatregelen grootstedelijke problematiek was introduced.

²⁷³ Art. 14 Huisvestingswet.

- *E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)*

Duty to register

There are no registration duties for lease contracts.

- *Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.*

As noted above, the courts have adopted a very broad interpretation of living space. Basically, every space that is rented as living space and fulfils some minimum conditions will be considered living space.²⁷⁴ Generally speaking, if a space is rented out as living space it will usually be qualified as such, when that qualification results in protection for the tenant.

- Regulation on energy saving
I'm not sure what is meant by this question. It is dealt with below (e & f; rent-increase/ service costs, Warmtewet). Or does it refer to the building requirements for new houses?

²⁷⁴ Van der Hoek 2013, T & C (Huurecht), Art. 7:233 CC, note 1.

6.2 Preparation and negotiation of tenancy contracts

Table 6.5 Choice of tenant

	Houses that fall within the regulated regime	Houses on the free market ('liberalised rents')	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Choice of tenant	Free but subject to housing permit-policy and municipality rules and policies	Free	
Ancillary duties			

- *Freedom of contract*
 - *Are there cases in which there is an obligation for a landlord to enter in to a rental contract?*

Table 6.6 Obligation for a landlord to enter/stay in to a tenancy contract

Obligation to enter/stay in contract	Continuance of relation/contract	of new
	New contract	Municipality rules for the allocation of houses
Art. 7:268 § 3 CC	Continuance	When the tenant dies, not only the co-tenant but also the person with whom he has been running a household can, within 6 months, demand to become tenant.
Art.7:266 CC	Continuance/ new contract (not with regard to price but to liability of leaving partner)	Spouse or registered partner becomes co-tenant. Court can determine that spouse/partner gets dwelling after termination or relation (266.5). Spouse/partner becomes main-tenant when contract with main tenant ends(266.3)
Art.7:267 CC	continuance	When a tenant is running one household with a partner for at least two years, the partner and tenant can apply for the co-tenantship of the partner at the court.
Art.7:269 §§1 and 2 CC	continuance	When a sub-tenant of a dwelling, pays the rent for the dwelling after the main tenant has ended the contract, the landlord should accept the sub-tenant as his main-tenant unless he has asked the court within 6 months to terminate the lease.

Art.7:269.3 CC	continuance	The rules apply to subletters of non-independent dwellings when the situation of art. 266-268 apply to them (co-tenancy/sustainable household)
Art. 7:270 CC	New contract/ continuance	Exchange of dwellings

Freedom of contract; duty to enter into a contract or accept replacement

The basic rule of Dutch law is that a landlord and a tenant are free to enter into a lease contract. However, a different system applies in the social sector where municipalities use a permit system. Such permit systems aim to allocate the scarce houses in accordance with policy priorities (see above, housing permits). In some cases, this may result in a refusal of a tenant by mayor & aldermen that was proposed by the landlord. It is very rare, that a landlord is forced to enter into a contractual agreement with someone with whom he does not want to rent out his apartment to. However, he can be forced to enter into negotiations with a candidate that is proposed by his city administration. A second exception to the freedom of contract rule concerns the rules for 'exchange of houses' that cannot be put aside by agreement.²⁷⁵ A tenant can ask the court to allow him to exchange his house with that of another tenant. If the tenant can prove that he has a heavy weighing interest in this exchange, the court will allow him to exchange. The forced exchange does not result in a new contract but in a replacement of the tenant.²⁷⁶ Examples of 'heavy weighing interests' are: the wish to live closer to work or family, medical reasons, or the need for a larger house for family reasons.²⁷⁷ A final exception to the freedom of contract rule is found in the Vacant Property Act (*Leegstandswet*)²⁷⁸ that determines that mayor and aldermen can oblige the owner of a building to offer a lease-contract for a vacant building to a candidate that is proposed by them.²⁷⁹²⁸⁰

Duty to stay in a contractual relation with an occupant

There are various situations in which the landlord is required to stay in an agreement that he wants to terminate. First, Dutch tenancy law only allows for agreements with a fixed term in specific situations. The general rule is that rental agreements are closed for an indefinite period and can only be terminated by the landlord in specific and by the statute limited circumstances.²⁸¹

²⁷⁵ Art. 7:270; A.S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 14.5

²⁷⁶ This is, somewhat oddly, not the case when the landlord accepts the exchange. He will then offer a new contract that will in some cases consist of a much higher rent than the one that the leaving tenant was paying.

²⁷⁷ Van der Hoek 2013, T & C (Huurrecht), art. 7:270, note 1-7; A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no 35.

²⁷⁸ Stb. 1985, 566.

²⁷⁹ Art. 7 §1 and 2 *Leegstandswet*.

²⁸⁰ The owner has in such a situation three months to offer the contract to a candidate of his own choice.

²⁸¹ Art. 7:271 §1 and 7:274.

In addition, there are some situations in which a landlord is required to continue the existing lease agreement with an occupant. The two general examples hereof are that of the co-tenant and of (in rare circumstances) sub-lessees that become main tenants.

Duty to accept co-tenant

Sustainable household

The first category applies to sustainable relations between two persons, of which one is the main-tenant.

Sustainable relations are relations between two people that live as partners in a sustainable household. The category applies to relations like those of married people that are intended to last and not to, for example, students (that are sharing a household for financial reasons) or parents and children (the shared household of which is meant to end).²⁸²

Spouses and registered partners (unmarried couples that have registered their relation) are always regarded as co-tenants as long as the dwelling is their main-residence. If a tenant shares a sustainable household with a person, he can apply for co-tenancy after two years.²⁸³ In reverse, if the relation has ended, the original main tenant can demand that he is no longer liable for the rent when he is the one that will move out of the dwelling.²⁸⁴

When a tenant dies, the person with whom he had a sustainable household can become the main-tenant.²⁸⁵

Sub-lessee becomes main tenants

Sub-lessees can become main tenants when the landlord does not expel them after the main-tenant has ended the contract. The landlord will then become responsible for the impression of the sub-tenant that he can stay in the dwelling. The sub-tenant has however to start paying the rent for the dwelling to the landlord himself and if the landlord accepts the payments, and has not expelled him, he has to accept the sub-tenant as his main-tenant.²⁸⁶

The same rule applies to sub-lessees of independent living space, but only with regard to the new sub-lessor and not with regard to the landlord.²⁸⁷ The rules do not apply to sub-tenants of dependent living space.

- *Matching the parties*
 - *How does the landlord normally proceed to find a tenant?*

²⁸² Art. 7:266 § 1 CC.

²⁸³ Art. 7:267 CC.

²⁸⁴ Art. 7:266 §5 CC.

²⁸⁵ Art. 7:268 §3 CC.

²⁸⁶ Art. 7:269 §1 and § 2 CC; A.S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 14.2

²⁸⁷ See also Art. 7:278 §1 CC.

Houses that are owned by a housing corporation and fall within the regulated regime, usually fall under a specific lottery system that combines years of attendance with qualifications of urgency.

Most (large) municipalities use a housing permit system for houses that fall in the regulated regime. If an apartment or house falls under the permit-regime, its owner is under a duty to give notice when the dwelling is empty.²⁸⁸ If he does not want to live there himself, mayor & aldermen can under some circumstance force him to accept a candidate for the house of their choice.²⁸⁹ This rule applies to every landlord as the regulated market is based on the qualification of the rental accommodation and not on the type of landlord. In certain municipalities, like Amsterdam, there is no housing permit required for dwellings owned by housing corporations as they are assumed to see to a balanced and just division of living space themselves.

Houses that are not owned by housing corporations are rented by individual landlords or through real estate agents. The large online providers of houses that are for sale have also opened rental sections on their websites.²⁹⁰ Most real estate agents have small sections for houses that are for rent. There are some agencies that specialise in rentals.²⁹¹

- *Checks on Landlords*

It is not common practice for tenants to perform checks on their landlords. An exception of some relevance is the landlord-blacklist that many student organizations keep that assist in finding rooms for students²⁹². There are some examples of lists of bad landlords in large cities and in Amsterdam there is a hotline for 'undesirable landlord behaviour'²⁹³

- *Checks on tenant*

What checks on the personal and financial status are usual?

Housing corporations usually ask for:

1. Proof of income and financial reliability

- A declaration of income or a tax-overview. This is used to check if the tenant's income makes him entitled to the house.
- Recent specifications of income or welfare; these are used for the same reason and are proof that the tenant is capable of paying the rent because of his income and/or his entitlement to subsidy.

²⁸⁸ Art. 19 Huisvestingswet.

²⁸⁹ This happens if they propose a candidate that is more urgent than the candidate of the owner or when the owner's candidate cannot get a housing permit (see Art. 20 Huisvestingswet).

²⁹⁰ See for example: <http://www.funda.nl>.

²⁹¹ See for example <http://www.directwonen.nl>.

²⁹² E.g. Studentenzonderkamer, <http://www.studentzonderkamer.nl/ZwarteLijst.aspx> (accessed 31 december 2013).

²⁹³ Meldpunt Ongewenst Verhuurdergedrag, <http://www.wswonen.nl/meldpunt/> (accessed 31 December 2013).

- Proof from his mortgagee or his previous landlord that he pays regularly.
- 2. Identity and address
 - Passport or European identity-card.
 - A recent overview from the municipal personal records database (*gemeentelijke basisadministratie*); this shows the tenant's 'housing history', including how long he has lived in the region of the housing corporation, the size of his household and his marital status.
- 3. Proof of behaviour²⁹⁴
 - Proof from previous landlord that he has behaved as a good tenant

Other checks and requirements

When a housing permit is required from the municipality, the tenant will usually have to show that he is economically or socially bound to the region (see above, housing permit).

A real estate agency, usually acts on behalf of the landlord and is bound to a duty of care that follows from the agency contract. Therefore, their checks on the credibility of the tenant is (or should be) more extensive.

If the house falls within the liberalized sector or is put on the market by a real estate agency, the checks usually only regard his financial situation. The Dutch association of real estate brokers has developed a standard screening test for tenants that includes: an identity check; a credit-check; and a list of questions based on which risk-factors (such as illegal behaviour) are checked.²⁹⁵

The credit-check is more extensive than the one that housing corporations usually undertake and includes information from all public sources, such as real estate possession, phone companies, personal financial history (bankruptcy) etc. Usually, a letter from the tenant's employer on the nature of the employment contract is also required.²⁹⁶

Gathering of information on tenants

How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of "bad tenants"? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protections grounds?

²⁹⁴ See for example, Woningstichting Den Helder, <https://www.woningstichtingdenhelder.nl/over-ons/veelgestelde-vragen/> (accessed 31 December 2013).

²⁹⁵ See Nederlandse Vereniging van Makelaars http://www.nvm.nl/wonen/woning_verhuren/nvmwoontoets.aspx (accessed 31 December 2013)

²⁹⁶ Gerechtshof Arnhem 1 March 2011, NJF 2011/188, ECLI:NL:GHARN:2011:BP9121 (see above; role of real estate agencies).

Table 6.7 Gathering of information on tenants

<i>Personal Data Protection Act (Wet bescherming persoonsgegevens)</i>	Artt. 6-24 e.g. Art. 8b Art. 22 (information on criminal record);	Privacy protection
Register of complaints and opportunities (<i>Klachten- en kansenregister</i>)		Sharing of information on tenants by institutional landlords

Gathering of information on tenants; general

Information on potential tenants can be gathered by specialized agencies that do credit checks. These gatherings are subject to the Protection of Personal Information Act (*Wet Bescherming Persoonsgegevens*)²⁹⁷. However, the landlord cannot check whether a tenant has a criminal record.

In addition, landlords cannot demand that the tenant shows a document on the nature of his behaviour (*Verklaring Omtrent Gedrag, VOG*).²⁹⁸ The latter is a formal document (provided by the government) that provides information on whether he has or does not have a criminal record. This document can only be asked for in the context of work-relations. There is some discussion on whether a landlord should be protected against tenants with the intention to use their dwelling for illegal purposes, and allow them to ask for a VOG. In addition, the procedures regarding housing permits may change in the future and allow the municipality to check if an applicant for a housing permit does have a criminal record.²⁹⁹

Gathering of information; housing corporations and professional landlords

To be able to exchange more information on the behaviour of tenants, housing corporations and professional landlords have started the Register of complaints and opportunities (*klachten- en kansenregister*). They use it to collect and exchange information on tenants that have committed housing fraud (e.g. illegal subletting of their apartment) or have misbehaved. If a tenant has caused severe nuisance, this is registered by the landlord who also states if the nuisance is caused by 'criminal behaviour', 'financial nuisance (non-payment, subletting etc) or psychological nuisance (severe noise e.g. severe neglect of the state of the dwelling).

The register is only accessible for authorised employees of the large, institutional landlords. They have established a stichting (trust) that is responsible for the register.³⁰⁰

²⁹⁷ Wet Bescherming Persoonsgegevens (*Personal Data Protection Act*) (6 July 2000), Stb. 2000, 302.²⁹⁸ Beleidsregels VOG, par. 2.3, <https://zoek.officielebekendmakingen.nl/stcrt-2013-5409.html> (accessed 2 January 2014).

²⁹⁸ Beleidsregels VOG, par. 2.3, <https://zoek.officielebekendmakingen.nl/stcrt-2013-5409.html> (accessed 2 January 2014).

²⁹⁹ This will concern a change of the Wet Bijzondere Maatregelen Grootstedelijke Problematiek, that has been proposed by the government but awaits parliamentary approval as of September 2013.

³⁰⁰ Stichting Nationaal Meldpunt Ongewenst Huurgedrag (NMOH).

If a tenant's name is in the register, the landlord will only close a contract with him if he agrees to additional conditions that regard professional assistance regarding his personal and/ or social behaviour.³⁰¹ Such a condition applies for 5 years.

In addition to this register, housing corporations have adopted a 'second chance- policy' (also known as last-chance policy) as they have duty to find suitable housing for everybody. Part of this second-chance policy is that housing corporations close a covenant to replace each other's tenants, when necessary. Tenants are sometimes placed in dwellings where they receive professional help or live in a different manner (e.g. a house with a shared facilities that are taken care of by the corporation, or replaced (about 40 %)).³⁰²

- *Ancillary duties of both parties in the phase of contract preparation and negotiation ("culpa in contrahendo" kind of situations)*

Tenancy law does not provide specific provisions on duties of landlords or tenants in the negotiation phase. However, Dutch law accepts a broad definition of the good faith-principle and a landlord and tenant should both be aware that their negotiations could come to a point where they cannot longer stop the negotiations without a duty to pay compensation and even the expected profits from the contract.³⁰³

Dutch law accepts that when a contract is being negotiated, a stage can be reached where a party cannot withdraw anymore from the negotiations without the payment of not only damages but also expected profits.³⁰⁴ For rental law this means that when a tenant and a landlord are negotiating a contract, they should be aware that at some point they cannot longer withdraw from the negotiations without the duty to pay some compensation. In a recent case that dealt with negotiations between a cooperation of owners³⁰⁵ and a contractor, the Supreme Court ruled that specific circumstances can result in a duty to pay damages to the contractor for not allowing him the contract, even if a written agreement that controls the negotiation-phase states otherwise.

³⁰¹ Protocol klachten- en kansenregister, stichting NMOH, d.d. 30 April 2008, par. 5.4, see http://www.cbppweb.nl/downloads_zw_lijsten_protocollen/nmoh_protocol.pdf

³⁰² See for references Centrum voor criminaliteitspreventie en veiligheid, <http://www.hetccv.nl/dossiers/wijkinterventies/laatste-kans-beleid> (accessed 3 January 2014). For an example of the policy, Regiogeschillencommissie: <http://www.regiogeschillencommissie.nl/documenten/ConvenantTweedekansbeleid.pdf> (accessed 2 January 2014).

³⁰³ M.H.L. Dijkman. & J.J. Hoekstra, 'Afgelopen onderhandelingen in het huurrecht', *Tijdschrift huurrecht in de praktijk*, May (2013), 72-76 NB this article mostly refers to cases that concerned commercial space lease-negotiations.

³⁰⁴ *Plas v Valburg*, Hoge Raad 18 June 1982, NJ 1983/723; *CBO v JPP*, Hoge Raad 12 August 2005, NJ 2005, 467; Hoge Raad 27 May 2011, JIN 2011/580, see for a comment D.D. Castelijn & M.J.A.G. Janssen, 'Contractuele beperkingen van aansprakelijkheid bij afgebroken onderhandelingen' 7, *Tijdschrift Overeenkomst in de Rechtspraktijk*, 29 (2011).

³⁰⁵ Vereniging van Eigenaren (VVE).

Rental Agencies

- *What is the role of estate agents? What are the usual services they provide in the area of rental housing?*

Table 6.8 The role of estate agents

Role of estate agents	Situation	For	Statutory role
Broker	Look for a tenant or for a dwelling	Tenant/landlord	Art. 7:400 CC Service contract
	Close a contract between tenant and tenant	Tenant/landlord	Art. 7:425 CC Agency contract
	Act as an administrator on behalf of a landlord	Landlord (mostly)	Art. 7:415 CC Mandate
	Close a contract for a tenant (e.g. an expat)		

Real estate agents

For most dwellings the role of estate agents is very limited, as housing corporations own them and they fall within the regulated category. Housing corporations have their own system to get tenants that combines a lottery system, a qualification of urgency (e.g. for medical reasons) and years of attendance. Most importantly, dwellings are divided in accordance with the years of attendance, meaning that someone who has been waiting 10 years for a house, has more chance to gain the house than someone who has been waiting for only 1 year. However, prospective tenants that are in possession of declarations of urgency will go first.

The role of real estate agents outside of the sphere of housing corporations can be twofold: real estate agents operate as broker between landlord and tenant or as a trustee/administrator for the landlord. In the first situation, the agent's only role is to bring the parties together. In the second situation, the tenant will pay his rent to the administrator who is also responsible for the maintenance of the dwelling, delivery of utilities etc. The administrator can then, based on his contract with the owner, act in his own name or on behalf of the (known) landlord.

Note that real estate agents do not only rent out houses for a commercial rate. They often also administer a number of houses that fall in the regulated rent category and that are not owned by a housing corporation. In addition, they sometimes represent

housing corporations for houses that fall within the liberalised rental market or that are for sale.

In rare cases, rental agencies are hired by housing corporations to find tenants for dwellings in the regulated regime. An example is, when the houses are for temporary use (as they are awaiting demolition or renovation).

The contract between a real estate agent and a landlord or tenant can be qualified as either an agency contract,³⁰⁶ or a contract of services.³⁰⁷ A real estate agent acts as a mandatory if such is agreed and can then either act in his own name or in the name of the mandator³⁰⁸. See below for some examples.

It is not allowed to charge a tenant for the broker-costs if the agency was hired by the landlord (see below). If the agency was hired by the tenant, there are no specific rules that would forbid the agency to charge for its (reasonable) costs as an agency that is hired by a tenant acts as a regular mandatory or broker.

Specific rules; broker costs and damages

The section on tenancy law in the Civil Code, deals specifically with the role of third parties in rental contracts. Contractual agreements that include unreasonable advantages for third parties in the context of the closing of a tenancy contract are void.³⁰⁹ The protection does only apply if the landlord or the agency would have received an unreasonable advantage, charging for a service delivered is not unreasonable.³¹⁰

As a basic rule, an unreasonable advantage exists when the lessee does not (or hardly) profit from the service for which he has to pay. A housing corporation was for example not allowed to charge its tenants for payments for 'administration costs' whereas on the other hand, it could charge its tenants for the costs that it made for getting them a housing permit from the municipality.³¹¹

An example of how the rules work out in the circumstances of 'mandate contracts' and tenancy law can be found in a case that was ruled at the Rechtbank Amsterdam in 2013. The case concerned Article 7:417 § 4 Civil Code that forbids a mandatory to work for two parties. In situations of selling or renting of living space, a contract that determines otherwise is voidable in so far as it concerns independent residential accommodation and the mandator is a natural person. In the specific case a rental agency had advertised some rental accommodation on its website. The tenant had responded to the website and then closed the contract. A provision in the lease agreement determined that the tenant had to pay a fee for the services of the agency. Despite the fact that the agency only charged tenants for its costs, the court determined

³⁰⁶ Art. 7:425 CC.

³⁰⁷ Art. 7:400 CC.

³⁰⁸ Art. 7:414 CC.

³⁰⁹ Art. 7:264 §2 CC.

³¹⁰ See for example Rechtbank Groningen 29 April 2010, ECLI:NL:Rbgro:2010:BO4449.

³¹¹ *St. Woningbouwvereniging IJmere v Bewonersvereniging Nelissen*, Hoge Raad 6 April 2012, NJ 2012/132.

that it had in fact acted as a mandatory for the landlord as it was his apartment that was advertised on the website. The provision in the contract was void and the lessee received its payment of € 1,664 back.³¹²

The situation would have been different, if the tenant had hired the agent, as he would then have contracted for the specific service of seeking an apartment.

Real estate agencies have a responsibility to represent the interest of their clients and can be liable for failing to do so. A good example of how this plays out for tenancy law is a ruling of the Supreme Court from 2008. It concerned a large real estate agency that had its clients sign lease contracts at market price for houses that fell within the regulated regime. A tenant had hired the agency to find her rental accommodation. She ended up with an apartment of which the market price (which she paid) was almost € 550 higher per month than the regulated price would have been. The real estate agency was found to be guilty of breach of the contract but the damages did not amount up to the difference between the market price and the regulated price as the agency successfully argued that the landlord would never have agreed to rent out the apartment for that price.³¹³

A duty of care, naturally, also exists to the client of the rental agency towards is the owner of the dwelling. In 2011, the Gerechtshof in Arnhem ruled that an agency was liable for the damages its client had suffered as a result of a 'bad tenant'. The landlord was living abroad and had hired the agency to find him a tenant for his house in his home-country. The agency then rented out the house to a tenant who did not have a sufficient income to pay the rent and allowed the house to become a weed farm to pay for his addiction to drugs and alcohol.³¹⁴

For duties of disclosure and duties of care for rental agencies and brokers we refer to the section above on information.

³¹² Rechtbank Amsterdam 13 March 2013, ECLI:NL:RBAMS:2013:BZ6442, for a discussion of the case see "Slimme makelaar denkt bemiddelingskosten te rekenen voor huurder die op website reageert: twee heren dienen dat kan niet." Juridsch Dagblad, 5 April 2013, see <http://juridischdagblad.nl/content/view/12386/53/> (accessed 2 January 2014).

³¹³ Hoge Raad 18 April 2008, WR 2008, 76, ECLI:NL:HR:2008:BC4493.

³¹⁴ Gerechtshof Arnhem 1 March 2011, NJF 2011/188, ECLI:NL:GHARN:2011:BP9121.

6.3 Conclusion of tenancy contracts

Table 6.9 Conclusion of tenancy contracts

	Independent dwelling in liberalized regime	Independent dwelling in regulated regime	Dependent dwelling in regulated regime (NB liberalized regime does not exist)
Ranking (regulation)	Freedom on price; strong regulation on other aspects	Most aspects of contract are regulated	Most aspects are regulated; termination-protection not in all cases as strong for tenants
Requirements for conclusion	Agreement	Agreement; sometimes combined with housing permit	Agreement
Description of dwelling	Dwelling with all facilities that exceeds the 142 points benchmark	Dwelling with all facilities that does not exceed 142 point benchmark	Dwelling with shared facilities, cabins, rooms in student houses etc.
Parties to the tenancy contract	Landowner - tenant	Landowner - tenant	Landowner - tenant
Duration	indefinite	indefinite	indefinite
Rent	Based on agreement (tenant has 6 months to start procedure)	Based on point system	Based on (separate) point system
Deposit	1-3 months	1-3 months	1-3 months
Utilities, repairs, etc.	Based on statutory regime; some freedom to negotiate on utilities; repairs mostly dealt with in civil code	Based on statutory regime; some freedom to negotiate on utilities; repairs mostly dealt with in civil code	Based on statutory regime; some freedom to negotiate on utilities; repairs mostly dealt with in civil code

Table 6.10 Conclusion of campus-contracts and rooms in landlord's houses

	Campus-contract	Room in house of landlord
Ranking	Strongly regulated; exception only for termination rights for landlord	Strongly regulated; termination-protection not as strong for tenants
Requirement for conclusion	Agreement; proof of enrolment in education facility	Agreement
Description of dwelling	Room or dwelling for student enrolled in university	A room in a private home
Parties to the tenancy contract	Landlord (usually professional/ university linked) and student	Individual landlord and tenant
Duration	For the education period	Indefinite; landlord may terminate the agreement within 9 months and when his interests outweigh those of tenant
Rent	Regulated regime (point system)	Regulated regime (point system)
Deposit	1-3 months	1-3 months
Utilities, repairs, etc.	Based on statutory regime; some freedom to negotiate on utilities; repairs mostly dealt with in civil code	Based on statutory regime; some freedom to negotiate on utilities; repairs mostly dealt with in civil code

Table 6.11 Conclusion of contracts concerning other living spaces

	Dwelling that comes with employment	Group homes	Dwellings that are for sale; owned by natural person	Living space in building that is listed for demolition or renovation
Ranking	If employment dominates relation price and termination fall outside scope of protection	The Vacancy Act does not apply rules of, price, termination, repair and service costs to the contract	The Vacancy Act does not apply rules of, price, termination, repair and services costs to the contract	The Vacancy Act does not apply rules of, price, termination, repair and services costs to the contract
Requirement for valid conclusion	Agreement & employment contract	Permit (landlord) and written agreement	Permit (landlord) and written agreement	Permit (landlord) and written agreement
Description of dwelling	Tight connection to employment; e.g. residence of mayor	Homes for specific groups such as disabled people, or young adults; permit requirement	House is put on the market by somebody who lived there; permit requirement	Building is listed to be demolished/renovated; permit requirement
Parties to the tenancy contract	Employer - employee	(specific) Institution- tenant	-Owner of the house (seller) and tenant	Landlord - tenant
Duration	For as long as the employment	Depends on situation	Minimum of 6 months, contract can be terminated by 3 months notice (landlord)	Minimum of 6 months, contract can be terminated by 3 months notice (landlord)
Rent	Depends on employment contract	Determined by mayor & aldermen in permit	Liberalized regime	Determined by mayor & aldermen in permit

- *Tenancy contracts*
- *Distinguished from functionally similar arrangements (e.g. licence; real right of habitation)*

As a general rule, a tenancy contract exists if the intention of parties (landlord and tenant) is to lease a certain space for the purpose of using it as a residence and in exchange for rent.³¹⁵

The general rule for tenancy contracts is that they are qualified in accordance with the intention of parties and not in accordance with what is written on the contract. Thus, a contract that is named 'use-agreement' or 'use of room in hotel' will have to be understood as a tenancy contract if it concerns living space and the lessee pays rent. In the most quoted case on this matter, parties had carefully written down in the contract that the specific space was to be used as a 'working atelier' and had also used words like, commercial space and working studio. The Supreme Court decided nonetheless that the contract concerned living space had to be qualified as a tenancy agreement.³¹⁶

This severe restriction on the 'freedom of contract- principle' follows from the intention of tenancy law to protect (all) tenants. The reason why landlords try to qualify a rental-contract as a use-agreement is because they aim to avoid to be bound to the regime of tenancy law, most notably the rule that a tenancy contract in practice has to be closed for an indefinite period³¹⁷ and don't want their apartment be ruled by the regulated rent regime.³¹⁸

Nonetheless, There are four categories from which a regular tenancy contract can be distinguished:

1. Specific categories of contracts that are distinguished in the section on rental law of the civil code;
2. Real rights of habitation;
3. Contracts based on the statute of vacancy;
4. Mixed contracts

Definition of Living Space: houseboats and short-term by nature

Living space is defined in the civil code as a constructed immovable that is leased as an independent or dependent dwelling, or a mobile home or mobile home stand, as well as their immovable accessories.³¹⁹

Generally a houseboat³²⁰ or any other floating home³²¹ is not an immovable and is therefore not considered as living space in the specific meaning of tenancy law.³²²

³¹⁵ the general definition is given in 7:201 where the criterium is that (part of a) certain good has to be provided in exchange for a something. A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 25.

³¹⁶ *Semarang v Geelhoed*, Hoge Raad 9 March 1964, NJ 1964/ 215; cf A.S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 1.4.1.

³¹⁷ Art. 7:271 CC.

³¹⁸ P. Abas, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijk recht. 5, Bijzondere overeenkomsten, Deel IIA, Huur*, 9th ed. (Deventer: Kluwer, 2007) no 112.

³¹⁹ Art 7:233 CC.

³²⁰ Hoge Raad 15 January 2010, ECLI:NL:HR:2010:BK9136.

³²¹ Hoge Raad 9 March 2012, ECLI:NL:HR:2012:BV8198.

Lease contracts that are of short-term by nature (such as holiday homes) do not fall under the tenancy law regime.³²³ The rationale behind this is to prevent that the tenant relies on security of tenure.³²⁴ The 'short term by nature-rule' is applied in a restrictive manner. It sees to the cases in which it should be clear to everybody that tenant should not rely on the regime of tenancy law. An example is a short-stay in a holiday home, or a temporary stay in an apartment that is provided by the landlord while the main residence of the tenant is renovated. On the other hand, the agreement of a foreign teacher that made use of an apartment that was qualified as short-stay, did not meet the 'short-term criteria' and was qualified as an ordinary rent agreement.³²⁵ (Important parts of) The tenancy law- regime is also not applicable to dwellings that are listed to be demolished and are owned by the municipality.³²⁶

Specific tenancy contracts in the Civil Code

The Civil Code contains specific rules for contracts for student houses, and rooms located in the house in which the landlord lives himself as well.

For student rooms, a different regime for the termination of the contract applies. The so-called campus-contract can be terminated by the landlord, when the tenant is no longer registered as a student and on the condition that he rents out the dwelling or room to someone who is.³²⁷

For the situation in which a landlord rents out a room in the house where he also lives himself, the civil code determines that during the first nine months the rules on continuance and termination of the agreement are not applicable.³²⁸

The rationale of this rule is that in such a situation, the landlord should be able to terminate the agreement because the relation between him and the tenant does not work out. Note that the rules only apply to the situation in which the dwelling of the tenant is dependent and he has to share facilities (like a shower, or a front door) with the landlord.

Real right of habitation: Leasehold (erfpacht)

Leasehold (or long lease) is a real right that is of some importance for tenancy law. It gives the leaseholder the power to hold and to use the immovable thing of another person.³²⁹ Leasehold is governed by title 5.7 Civil Code. In Dutch cities, municipalities have used a leasehold system for decades and some (including Amsterdam) still do.

³²² Gerechtshof 's-Gravenhage 1 February 2011, WR 2011, 11

³²³ Art. 7:232 §2 CC

³²⁴ J. Sengers & P. van der Sanden (eds), *Huurrecht Woonruimte*, Huurrecht 5th ed. (The Hague: SDU Uitgevers bv, 2011), 57.

³²⁵ Van der Hoek 2013, T & C (Huurrecht), art. 7:232, note 2; J. Sengers & P. van der Sanden (eds.), *Huurrecht Woonruimte*, Huurrecht 5th ed. (The Hague: SDU Uitgevers bv, 2011), 57; Stichting *Duwo v M.M. Motazacker*, Kantonrechter Amsterdam, 20 May 2009, WR 2009/96, ECLI:NL:RBAMS:2009:BJ7852.

³²⁶ Art. 7:232 § 3 CC.

³²⁷ Art. 7:274 § 4 CC.

³²⁸ Art. 7:232 § 3 CC.

³²⁹ Art. 5:85 CC.

The city is therefore owner of most of the land on which buildings are constructed. The lessee pays a yearly rent for the use of that land. The leasehold can be established for a limited time (usually 50 years or longer) or for an indefinite period (“perpetual leasehold”). The system can be of importance for tenancy law, in an indirect manner, as cities will in some cases accept a decrease of the rent for buildings with a social function, like offering houses at a rent that is below market price and thereby subsidize the construction of low cost-housing. In addition, the municipality as a lessor can use the leases to add some obligations to the lease contract that they could otherwise not add through public regulation. They can for example state that the rent amount will be increased if the owner of a building decides to convert the social housing units into commercial housing units. It should be noted that the use of leasehold is not restricted to municipalities or other government land owners, but can also be used as a instrument to issue land by private landowners.

Contracts based on the Vacancy Property Act (*Leegstandswet*)³³⁰

The Vacancy Property Act (*Leegstandswet*)³³¹ provides rules for vacant buildings and apartments. The statute discerns three types of specific tenancy contracts and sets aside some the rules of the civil code on tenancy. For its applicability a permit of mayor & aldermen is necessary. If a permit is granted, the regimes on defects, notice and continuance by inhabitants of the house (such as subtenants) do not apply to the legal relation. For the houses that are put on the market by individual landlords the price regime (regulated rent) does also not apply. For the other categories, mayor & aldermen set rents in the permit.³³² The permit is for two years and can be extended to five years. For the situations below (2,3 and 4) the permit is given for five years and cannot be extended.

The period of the contract has to be at least six months. It has to be in writing, and refer to the permit. Landlord is obliged to inform tenant on specific situation. If not, the normal tenancy law-regime applies.

The categories that are listed are:

1. group-homes, - homes for (medical) care; - living space in hotels; - lodging (logies); living space in administration-buildings; education or a combination of these functions;
2. houses that are for sale and have not been rented out for more than three years during the last ten years; or
3. houses that have never been inhabited;
4. houses that have been inhabited for at least twelve months previous to the moment of sale;
5. houses that are awaiting demolition or renovation.

³³⁰ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013),, 285-290; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 10.7

³³¹ Leegstandwet (21 May 1981), Stb. 1981, 337.

³³² Art. 16 § 10 Leegstandswet.

The Vacancy Act also determines that a contract ends on its terms (fixed period) or when the permit expires.³³³ The period of notice for the tenant is not more than one month³³⁴ and for the landlord it is at least three months.³³⁵

The Anti-squatting agreement (*Anti-kraakovereenkomst*); loan-for-use agreement

Anti-squatting and loan-for-use agreements cannot be qualified as tenancy agreement if no rent is paid. But a payment for the expenses made by the landlord (onkostenvergoeding) is due. This payment should only be for 'real expenses' such as the use of electricity, water and gas and not for the use of the space as such (no rent).

If the amount that has to be paid for these expenses is higher than necessary to cover the cost, the contract will be qualified as a lease contract and the tenant will enjoy legal protection accordingly.³³⁶ Landlords use anti-squatting agreements, if they are afraid that the city administration will otherwise force them to rent out the dwelling and/or they fear that their property may become object of squatting.

Loan-for-use

Loan-for-use can also only exist when (absolutely) no rent is paid.

In the case an owner demanded his dwelling back from the tenant, the court qualified the relation as a 'tenancy contract' despite the fact that it was named loan-for-use and the rent was 'extremely' low.³³⁷

Squatter Homes

Until 2010, squatting was under some circumstances not a criminal act and could eventually allow users of houses to become tenants. However in 2010, squatting was forbidden under all circumstances.³³⁸ It is therefore no longer a meaningful category as squatting is now always a criminal act.

Mixed contracts

When an agreement has the characteristics of two or more statutory regulated specific types of agreements, then the specific statutory provisions for each of these types shall apply simultaneously to the agreement, except as far as these provisions are not easily compatible or their necessary implications, in connection with the nature of the agreement, oppose against a simultaneous application.³³⁹

If the aforementioned exception applies, it must be determined which legal provision has priority. The outcome depends on the circumstances of the case. The predominant nature of the agreement is often divisive.³⁴⁰ Examples of mixed contracts are:³⁴¹

³³³ Art. 16 § 8 Leegstandswet (*Vacant Property Act*)

³³⁴ Art. 16 § 5 Leegstandswet.

³³⁵ Art. 16 § 6 Leegstandswet.

³³⁶ J. Sengers & P. van der Sanden (eds), *Huurrecht Woonruimte*, Huurrecht 5th ed. (The Hague: SDU Uitgevers bv, 2011), 22.

³³⁷ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no 1.

³³⁸ Wet kraken en leegstand (24 July 2010), Stb. 2010, 320.

³³⁹ Art. 6:215 CC.

³⁴⁰ J. Sengers & P. van der Sanden (eds), *Huurrecht Woonruimte*, Huurrecht 5th ed. (The Hague: SDU Uitgevers bv, 2011), 26.

- Tenancy contracts combined with employment contracts

For a dwelling to be qualified as an 'employment-house' it is necessary that the dwelling is made available by the employer and that the duty to live in the dwelling is indispensable from the nature of the employment. The legal consequence of this qualification is that the employee will have to leave the dwelling when his employment ends. The house really has to be indispensable for the employment. A house that is provided by an employer because he happens to own some houses nearby the factory or building where the employee works, does not qualify as such. Even, a house that comes with a certain job (such as a rectory) will not qualify as such and the employee will in most circumstances be able to invoke his rights as a tenant.

Typical examples of employment-houses are the forester mansion, and the janitor mansion. However, a gamekeeper mansion that was situated near but not on the hunting grounds, was qualified as a regular tenancy relation.³⁴²
- Tenancy contracts combined with treatments or services

For these contracts, to fall outside of the tenancy-regulations, it is of importance that the treatment or provided services (pension-contract) dominates the relation. However, in specific cases the nature of the agreement (intention of parties) may also prevent the user to invoke tenancy-protection.

Some examples hereof are that of a care centre that provided coaching and training services for young adults to teach them to take care of themselves. Another example concerns a 'care-farm' where the (physically or mentally disabled) inhabitants participated in a day program, but paid their rent separately. Another example is that of a dwelling where substance addicts were trained to take care of their own household, the contract was named a 'living-skills'-agreement. In all these situations, the courts decided that the nature of the relation prevented the tenant from the protection of the tenancy regime. Even while, as was the case in the last example, the treatment/coaching elements of the contract did not prevail or, as was the case in the care-farm example, the rent was paid separately. On the other hand, the lease of a hotel room was qualified as tenancy because the service-element did not prevail.³⁴³

 - *Requirements for a valid conclusion of the contract*
 - *Formal requirements*

For a tenancy contract is required that the specific good (living space) is made available for the tenant in exchange for a specified counter-performance.³⁴⁴ Therefore, it is relevant that the object of the lease is determinable.

³⁴¹ J. Sengers & P. van der Sanden (eds), *Huurrecht Woonruimte*, Huurrecht 5th ed. (The Hague: SDU Uitgevers bv, 2011), 27-29.

³⁴² A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013),36; P. Abas, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijkrecht. 5, Bijzondere overeenkomsten, Deel IIA, Huur*, 9th ed. (Deventer: Kluwer, 2007), no 107

³⁴³ Examples derived from A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no 1.1.

³⁴⁴ Art. 7:201 CC jo Art. 6:227 CC, A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 38-41. P. Abas, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijkrecht. 5, Bijzondere overeenkomsten, Deel IIA, Huur*, 9th ed. (Deventer: Kluwer, 2007) no 16-18;

Except for that, the mere meeting of minds (offer and acceptance) and legitimate trust-requirements of Dutch contract law are enough.³⁴⁵ For the assumption that there is a contract, it is sufficient that a tenant starts to pay rent, if the rent is not refused by the landlord. In addition, it is not necessary that the rent is paid in money: it can also be paid by providing a service (such as maintenance or renovation of the dwelling).

The counter-performance has to be determinable but does not have to exist of money.³⁴⁶ In a case where a son who lived with his mother, asked for a declaration that the services that he provided (shopping, cooking, repair-works, taking care of the land), this counter-performance was not specific enough to be qualified as rent. In the rare situation in which a landlord does not longer want to receive rent, the nature of the relation will only change to use or loan-for-use when both parties agree that there is no longer a tenancy relation.³⁴⁷

- *Fees for conclusion of contract*

Fees for the conclusion of a lease contract will in most circumstances be qualified as 'key-fees' (sleutelgeld). By this is meant, that the tenant has to pay to receive the key to his apartment. Such agreements are void, as they are considered as unreasonable advantages for one of the parties to the agreement (landlord) that concern the creation of the contract.³⁴⁸

Landlords can only charge tenants for costs that are also in their interest. A real-estate agent cannot charge a tenant for an income check, because this check only serves the interests of the landlord. A housing corporation can only charge tenants for administration costs to the extent that tenants do actually profit from these checks.³⁴⁹

- *Registration requirements; legal consequences in the absence of registration*

There are no registers for tenancy contracts.

For the registers that are used to check on the status of the tenant, see above (the gathering on information). The lease-contract as such is not registered, only the domicile of the tenant.

- *Restrictions on choice of tenant - antidiscrimination issues*
 - *EU directives and national law on antidiscrimination*

Dutch law has adopted various antidiscrimination laws. The most important one is the Equal Treatment Act.³⁵⁰ There are various more specific acts.

R.A. Dozy & J.L.R.A. Huydecoper (eds), *Tekst & Commentaar Huurrecht*, 5th ed. (Deventer: Kluwer, 2012), comment on Art. 7:201, note 2b and 2c; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 1.4.1.

³⁴⁵ Art. 3: 33 CC.

³⁴⁶ *Drost v Donselaar*, Hoge Raad 16 March 1975, NJ 1975/437.

³⁴⁷ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 40.

³⁴⁸ Art. 7:264 CC.

³⁴⁹ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 47.

³⁵⁰ Algemene Wet Gelijke Behandeling (2 March 1994), Stb. 1994, 230.

The Equal Treatment of Disabled and Chronically Ill People Act³⁵¹ includes a section on residential accommodation. It states that a landlord may not refuse a candidate for his dwelling because of the reason that the candidate is suffering from a chronic disease or is physically disabled. The duty to accept the candidate includes a duty of 'immaterial changes' to the building, such as allowing a small electric car to park on the courtyard of the building. The duty to accept does not include a duty to carry out material changes to the building, such as the adaptation of kitchen for wheelchairs.

In 2012 a lower court ruled a case that concerned the anti-discrimination clause of the constitution.³⁵² It found that a housing corporation could not refuse to allow an exchange of houses between tenants because the ethnical background (Moroccan) of the proposed tenants did not fit its policy to disperse various groups across the city.³⁵³

However, the housing permit policy as written down in the Urban Areas (Special Measures) Act (*Wet Bijzondere Maatregelen Grootstedelijke Problematiek*) (see above, housing permits) has not been deemed as a disproportionate violation of non-discrimination principles despite its provision that in some neighbourhoods, cities may require that the person who seeks a house has been living in the city for six years.³⁵⁴

- *Limitations on freedom of contract through regulation*

There are no minimum requirements as such for a tenancy contract to be lawful outside of the requirements of a 'specific good' that has to be used by a tenant in exchange for a specific counter-performance (see above, formal requirements).

- *Control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms*

On the other hand, Dutch tenancy contracts incorporate a public law regime that comes with many provisions of an obligatory or semi-obligatory law. By the latter is meant that provision cannot be set-aside in a manner that is of disadvantage for the tenant. In some cases (rules for defects), rules can be set aside when an organization of tenants reaches an agreement on standard provisions with an organization of Landlords.³⁵⁵ This exception is not of much practical relevance as such an agreement has never been closed.³⁵⁶

³⁵¹ Art. 6 Wet Gelijke behandeling op Grond van een Handicap of Chronische Ziekte, WGBH/CZ, (3 April 2003), Stb 2003, 206.

³⁵² Art. 1 Grondwet (Dutch Constitution).

³⁵³ *B.S. v Woningbouwvereniging Volksbelang*, Rechtbank 's Hertogenbosch 11 January 2012, ECLI:NL:RBSHE:2012:BV2700.

³⁵⁴ Tweede Kamer der Staten Generaal, vergaderjaar 2011-2012, 33340 Evaluatie Wet bijzondere maatregelen grootstedelijke problematiek; See for a very critical discussion of this Act, J. Van der Vlist, *Wet maatregelen grootstedelijke problematiek aangenomen*, (16 January 2006), http://www.art1.nl/artikel/4707-Wet_maatregelen_grootstedelijke_problematiek_aangenomen (accessed 4 January 2014).

³⁵⁵ Art. 7:242 CC.

³⁵⁶ A.S. Rueb, H.E.M. Vrolijk, E.E. de Wijkerslooth-Vinke, *De huurbepalingen verklaard*, 96 (Deventer: Kluwer, 2006).

In most cases, the consequence of an invalid contractual term is that it is ‘voidable’ and the tenant will have to invoke the invalidity.

However, for provisions in the general terms of the agreement, the invalid term has to be set aside by the court ex officio.³⁵⁷ Before the introduction of the European blue list on consumer rights³⁵⁸ the Dutch Civil Code had already included two articles on general terms. These terms are divided in a black list³⁵⁹ and a grey list.³⁶⁰ The black list includes provisions that are deemed unreasonable, whereas the grey list includes provisions that are ‘supposed to be’ unreasonable (evidence to the contrary is allowed). The legal consequence of an unreasonable term is that its voidability has to be invoked by the ‘consumer-party’ in the case. However, European law has changed this requirement in a duty for an ex officio- scrutiny for the court if one of the parties (either the consumer or the professional) invokes the provision.^{361,362}

A recent prejudicial question dealt with the question if a court could mitigate the fine that was mentioned in the general terms of the agreement for non-performance by a tenant (which could be done under Dutch law) or that it had to set aside the provision (based on the duty to review the provision ex officio). The answer of ECJ was that it had to be set aside and could not be mitigated.³⁶³ Therefore, the directive on consumer rights has changed the consequences of invalidity of the rules on general terms in consumer law in the Dutch legal system.

Tenancy law includes a limited list of terms that are forbidden (void).

It follows from the nature of tenancy law that the invalidity of specific provisions results in the replacement by the provisions of the statute or (if possible) that they are set aside, and does not result in non-existence of the whole agreement as that would harm the interests of the tenant.

An overview of provisions that are void is provided in the Table 6.12.

Table 6.12 Invalidation of contractual terms

Void		Exception
Art. 7:248 §2 CC	Rent-increase cannot exceed the percentage that is set by the secretary of housing	‘liberalized’ dwellings
Art. 7:251 CC	Not more than one rent-	Art. 7:255 CC (renovation;

³⁵⁷ *Pannon GSM Zrt. v Erzsébet Sustikné Győrfi*, ECJ 4 June 2009, C-243/08 ().

³⁵⁸ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

³⁵⁹ Art. 6:236 CC.

³⁶⁰ Art. 6:237 CC.

³⁶¹ H.A. Van den Berg, Rapport van de LOCVK werkgroep ambtshalve toetsing, Ambtshalve toetsing van het Europees Consumentenrecht, 2010. See Rechtspraak.nl http://www.rechtspraak.nl/Procedures/Landelijke-regelingen/Sector-civiel-recht/Documents/EindrappportLOVCKwerkgroepambtshalvetoetsing_17210.pdf (accessed at 5 January 2014).

³⁶² M.B.M. See Loos, , Algemene voorwaarden onder de voorgestelde consumentenrichtlijn, *Vermogensrechtelijke Analyses*, (2009), 6(20), 8-77.

³⁶³ Directive 93/13/EEC; ECJ, 30 May 2013, Case c-488/11.

	increase per year	betterment)
Art.7:264 § 1 CC	Every provision made when closing the rental agreement is void insofar as it includes an unreasonable advantage for one of the parties	
Art. 7:264 § 2 CC	Provisions that contain an unreasonable advantage when an agreement is closed for or towards a third party are void	
Art. 7:271 § 4 CC	A notice of a landlord without reason is void. Any reason that is not mentioned in the statute, makes the notice void	
Art. 7:271 § 7 CC	Every contractual agreement that between parties that contains a longer period for notice by tenant or shorter by landlord than mentioned in the statute is void. Every contractual agreement that makes it possible for a rental agreement to end without notice, is void. All other agreements that are in conflict with article 7:271 are void	

○ *Statutory pre-emption rights of the tenant*

A statutory right-to-buy for tenants does not exist, despite some proposals by the previous government (Rutte I, 2010-2012). In practice, tenants of housing corporations are offered to buy their house when the housing corporation decides to sell some of its stock. Housing corporations have actively lobbied against the right-to-buy proposals as they claimed that it would interfere with their (maintenance and renovation) policies when they would be confronted with individual owners.

○ *Mortgage- provisions*

Are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?

Most mortgage-deeds include a so-called mortgage-provision on rent/ letting clause.³⁶⁴ Under this provision mortgagees have the right to refuse the right to a landlord to rent his house to a tenant. The provision is found in mortgage acts and mostly used to evict a tenant, if the house is to be auctioned by the bank after its mortgagor failed the

³⁶⁴ Art. 3:264 CC; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 7.1

payments on the mortgage. Without such provision, the mortgagee would have no legal right to evict the tenant. Note that this only applies if the mortgage preceded the rental agreement, the mortgagor has defaulted on his mortgage payments and it is clear that the house in question will not fetch a high enough price at auction to pay off the mortgagee.³⁶⁵

6.4 Contents of tenancy contracts

- *Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)*

A tenancy contract will have to include the address of the dwelling. If a mistake is made, this will usually be without consequences when both parties are aware of what is the actual object of the lease.

Legal consequences will most likely occur when defects of the dwelling are not mentioned in the contract. They are then not said to be included in the rent and could result in a lower price.

In very specific circumstances, this could even be a ground for an annulment of the contract on the ground of mistake. A court case dealt with the situation in which a tenant could annul a contract because of a humidity problem in the house that damaged his collection of movie tapes.³⁶⁶³⁶⁷ It may also happen that the description of the dwelling in the contract is such that the dwelling falls within the liberalized regime (e.g. by using a different method to measure the surface of the apartment) which will result in a (often much) higher rent. If the tenant starts a procedure at the Rental Commission on the price within 6 months, it will be lowered according to the fixed price of the regulated regime. If he fails to do so, he will be bound to rent that is set in the contract.³⁶⁸

- *Residence contracts and mixed (residence/commercial) contracts*

Retail and commercial space have their own legal regimes in the Civil Code.³⁶⁹

The first category is that of space with a public accessible part. This can be a store, but also a restaurant or a pick up place for goods³⁷⁰ a hotel,³⁷¹ or a camping.³⁷² The regime aims to protect tenants against unreasonable high prices (and landlords against unreasonable low prices) and allows them to rent a space for (in most cases) ten years.

³⁶⁵ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), No. 11.2.

³⁶⁶ D. De Vries, (2011), 'Mogelijkheid en gevolgen van vernietiging van de huurovereenkomst wegens bedrog en/of dwaling', *Tijdschrift huurrecht in praktijk*, nr 7-8, december (2011), 196-199.

³⁶⁷ Rechtbank 's-Gravenhage, sectie Kanton, 22 April 2009, WR 2009/95 (for a discussion see note 53, 197).

³⁶⁸ Art. 7:249 CC.

³⁶⁹ Art. 7:290 CC (retail and commercial space) and Art. 2:230a CC (space not qualified as commercial or residential)

³⁷⁰ Art. 7:290 § 1 CC.

³⁷¹ Art. 7:290 § 2 CC.

³⁷² Art. 7:290 § 3 CC

There is no regulated price regime but prices are deemed to be reasonable when they are in line with what is paid for similar spaces.³⁷³

The outline of the regime is as follows: contracts for spaces that are (partly) accessible for the public are assumed to be for a period of five years³⁷⁴ unless parties have agreed to a period of less than two years³⁷⁵. After five years, the contract is prolonged automatically for another period of five years³⁷⁶. The landlord can only terminate the agreement when the tenant has not behaved properly or if he wants to use the space himself or needs it for one of his relatives.³⁷⁷ The tenant can end the agreement when the period mentioned in the contract expires. After ten years, the landlord can terminate the agreement if his interests to end the agreement outweigh the interests of the tenant.³⁷⁸

If a space does not qualify as residential, nor as commercial space in the sense of the above regime (known as Article 290-commercial space), it falls under the regime of Article 7:230a (is qualified as Article 230a-commercial space). This regime introduces two rules of importance: if a contract reaches its end and the landlord does not want to prolong it, the court may do so on request of the tenant if his interests outweigh that of the landlord. This can be done for one year that can be extended two times on request of the tenant.³⁷⁹

In addition, if parties fail to reach an agreement on the price, the court will set a price based on what is commonly paid in the area.³⁸⁰

There have been many court-cases on mixed contract- situations, concerning situations where the property was used as a residential space on the one hand and as a retail or business space on the other hand.

If parties conclude separate agreements for the residential and retail space, both contracts are governed by their own legal regimes. For the answer to the question which rules are applicable for mixed contracts, the Supreme Court has ruled that the predominant use of the spaces is decisive.

To determine the nature of a contract becomes difficult when parties conclude one contract concerning the property as a whole.³⁸¹ The law presumes that an accessory house belongs to the retail space, and then it has to be qualified as such.

³⁷³ Art. 7:303 CC; A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), No. 67.

³⁷⁴ Art. 7:292 CC.

³⁷⁵ Art. 7:300 CC.

³⁷⁶ Art. 7:292 §2 CC.

³⁷⁷ Art. 7:296 §1 CC.

³⁷⁸ Art. 7:296 §3 CC.

³⁷⁹ Art. 7:230a §§1-5 CC.

³⁸⁰ Art. 7:230a §6 CC.

³⁸¹ Art. 7:290 CC.

When the space is not qualified as an accessory house, the rules concerning residential space or retail space can be applicable. This depends on the circumstances of the case.³⁸² What qualifies in such a situation as accessory depends on the verdict of the court.

- *Parties to a tenancy contract*
 - *Landlord: who can lawfully be a landlord?*

There are no meaningful exceptions in Dutch tenancy law, to the general rule that everybody can lawfully be a landlord. A person who is not owner of the dwelling, can still close an enforceable lease contract.³⁸³

When tenancy law was re-codified in 2003 the wording of the principle 'sale does not break lease' (a lease-agreement stays in existence when the good is sold) was changed into 'transfer doesn't break lease' to emphasise that not only the owner but also the person who is in possession of a real right can lease the good.³⁸⁴

- *Does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?*

Inheritance

Acquisition of ownership by universal title doesn't change the tenant's position.³⁸⁵

Sale

The principle is that tenancy agreements are not terminated by sale of the good.³⁸⁶ As of the moment of transfer, the new owner becomes, by law, the new landlord and has all the rights and obligations the previous owner had towards the tenant. After the transfer, the old owner can no longer be held liable to perform. At the most, he can be liable to compensate the damage caused by his actions. In addition, the new owner cannot base legal claims on breach of the contract by the tenant that took place before he became owner.

The acquiring party is only bound by those contractual provisions of the lease agreement that directly relate to the use of the leased property as granted by the landlord in exchange of the counter performance to be performed by the tenant. The connectedness is of relevance, not if he was aware of the existing duty as he does not step into all obligations and duties of the seller (like when he would have inherited the good) but only into those that are directly related to the specific good.

³⁸² *Tokkie v Michael*, Hoge Raad 24 January 1997, NJ 1997/558.

³⁸³ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 11.1.

³⁸⁴ Art. 7:226 CC; A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 132-137; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 6.1

³⁸⁵ Art. 3:80 CC in conjunction with Art. 7:229 CC.

³⁸⁶ Art. 7:226 CC.

He will for example be bound to an option-to-buy of the tenant if this option has resulted in a higher rent (is part of the agreement), he is bound to a verbal agreement that allows tenant to not pay the rent for a few months, he is bound to a co-optation rights of tenants. He is not bound to the agreement between tenant and landlord that the garden of the building (not part of the rented dwelling) may be used to stall bicycles.³⁸⁷

Public auction

An important exception to the principle that the lease goes before sale, is the letting clause. If the mortgage deed contains an explicit clause which limits the right of the mortgagor to lease out the mortgaged property without authorisation of the mortgagee, the mortgagee may not only invoke this clause against parties who have acquired the mortgaged property from the original mortgagor. After the mortgaged property is sold by foreclosure, its buyer may also invoke such a letting clause against the before mentioned persons, in the same way and with the same effect as the mortgagee could. He can however only do so, when the mortgagee himself still has this right at the moment of the public sale and he has granted it to the buyer in accordance with the sale conditions applicable to the foreclosure.³⁸⁸

However if the house was already rented out at the time when the mortgage was made, the clause cannot be invoked to a new tenant.³⁸⁹ In addition, the clause can only be invoked after the court has permitted the eviction. If the rent paid by the (sub-) tenants is sufficient to pay for the proceeds of the mortgage or the value of the rented house at auction will be enough to pay of the mortgagee, the mortgagee cannot evict the tenants. If he is granted the right to evict, the court will set a period of not more than one year for tenants to leave the dwelling.³⁹⁰ The tenants will receive a payment for damages by preference after the mortgagee has been paid.³⁹¹

One case that was ruled by the Supreme Court concerned a lease agreement that was mentioned in the deed of transfer that stated that the seller of the dwelling would rent the house after it was transferred to the buyer. Here the letting-clause was set aside by the Supreme Court because the mortgagee would have known this agreement, if he would have looked in the transfer deed.³⁹²

- *Tenant: Who can lawfully be a tenant?*
- *Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?*

There are no specific restrictions to who can or cannot be a tenant in Dutch tenancy law.

³⁸⁷ Huydecoper, 2013, T & C Huurrecht, art. 7:226, note. 1-7. Examples derived from A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), No 11.

³⁸⁸ Art. 3:264 § 1 CC.

³⁸⁹ Art. 3:264 § 4 CC.

³⁹⁰ Art. 3:264 § 6 CC.

³⁹¹ Art. 3:264 § 7 CC.

³⁹² *Metterwoon v Van Ommen*, Hoge Raad 15 November 1996, NJ 1997/508.

The tenant is allowed to live with his spouse or his partner. The civil code determines that spouses and registered partners are co-tenants. Both types partnership can only exist after registration at the municipality.³⁹³

There is legal right to live with ones (unregistered) partner who can also become co-tenant³⁹⁴. There is no specific right to live with one's children so this right has to be based on the constitutional right to family live. In practice, if the tenant has somebody to move in this is not in itself a ground for eviction as long as he keeps his main residence in the dwelling. He may also sub-lease a part of his dwelling.³⁹⁵

- *Changes of parties*

In case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant

Divorce and separation

To the situation of divorce and separation, the rules of co-tenancy apply. A spouse is a co-tenant by law. As Dutch family law allows for same sex- marriage, there is no difference between heterosexual or homosexual partners here. There is a specific regulation for the case of separation to protect the partner that moves out pending the separation procedure. His or hers moving out does not affect the position as co-tenant. However, when the leaving of the marital dwelling is not connected to the divorce, the spouse will lose co-tenancy rights as a result of his/her moving out. Even then, he or she can still become main-tenant if so determined in the divorce-covenant. If the spouses cannot reach an agreement on who should stay in the dwelling after separation, they may ask the court to take that decision for them. He will make his decision, based on a weighing of interests.³⁹⁶

In the case of a non-marital relation, the situation depends on whether the partner is a co-tenant or not. If so, the ex-partners have to make an arrangement for the dwelling amongst themselves or have to ask the court to do so for them. If not, the dwelling will stay with the main tenant.

- *Subletting*

Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?

Subletting: main rule

³⁹³ Art. 7:266 CC; M. Van Schie, *Huur en Verhuur*, in *Huurrecht Woonruimte*, eds J. van Breevoort & P. van der Sanden, 4th ed. (Den Haag: Sdu 2009), 11.2.2, 232.

³⁹⁴ Art. 7:267 CC; See part on co-tenancy.

³⁹⁵ Art. 7:244; Van der Hoek 2013, T & C (Huurrecht), art. 7:44 CC, note. 1 and 4.

³⁹⁶ Art. 7:266 § 4 and § 5 CC; A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 336-346; S. Rueb, H.E.M. Vrolijk & E.E. de Wijckerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 13.6

A tenant is not allowed to sublet the dwelling without consent of his landlord.³⁹⁷ However, he is allowed to sublet a part of his dwelling as long as he stays to have his 'main-residence' in that dwelling.³⁹⁸ The consent for subletting can be tacit. However, this has to be shown by the main tenant as consent is not presumed.

Subletting as a circumvention practice

The most common type of abuse of the subletting practice is the subletting of apartments by tenants. The reason is that the market value of dwellings with regulated rents is often higher than the rent itself, especially in the cities. When a tenant moves out of his apartment, for example to live with his or her partner, he will often sublet his apartment for a profit.

Subtenant becomes main tenant

When the relation between the main tenant and the landlord ends, the law provides a rule that allows the subtenant (of independent living space) to become main-tenant. He will have to notify the landlord that he wants to continue the tenancy.³⁹⁹ It is irrelevant whether the landlord has previously agreed to the situation.

In practice this means that tenant has to start paying the rent to the landlord. If the rent is not refused by the landlord within six months, he will have to accept the new tenant.⁴⁰⁰

- *Multiplicity of tenants*

Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?

A group of people may become main-tenant together, which means that they share responsibility for the rent.

There are various possibilities: groups that share a household or a group that only shares communal facilities such as the kitchen or a shared bathroom.

In the first situation it is common for a landlord to work with one contract with multiple main tenants whereas in the second situation he will probably choose for separate contracts for independent living space.

If he does so, there is also an option to charge the tenants separately for the service costs (such as utilities).

Legally, tenancy law allows the option that more than one tenant's name is on the contract. This is called contractual co-tenancy and as it is based on an agreement, the sustainable household test is irrelevant. The rules, regarding joint and several liability of

³⁹⁷ Art. 7:221 CC.

³⁹⁸ Art. 7:244 CC; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 5.9, 14.1

³⁹⁹ Art. 7:270a CC.

⁴⁰⁰ Art. 7:269 CC.

the statutory regulation on co-tenancy are usually applied to the legal relation. Under specific circumstances, this can however result in an unfair situation and the court may decide differently. Contractual co-tenancy⁴⁰¹, can be combined with a co-optation right for the group to choose a new tenant. This is often the case in student houses. There is no statutory regulation of co-optation. The practices are either based on contractual agreements with the landlord or on behavioural practices. If the latter is the case, the landlord has more options to change the practice if his interests outweigh those of tenants. If the co-optation right of tenants is mentioned in the contract, the landlord cannot end it. He may however choose to not rent out the specific room (-s) and choose an 'extinction' strategy to end the co-optation practice. He can also give notice to the group, but only on the limited grounds that are mentioned in the Civil Code.⁴⁰²

- *Duration of contract*
 - *Open-ended vs. limited in time contracts for limited in time contracts: is there a mandatory minimum or maximum duration?*

The general rule in Dutch tenancy law is that contracts are open-ended. There are some exceptions, based on the Vacancy Act (see above). These contracts have to be closed for a minimum period of six months.⁴⁰³

The civil code specifically mentions the situation in which the landlord wants to live in a house that he did not previously occupy, for example when he had not sold his previous house or for other reasons had to wait before he moved into his house. It is necessary that the tenant did not already live there. If the landlord wants to move back into his house (for example after he spent some time working abroad) or wants to allow his previous tenant to move back in, the contract can be closed for a limited time.⁴⁰⁴

In all these cases the contract must explicitly state that the tenant has to vacate the house at the end of the agreed upon term.

- *Other agreements on duration and their validity: "chain contracts"; prolongation option; contracts for life etc.*

Dutch tenancy law does not apply any other rules to the duration of contract than the ones sketched above. The reason is that the general rule of tenancy law, is that the contracts are for an open-ended period, no matter what parties have agreed to. Contracts for life do (deliberately) not exist.

- *Rent payment and rent increase*
 - *In general: freedom of contract vs. rent control*
 - *Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent*

⁴⁰¹ S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 13.5, here it is also pointed out that the status of contractual co-tenant does not have to imply the obligation to use the dwelling as main-residence. Co-tenants can for example also be parents of students that accept liability for the rent.

⁴⁰² A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 34.4, 34.5.

⁴⁰³ Art. 16 § 4 Leegstandwet.

⁴⁰⁴ See Art. 7:274 §2 CC.

Dutch tenancy law qualifies living space in an objective manner, meaning that the applicability of the legal regime depends on the qualities of the object and not on the nature of landlord. As a result, most of the rents are regulated by the national government. The government applies a point system to determine the maximum price that is applicable to all rentals that fall within the regulated regime.

Within this system, there are four different categories:

- Independent living space;
- Dependent living space (such as rooms);
- Mobile homes and their stands
- Service flats

If a dwelling that is qualified as independent living space has more than 142 points, it falls in the liberalised category. However, contracts that were closed before or on 1 July 1994 fall within the regulated system as long as they were not closed for houses that were realised after or on 1 Jul 1989.⁴⁰⁵ All other houses that are governed by the section on tenancy law in the Civil Code also fall within the regulated system.

An excessive rent in Dutch tenancy law can have two definitions. The first definition would be a rent that is more than the maximum rent (€ 681,02 in April 2013) based on the point system, whereas the quality of the house does not reach the 142-points benchmark.

Another definition of an excessive rent could be, a rent that is more than what can be asked for based on the point system while not exceeding the maximum that can be asked for based on that system. In such a situation, the rent would (for example) be € 500 whereas it should be € 400, based on the point system.

In the first situation when parties agree to an excessive rent, the tenant has six months to go to the Rental Commission. If he does, the Rental Commission will set the rent for the apartment. If he fails to do so, the excessive rent stands as it is.

In the second situation, the tenant can go to the Rental Commission whenever he is ready to do so.

- o *Maturity (fixed payment date); consequences in case of delayed payment*

The consequences of delayed payment are somewhat unclear. It can be qualified as a breach of the statutory duty to behave as a good tenant or as a breach of the contract.

The court is not likely to terminate an agreement when the payment of the rent is delayed.

⁴⁰⁵ Art. 7:247 CC.

On the other hand, it is common practice that when a tenant has not paid the rent for three months (or more), the landlord can have the lease terminated which is one of the rare chances the landlord has to get rid of a tenant.⁴⁰⁶

- *Tenant retention rights: May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it when the landlord does not respect his contractual duties, e.g. does not repair a defect)*

In case the landlord does not respect his contractual duties, a tenant has two options: he can exercise his retention right, or he can partially rescind the agreement. In both situations he will first have to notify landlord of the defect, unless he may assume that landlord is already aware of its existence. For, a partial rescission tenant needs to go to the Rental Commission (if his dwelling falls in the regulated regime) or to a normal court.⁴⁰⁷ He can only ask to diminish the rent until six months before he started the procedure.

Tenant can also decide to use his retention right.⁴⁰⁸ In that case he will have to pay the full amount of the rent when landlord has performed his duties (e.g. repaired the defect). He does however not have to start a court procedure to exercise this right.

More specifically, a distinction exists between the right of suspension and the right of retention. By the latter, is meant here that a creditor can keep a good that belong to somebody else, until the debtor performs his duties. A tenant could, after the termination of a lease contract, stay in his apartment to force the landlord to (for example) pay for damages that fell within the sphere of risk of the landlord.⁴⁰⁹

- *Assignment of claims to third parties: May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)*

A landlord can assign his claim from the rental agreement to a third party, but he will have to notify the tenant that he can pay the third party (e.g. the bank).⁴¹⁰

- *Rent replaced by performance in kind: May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)? Does the tenant have a statutory right to this effect? Could a lien of the "tenant-contractor" create problems in that case? (a lien is a statutory right of a contractor to ensure his being paid for his performances, e.g. improvements to the house, e.g. § 648 BGB)*

⁴⁰⁶ P. van der Sanden, J. Breevoort & J. van den Mosselaar (eds.), *Huurrecht Woonruimte*, 4th ed. (Den Haag: Sdu 2009), p.104

⁴⁰⁷ 7:207 and 7:257, C. Schouten, in J. Breevoort & J. van den Mosselaar (eds.), *Huurrecht Woonruimte*, 4th ed. (Den Haag: Sdu 2009), pp. 77-78]; R.A. Dozy & J.L.R.A. Huydecoper (eds), *Tekst & Commentaar Huurrecht*, 5th ed. (Deventer: Kluwer, 2012), comment on Art. 7:207 CC, note 1-3; Jacobs, 2013, T & C Huurrecht, 7:257, note. 1-4.

⁴⁰⁸ ex Art. 6:262 CC.; C. Schouten, 2009, p. 77

⁴⁰⁹ Art. 3:290 CC in conjunction with Art. 7:205 CC; A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 8.2.

⁴¹⁰ Art. 6:116 CC; P. Van der Sanden, in J. Breevoort & J. van den Mosselaar (eds.), *Huurrecht Woonruimte*, 4th ed. (Den Haag: Sdu 2009), p. 98.

Rents do not have to exist of payments. A rent payment can be replaced by a performance in kind. Dutch law defines price as the total of all obligations, not as a financial sum.⁴¹¹ The performance must be determinable.

Such a counter performance could also exist of a duty to carry out works or to take care of the landlord or one of his family members.

Tenant does not have a statutory right to replace his rent payment by a performance in kind. However, he does have a statutory right to repair defects that have not been repaired the landlord but fall under his responsibility.⁴¹² He can do so without court order, after he has given the landlord a (final) term to repair the defect. If the landlord then fails to undertake action, the tenant may have the defects repaired and settle the reasonable costs with the rent. If he chooses to do so without court-order, he risks a procedure of the landlord who may claim that there wasn't any defect to be repaired or that the costs made by the tenant were unreasonable high.⁴¹³

The tenant-contractor does not have a lien under Dutch law.

- *Clauses on rent increase*
 - *Open-ended vs. limited in time contracts*
 - *Automatic increase clauses (e.g. 3% per year)*
 - *Index-oriented increase clauses*

For regulated rents, the maximum increase-percentage is yearly set by the minister of housing. Automatic increase clauses (index-oriented) are allowed, but only if they do not exceed that maximum amount.

For liberalized rents, there are no general rules, except for the rule that an increase of rent can only take place once per year. In addition, the rent itself can be unreasonable if there is a major difference between the rent and what is generally paid for comparable houses.

For dwellings that fall within the liberalized regime, indexation clauses are common practice.⁴¹⁴

- *Utilities*
 - *Kinds of utilities and their legal regulation (especially: does the landlord or the tenant have to conclude the contracts of supply)*

The general category of Dutch tenancy law is called service costs; they consist of of the reasonable costs that are related to dwelling and concern goods or services and for which the landlord has to be reimbursed. The category as such, does, for example, not

⁴¹¹ Art. 7:237 CC.

⁴¹² Art. 7:206 §3 CC, Van der Hoek 2013 2013, T & C (Hurrecht), note. 4; A.R. de Jonge, *Hurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 8.3.1.

⁴¹⁴ Rijksoverheid.nl, <http://www.rijksoverheid.nl/onderwerpen/huurwoning/vraag-en-antwoord/hoe-werkt-huurverhoging-op-basis-van-een-indexeringsclausule.html> (accessed 5 January 2014).

include (mental or physical) treatments and care taking of persons as they are not directly connected to the dwelling.⁴¹⁵

Utilities are costs and expenses associated with a service or performance of which the tenant takes advantage, mainly heating, electricity and gas. Common practice is that the tenant concludes a contract of supply with a utility company. But it does happen that the landlord concludes a contract and charges these costs to the tenant. In some apartment buildings, there is a central heating system for the whole block that deprives the tenant of the option to choose his own provider. In 2014 a new statute came in force, the Heating Act (*Warmtewet*)⁴¹⁶ that determines the prices that landlords (mostly housing corporations) can charge to tenants that are connected to a shared system of heating. Whereas before, this would be part of the service costs, the government deemed it necessary to make a separate act for heating as it argued that tenants have no choice but to accept the landlord's monopoly on the price of heating.⁴¹⁷ The Act therefore determines that a maximum price is yearly set by the board of the Dutch competition authority.⁴¹⁸

The costs for utilities are covered in the section on service costs that is based on the section on prices and services costs in the civil code.⁴¹⁹⁴²⁰ The section refers to the Decision on Service Costs (*Besluit Servicekosten*)⁴²¹ of the Minister of housing. In this decision, ten categories of costs are listed as service costs:

- heating, electricity, gas and water;
- movables (including furniture, heating installations, kitchen appliances);
- small repairs that fall under the responsibility of tenant but are being carried out by the landlord;
- costs related to garbage collection and transport;
- costs for the caretakers;
- administration costs for the specific services;
- signal delivery for internet, radio and television;
- electronic appliances (e.g. alarm; intercom);
- insurances;
- costs for the services for the common spaces such as a common rooms or staircases.

Sewerage charges (*rioolrechten*), pollution levy (*verontreinigingsheffing*), waste collection levy (*afvalstoffenheffing*), refuse collection charges (*reinigingsrechten*), immovable property tax (*onroerende-zaakbelasting*) are not considered as a cost for which the landlord has provided a service but as levies. These costs are directly charged to the landlord or user of the dwelling. The landlord may charge these cost separately to the tenant, if the tenant hasn't received assessment (*aanslag*) and paid the amount due.

⁴¹⁵ 7:237 §3 Van der Hoek 2013, 2013, T & C (Huurrecht), 7:237 notes 4-5.

⁴¹⁶ Warmtewet, 17 June, 2013, Stb. 2013, 325

⁴¹⁷ A. Koedam & M. De Boer, Handreiking Warmtewet voor woningcorporaties, versie 1.0, Aedes, 2013

⁴¹⁸ Art. 5 Warmtewet

⁴¹⁹ Arts 7:258-261 CC.

⁴²⁰ Art. 7:237 §3 CC.

⁴²¹ Besluit Servicekosten, 8 April 2003, Stb. 2003, 170.

- *Distribution: Which utilities may be charged from the tenant?*

The landlord can charge the tenant for the costs that are concerned with the delivery of services such as electronic signals for internet or heating (see directly above).

The obligation of the tenant to pay service charges goes up to the amount as agreed upon by parties or, when they fail to come to terms, to the amount that is in line with the applying statutory provisions or with what can be regarded as a reasonable compensation for the provided goods and services.⁴²²

- o *What is the standing practice?*
- *Increase of prices for utilities*

The price for the utilities can be increased at the end of the term of payment that is agreed in the contract (in practice once per year) but only on the condition that the landlord has supplied an overview of the costs.⁴²³

Disruption of supply

The standing practice is that service costs are paid on beforehand by the tenant as part of the rent. He does not pay separately for the utilities and it is therefore not likely the landlord will disrupt the supply of the services. It is more likely, that he will aim to terminate the lease if the tenant stops paying. In so far as the tenant has paid for a service that is not delivered, he can start a procedure to receive his payment back as these payments were undue and to lower the amount that he has to pay monthly for the services.⁴²⁴

- *Deposit: Practice and legal limitations*
 - o *What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?*
 - o *What is the usual and lawful amount of a deposit?*
 - o *How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?*
 - o *What are the allowed uses of the deposit by the landlord?*

The landlord will usually require a security deposit at the beginning of the contract. An agreement concerning a security deposit is valid unless the amount is unreasonably high.⁴²⁵ It can be used as a guarantee deposit to cover future claims of the landlord or even to set off against the outstanding rent.

⁴²² Art. 7:259 CC; A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no 45.4.

⁴²³ Art. 7:261 §1a CC; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 13.5

⁴²⁴ Art. 6:203 CC, A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 46.

⁴²⁵ Art. 7:264 CC; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 11.11

Generally speaking a deposit of one month of rent is stipulated by the tenant.⁴²⁶ An amount of more than three months' rent is usually considered to be unreasonable and therefore null and void.⁴²⁷

The amount may be paid into a separate blocked account. Alternatively the tenant may issue a bank guarantee.

The deposit may be used for:

- repairing damages to the dwelling beyond normal wear and tear
- setting off against the outstanding rent (by tenant);
- restoring the landlord's personal property, such as keys or furniture, other than normal wear and tear. If the deposit hasn't been set off or used to pay the damage, the landlord must return the deposit (but not the interest).⁴²⁸

- *Repairs*
 - *Who is responsible for what kinds of maintenance works and repairs?*
 - *What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)*

The tenant can only be held responsible for small repairs.⁴²⁹ This rule cannot be set aside. If the tenant carries out other than small repairs this will have to be understood as in-kind payment of rent.

There is a Decision on Small Repairs (*Besluit Kleine Herstellingen*) of the Minister of housing⁴³⁰. The appendix to this document is a list that limits the small repairs that the tenant has to carry out or for which he can be charged.

- *Third Parties: Connections of the contract to third parties*
 - *Rights of tenants in relation to a mortgagee (before and after foreclosure)*
 - *The right to foreclose by a mortgagee in case the landlord has rented out the encumbered property*

It is not unlikely that Dutch real estate is encumbered with mortgage, which functions as a security or the loan.

If the mortgagee is in default with the observance of an obligation for which the mortgage serves as security, the mortgagee is entitled to sell the mortgaged property in public by auction and to recover the secured debt-claim from the sale proceeds.⁴³¹ This makes clear that the mortgagee has a direct interest in the value of the encumbered property.

A tenancy contract may decrease the value of the encumbered property, as the tenant enjoys security of tenure. In some situations, the legislator considers mortgagee 's right

⁴²⁶ Huurhuis Nederland <http://huurhuisnederland.nl/waarborgsom.html>, (accessed 25 April 2013).

⁴²⁷ J. Sengers & P. van der Sanden (eds), *Huurrecht Woonruimte*, Huurrecht 5th ed. (The Hague: SDU Uitgevers bv, 2011), 328.

⁴²⁸ Kamernet, <http://karnet.nl/juridischehulp.php>, (accessed 25 April 2013).

⁴²⁹ Art. 7:217; Art. 7:240 CC

⁴³⁰ *Besluit Kleine Herstellingen (Minor Repairs (Tenant's Liability) Decree)* (8 April 2003), Stb. 2003,

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⁴³¹ Art. 3:268 CC.

outweighs the tenant's interests and therefore, created rights in the mortgagee's favour. These rights must be stipulated in the mortgage deed. Examples are: the letting clause and the non-alteration clause (see below).

Whether foreclosure by the mortgagee is possible, depends on:

- a. Whether the tenancy contract is concluded before or after the execution of the mortgage deed and
- b. Whether the mortgage deed contains an explicit clause that limits the mortgagor's right to rent out the mortgaged property without the mortgagee's authorization (letting clause). All Dutch banks have the letting clause included in their mortgages.

If the tenancy contract is concluded before the execution of the mortgage deed (which included a letting clause), the tenant enjoys the right of security of tenure.⁴³² Which means: in case of foreclosure, the tenant does not have to clear the dwelling.

However, if the contract is concluded after the execution of the mortgage deed (which included a letting clause), the tenant has to clear the dwelling.⁴³³ The clause may only be invoked after the mortgagee is granted permission to evict the dwelling by the provisional relief judge of the District Court. Such permission is not required when the tenant has consented in writing with the nullification of the lease or when the tenancy contract was entered into after the public auction was publicly announced.⁴³⁴

The restriction does also not apply to living space that does not meet the definition of the special section of the Civil Code: which sees to contracts that are short term by nature; contracts based on the Vacancy Act and houseboats.⁴³⁵

After the mortgaged property is sold by foreclosure, its buyer may also invoke such a letting clause against the tenant, in the same way and with the same effect as the mortgagee could, provided that the mortgagee himself still has this right at the moment of the public sale and he has granted it to the buyer in accordance with the sale conditions applicable to the foreclosure.⁴³⁶

Restriction on the right to foreclose

The right to foreclose is restricted in the sense that a stipulated letting clause only has effect as far as it is not in conflict with a mandatory rule of law for tenancy contracts.⁴³⁷ A letting clause excluding the right to rent out a residential space cannot be invoked against a tenant when the involved residential space was already rented out at the moment on which the mortgage was established and the new tenancy contract doesn't contain unusual and more difficult conditions for the mortgagee.

Protection by the landlord in case of a legal claim by a bank

⁴³² *Metterwoon v Van Ommen*, Hoge Raad 15 November 1996, NJ 1997/508.

⁴³³ Art. 3:264 CC.

⁴³⁴ Art. 3:264 §5 CC.

⁴³⁵ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no 11.2.

⁴³⁶ Art. 3:264 §1 CC.

⁴³⁷ 3:264 §4 CC.

In case a bank has filed a legal claim (right of action) against the landlord with the objective to sell off the dwelling by foreclosure, the landlord is obliged, as soon as the lessee has notified him of this legal claim (right of action), to enter the legal proceedings in order to defend the interests of the lessee. This concerns a right of the tenant, he can also choose to defend himself independently.⁴³⁸

Furthermore, the landlord must compensate the tenant for all costs incurred with regard to this legal claim (right of action), though, if the notification was not given immediately, only the costs that have arisen after that notification have to be compensated. In case of sub-letting, the sub-tenant has the same rights towards the tenant/sub-landlord as the tenant has towards the landlord.⁴³⁹

Alterations by the tenant and the mortgagee's non-alteration clause

Problems may arise, when tenants wish to alter the dwelling without the mortgagee's consent.

A tenant is not allowed to change, in full or in part, the functional arrangement or shape of the dwelling. In order to do so, he needs the landlord's written consent, unless it concerns changes and additives which at the end of the tenancy contract can be made undone and removed without noteworthy costs.⁴⁴⁰

If the landlord doesn't give his consent, the tenant may claim in court an authorisation to carry out the planned changes himself. If the lessor is not also the owner, usufructuary or long leaseholder of the leased property, the lessor ensures that the owner, usufructuary or long leaseholder is called in time to the legal proceedings as well. If the leased property is encumbered with a mortgage, the mortgagee also has to be called in time to the legal proceedings.⁴⁴¹

It is general practice that in a mortgage deed an explicit clause is enclosed, according to which the mortgagor may not alter the constructions or state of the mortgaged property or he may not do so without permission of the mortgagee. It is not possible to invoke this clause when the district Court has authorized the tenant to make certain changes on the basis of the rules of law for tenancy contracts.⁴⁴²

The courts' consent maybe a ground for calling the loan due and payable, if it qualifies as a default in the (general) mortgage terms and conditions.⁴⁴³

⁴³⁸ Art. 7:211 §1 and §2 CC; R.A. Dozy & J.L.R.A. Huydecoper (eds), *Tekst & Commentaar Huurrecht*, 5th ed. (Deventer: Kluwer, 2012), comment on Art. 7:2:11 notes. 1-2.

⁴³⁹ Art. 7:211 §3; R.A. Dozy & J.L.R.A. Huydecoper (eds), *Tekst & Commentaar Huurrecht*, 5th ed. (Deventer: Kluwer, 2012), comment on Art. 7:2:11 note. 3

⁴⁴⁰ Art. 7:215 §1 CC; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 5.4

⁴⁴¹ Art. 7:215 §3 CC.

⁴⁴² Art. 3:265 CC.

⁴⁴³ A.I.M. van Mierlo & A.A. van Velten, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijk recht. 3. Vermogensrecht algemeen. Deel VI. Zekerheidsrechten*, 14th ed. (Deventer: Kluwer, 2010), no 377.

Note that these rules on alteration only rarely result in court cases in the sphere of tenancy law. This is more likely the case when the tenant is the professional user of an office building.

6.5 Implementation of tenancy contracts

Table 6.12 Implementation of tenancy contracts

	Independent dwelling in liberalized regime	Independent dwelling in regulated regime	Dependent dwelling in regulated regime (NB liberalized regime does not exist)
Ranking (regulation)	Freedom on price; strong regulation on other aspects	Most aspects of contract are regulated	Most aspects are regulated; termination-protection not as strong in all cases for tenants
Breaches prior to handover	Can be tort or breach	Can be tort or breach	Can be tort or breach
Breaches after handover	May result in rescission of contract & damages	May result in rescission of contract. Less likely, as tenant has less option when he can only afford regulated regime & damages	May result in rescission of contract & damages
Rent increases	Once per year	Once per year; maximum set by minister of housing	Once per year; maximum set by minister of housing
Changes to the dwelling By the tenant	Are regulated in civil code; should not change value and main use	Are regulated in civil code; should not change value and main use	Not without consent of landlord
Use of the dwelling	Living Space	Living Space & main residence	Living space

Table 6.13 Implementation of tenancy contracts

	Campus-contract	Room in house of landlord
Ranking	Strongly regulated; exception only for termination rights for landlord	Strongly regulated; termination protection not as strong for cases
Breaches prior to handover	Breach or tort	Breach or tort; likely to result in rescission
Breaches after handover	May result in termination & damages depending on nature of breach	Likely to result in termination of agreement
Rent increases	Once per year; maximum set by minister of housing	Once per year; maximum set by minister of housing
Changes to the dwelling	Regulated in the civil code; should not change main use or value of dwelling	Not without consent
Use of the dwelling	Living Space; Main residency during enrolment in educational institution	Living Space

- *Disruptions of performance (in particular “breach of contract”) prior to the handover of the dwelling*
 - *In the sphere of the landlord*
 - *Refusal to handover dwelling by landlord*

A landlord is obliged to place his property at the disposal of the lessee and to leave it at his disposal insofar as this is necessary to comply with the agreed enjoyment (right of use).⁴⁴⁴

The general rule is that a debtor is bound to the requirement of specific performance. If the landlord doesn't handover a dwelling because it is not complete, he will be in default. This might be a reason for the tenant to set the contract aside⁴⁴⁵ and to claim damages when the completion is the fault of landlord. In practice, when the completion is delayed, the landlord will provide alternative housing or pay for the costs of an alternative.

Double Lease

Double lease situations are dealt with specifically in the title on lease. The general rule is that the tenant that came first, has the right to the dwelling. This is based on an

⁴⁴⁴ Art. 7:203 CC.

⁴⁴⁵ Art. 6:265 CC.

analogous interpretation of the rules for real rights.⁴⁴⁶ However, if the second tenant is already living in the dwelling and is paying rent, he may claim the protection that the law gives to tenants. In that case, the court will have to weigh the interests of the tenants. The landlord has to pay damages. Courts have also allowed landlord to offer a replacement house to the tenant.⁴⁴⁷ If the second tenant (that now lives in the apartment) acted in bad faith, the first tenant will be able to file a claim based on tort (misuse of the breach of a third party) and ask for in-kind damages (the house).⁴⁴⁸

Tenant stays in house

- *Refusal of clearing and handover by previous tenant*

If the previous tenant refuses to handover the dwelling to the new tenant, the landlord will have to start a legal procedure (eviction) to force the tenant to handover the dwelling. See also above (double lease).

- *Public law impediments to handover to the tenant*

If the dwelling falls in the liberalised regime, there are no public law impediments to handover the dwelling to the tenant.

However, if the dwelling falls in the regulated regime, the municipality's policies may be an impediment. Most notably, the situation in which a housing permit is required (see above). In addition, in some cases the landlord will have to accept candidates that have received a declaration of urgency (*urgentieverklaring*), (see under housing permit).

- o *In the sphere of the tenant: refusal of handover by tenant*

If the landlord wants the tenant to leave the dwelling, he needs to get a court order. A lease stays effective when the tenant refuses to accept the notion of termination of the landlord.⁴⁴⁹ The landlord will therefore have to go to court to ask for termination of the contract, the court will then also set a date for when the dwelling has to be cleared by the tenant. After that date, he can be evicted.⁴⁵⁰

Insolvency of tenant; suspension of payments (surseance van betaling)

When a tenant is bankrupt both the receiver (*curator*) and the landlord, may prematurely terminate the lease agreement, provided notice of termination is given at an effective termination date. Furthermore, the agreed or customary notice periods must be observed, on the understanding, however, that three months' notice will in any case be sufficient. If rent has been paid in advance, no notice of termination of the lease can be

⁴⁴⁶ Art. 3:298 CC.

⁴⁴⁷ J. Sengers & P. van der Sanden (eds.), *Huurrecht Woonruimte*, Huurrecht 5th ed. (The Hague: SDU Uitgevers bv, 2011), 64.

⁴⁴⁸ Art. 6:103 CC; A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no 7.1; P. Abas, *Mr. C. Assers Handleiding tot de beoefening van het Nederlands burgerlijk recht. 5, Bijzondere overeenkomsten, Deel IIA, Huur*, 9th ed. (Deventer: Kluwer, 2007), no. 24.

⁴⁴⁹ Art. 7:272 CC.

⁴⁵⁰ Art. 7:273 CC.

given at an effective termination date before the last day of the period for which the rent has been paid already. The rent that becomes indebted as of the day of the declaration of bankruptcy will be an estate debt."⁴⁵¹

The situation is different when the tenant has been granted the right to clear his debts.⁴⁵²⁴⁵³ This right is found in the bankruptcy act and is meant to allow natural persons the right to start over with a clean slate.

If the tenant has been granted this right by the District Court, he cannot be evicted based on his non-payment as long as he pays his rent after he has been granted the right to clear his debts. In other words, his rent-debt of before he went insolvent cannot be a ground to evict him even when the landlord has managed to get a court order to do so. However, when the tenant fails to pay the rent after he was granted the right to clear his debt, he can be evicted in accordance with the normal procedures of the civil code. The 'clearance of debt' regulation comes with a 'forced agreement' with the creditors that will have to accept a cut on their claims. The clearance situation stays in existence for a maximum period of 3 to 5 years, depending on the ability of the person to pay of his debts (based on the agreement) during this period. When he has paid of the creditors or cannot even pay the amounts of the forced agreement, the situation ceases to exist. After this, what is left of the debts (and has not been paid of) will remain but cannot be claimed in a court (they have become natural obligations). The regulation also deals with the urgent situation of losing one's house or being cut of gas, electricity and/or water. In this situation, the natural person can ask the mayor & aldermen of his municipality to decide on a provisional basis (*voorlopige voorziening*). They can do so for a period of 6 months, and then the rules as stated above apply, during the 6 months of the provision the tenant cannot be evicted (based on his previous defaulting) if he pays his rent during that period.⁴⁵⁴

- *refusal of the new tenant to take possession of the house*

If tenant refuses to take possession of the house, he will normally be bound to the lease. The lease will generally state that he, unless he has guaranteed to stay in the dwelling for a specific period, can terminate the contract by giving notice to landlord. He will have to pay rent for a period of 1-3 months, depending on the periods in which he pays (or should pay) the rent.⁴⁵⁵

- *Disruptions of performance (in particular "breach of contract") after the handover of the dwelling*
 - *Defects of the dwelling*
 - *Notion of defects: is there a general definition?*

⁴⁵¹ Art. 39 Wet op faillissement en de surséance van betaling (Bankruptcy Act), (30 September 1893), stb. 1896. 9,

⁴⁵² A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 13.

⁴⁵³ Wet Schuldsanering Natuurlijke Personen (25 June 1998), stb. 1998, 445. The act is found in Title 3 of the Wet op faillissement en de surséance van betaling.

⁴⁵⁴ see also P. Van der Sanden, 2009, p.111-114; Art: 7:215 §1 CC; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 7.2

⁴⁵⁵ Art. 7:271 §5 CC.

There is a general definition of defects that applies to all goods that are leased. A defect is a situation or feature of the good, for which the tenant cannot be blamed and due to which the good cannot be of use to the tenant in a way that a tenant, when the contract was signed, could have expected from a good as such.⁴⁵⁶ For living space, the civil code determines that specific shortcomings can be listed as defects by Governmental Decree, this has resulted in a Decision on defects (*Besluit Gebreken*) of the minister of housing that is worked out in the Book of defects (*Gebrekenboek*) of the Rental Commission⁴⁵⁷. This decision contains three categories of defects: A, B and C. When a defect falls within one these categories, the legal consequence is that the rent can be reduced to 20 % (A-defects), 30 % (B-defects) or 40 % (C-defects) of the so-called maximum reasonable rent for houses that fall into the regulated price category. For houses that fall in the liberalised category, the lists of defects is still of relevance but the tenant will have to start a procedure at a regular court, instead of the Rental Commission.

- *Examples: is the exposition to noise e.g. from a building site in front of the house or are noisy neighbours a defect? damages caused by a party or third persons? Occupation by third parties?*

The general definition specifically excludes the situation in which third parties claim a right to the leased object, or are in practice disturbing the enjoyment of the good (e.g. by occupation of the dwelling).⁴⁵⁸

Noise can be a so-called C-defect (see above). There are various situations discerned in the Book of defects of the Rental Commission (*Gebrekenboek*). Generally speaking, a defect exists when noise is the result of a condition in the dwelling that falls under the responsibility of the landlord: e.g. cracking sounds of the floor or stairs, noisy technical installation, or a lack of isolation of the floors or walls⁴⁵⁹. If the neighbours are causing noise (or any other kind of trouble) and are renting from the same landlord, the noise will be a defect and landlord will have to take action towards his tenants reminding them of their duty to behave as good tenants. The landlord will have to behave in an active manner (during research in the neighbourhood, invite social services to intervene) and eventually it can be asked of him to start an eviction procedure.⁴⁶⁰ However, if the noise is caused by third parties (not renting from landlord), the noise will not qualify as a defect.⁴⁶¹

- *Possible legal consequences: rent reduction; damages; "right to cure" (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third*

⁴⁵⁶ Art. 7:204 CC.

⁴⁵⁷ Art. 7:241 CC, *Besluit Huurprijzen Woonruimte (Residential Tenancies (Rent) Decree)* (6 February 1999), Stb, 1999, 69, art. 6, *Gebrekenboek Huurcommissie: ernstige gebreken en tekortkomingen*, versie 1 april 2012, http://www.huurcommissie.nl/uploads/media/Gebrekenboek_Huurcommissie.pdf (accessed 7 January 2014).

⁴⁵⁸ 7:204 §3

⁴⁵⁹ *Gebrekenboek Huurcommissie: ernstige gebreken en tekortkomingen*, versie 1 January 2003, supplement 1 January 2004. The examples are found in Category C: 3, 7, H5, and Qa4

⁴⁶⁰ 7:204 §2; 7:206 §2; 7:213,214: A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 8.1 and 9.

⁴⁶¹ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 8.1.1, see also note 243.

parties) what are the relationships between different remedies; what are the prescription periods for these remedies

If there is a defect of the dwelling the tenant has first of all the duty to notify the landlord of the existence of the defect.⁴⁶² If he fails to do so, he can be held responsible for the damages that are caused by his omission.⁴⁶³

If the defect is not a small defect that he has to repair himself, and the landlord does not take action upon the notification, the tenant has various options:

If the dwelling is within the regulated regime, he can, six weeks after the notification, start a procedure at the Rental Commission and ask for a reduction of the rent. He has to start the procedure within 6 months.

The Rental Commission will investigate whether the defect falls within the A, B or C-category and rule for a reduction of the rent accordingly. The reduction will be in force from the moment that the landlord should have been aware of the defect and ends when the defect is repaired.

The tenant can also start a procedure at district court to obtain a rent reduction pro rata of the infringement the defect.⁴⁶⁴ For a house in the regulated regime this would usually mean asking the court to apply the defect categories of the Rental Commission as mentioned above. The court is not required to apply the policy of the Rental Commission but has to take the list of defects of the Besluit Gebreken into account. For the tenant who does not rent under the regulated regime there is no general rule other than the pro rata reduction. Note that for this tenant there is neither the obligation to wait 6 weeks after notifying the landlord of the defect nor the obligation to initiate a procedure within 6 months of notifying the landlord.⁴⁶⁵

- He can start a procedure at a district court and ask for immediate action of the landlord;
- The Rental Commission will only rule on reduction of the rent, but will not force the landlord to actually repair the defect. Thereto, the tenant needs to go to a district court that can order for immediate repair by the landlord.
- He can repair the defect on behalf of the landlord (and on his costs)⁴⁶⁶
- After the notification, If the landlord doesn't take action the tenant can decide to repair the defect himself (without court order). This option is often chosen by tenants but it can only be applied by tenants who can afford to advance the money.
- In practice tenants will announce their plan to have the defect repaired to the landlord and then diminish the rent accordingly until he is reimbursed for the costs.
- He can suspend his payment of the rent;
- A Tenant can suspend his duties, while waiting for the landlord to take action. However, tenants should be careful not to stop paying the rent in total and,

⁴⁶²7:207 §1 CC.

⁴⁶³ 7:222 CC.

⁴⁶⁴ 7:207 CC.

⁴⁶⁵ 7:257 CC.

⁴⁶⁶7:206 §3 CC.

preferably, and reserve the payments in a specific account as the landlord may otherwise accuse him of breach.

- He can ask the court to (partially) terminate the agreement⁴⁶⁷;
- A tenant can start a procedure to (partially) terminate the agreement in accordance with the nature of the defect. There is some debate on whether he can partially terminate the agreement without a court order. There is reason to assume that he cannot as there would otherwise be a risk of extortion of landlords.⁴⁶⁸
- He can claim damages⁴⁶⁹
- If there are damages that are a result of a defect that is the landlords' fault and/or stem from of the failing of the landlord to act, the tenant can ask for damages.
- If the defect is such that it is impossible to enjoy the leased good, he can terminate the agreement without interference of the court.⁴⁷⁰

This is option also exists for the landlord.

- *Entering the premises and related issues*
 - *Under what conditions may the landlord enter the premises?*
 - *Is the landlord allowed to keep a set of keys to the rented apartment?*
 - *Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?*

As a principle, the landlord cannot enter the premises without consent of tenant. He is also not entitled to a set of keys.⁴⁷¹ The right of the tenant to not allow the landlord into his room follows from the constitution that provides individuals with the right to privacy and provides a specific prohibition to enter somebody's house without permission.⁴⁷² To make sure that landlord has the right to rent out his house to a new tenant or to sell it after the termination of the contract, the tenant has to allow him to show the premises to interested parties. This duty is specifically dealt with in the Civil Code, as it could interfere with the constitutional rights of tenant.⁴⁷³ The landlord is not allowed to lock a tenant out of the premises himself. He will have to hire an usher to do so.⁴⁷⁴

- *Implementation of (unilateral) rent increases*
 - *Ordinary rent increases to compensate inflation/ increase gains*
 - *Rent increase after renovation or similar*
 - *Rent increases in "houses with public task"*
 - *Procedure to be followed for rent increases*
 - *Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel)?*
 - *Possible objections of the tenant against the rent increase*

⁴⁶⁷ Art. 7:217 CC jo Art. 6:267 CC and Art. 6:270 CC

⁴⁶⁸ *Van Bommel v Ruygrok*, Hoge Raad 6 June 1997, NJ 1998/28 and Hoge Raad 5 October 2010, RvdW 2010, 386 (the reference is to the conclusion of the Advocate General).

⁴⁶⁹ Art. 7:208 CC.

⁴⁷⁰ Art. 7:210 CC.

⁴⁷¹ See for example, ECLI:NL:RBMAA:2010:BL8593

⁴⁷² Arts 10 and 12 Grondwet (Dutch Constitution).

⁴⁷³ Art. 7:223 CC, R.A. Dozy & J.L.R.A. Huydecoper (eds), *Tekst & Commentaar Huurrecht*, 5th ed. (Deventer: Kluwer, 2012), comment on Art. 7:223 CC.

⁴⁷⁴ See for example, ECLI:nl:rbbre:2011:bp4878.

Regulated regime

The rent can be increased once per year (normally July 1st)⁴⁷⁵, but in the first year it can be increased twice⁴⁷⁶. The maximum amount is set by the minister of housing and has been linked to the inflation percentage of last year for most of the previous years. However, this is not a general rule and in 2013 the percentage of increase was higher (one of the reasons therefore is that the maintenance costs for landlords are generally higher than inflation).

The proposal for the rent increase has to be sent two months in advance. The proposal should contain the present price, the percentage of increase, the date from which on the new price will be used, and the way in which the tenant can object to the increase.⁴⁷⁷

There is no fixed legal consequence when the landlord does not fulfil these requirements. However, when the tenant objects to the increase and the landlord starts a procedure at the Rental Commission, his claim may not be accepted (*niet-ontvankelijk*) by the commission because of formal defects.

If the tenant objects to the increase, he has to respond to the proposal in writing within six weeks. If he does so, the landlord can start a procedure at the Rental Commission.⁴⁷⁸ If tenant fails to respond and does not start paying the increase, the landlord has to send him a reminder-letter within six weeks (after the expiration of the first six weeks period) after which the tenant has to start a procedure at the Rental Commission.⁴⁷⁹ However, if the landlord has sent him a registered letter, he can start the procedure himself after six weeks.⁴⁸⁰

If the tenant starts paying the rent and does not start a procedure at the Rental Commission he is assumed to have accepted the increase.⁴⁸¹

In 2013, after much debate, a new regime was introduced that allows landlords to increase the rent of their tenants because of their income. The income is measured by household. Tenants with a (household) income under € 3,614 received a maximum increase of 4 %. Tenants with a (household) income between € 33.614 and 43.000 the percentage of increase was 4.5 % and for tenants that earned more, the increase percentage was 6.5 %. The civil code regulates the procedures for this increase that deal mostly with the proof of income that the landlord has to gather. The percentage of increase is yearly set by the minister.⁴⁸²

Facilities and energy performance

If specific facilities have been added to the dwelling by the landlord, such as facilities for disabled people or facilities that increase the quality of the dwelling (e.g. isolation or

⁴⁷⁵ Art. 7:250 CC.

⁴⁷⁶ Art. 7:250 §1 sub a CC.

⁴⁷⁷ Art. 7:252 CC.

⁴⁷⁸ Art. 7:253 §1 CC.

⁴⁷⁹ Art. 7:253 §2 CC.

⁴⁸⁰ Art. 7:253 §5 CC.

⁴⁸¹ Art. 7:253 §3 CC.

⁴⁸² Art. 7:252a CC

other energy performance measures), the rent can be increased in accordance with the costs of those facilities.⁴⁸³

This regulation does not include the repair of defects. However, if the landlord has repaired defects in the dwelling, he may increase the rent one more time (2 times per year instead of 1 time) with the increase that he could not add because of the defect.

A case in point are energy measures of isolation of outside walls, the crawl space and the replacement of the heating kettle. The tenant can force the landlord to take these measures as long as he is willing to pay an increase of the rent.⁴⁸⁴

Objection of tenant to rent-increase

Objections that a tenant can make to the increase are: the price has been lowered by the Rental Commission because of defects, his household income is lower than the income used by the landlord, or that the increase has not been sent to him in accordance with the law.

For houses that fall within the liberalized regime, there are no general rules for the maximum amount of the price increase or the way in which the tenant has to be notified of the increase.

The rule of one price increase per year, does apply to dwellings that fall within the liberalized regime as well as the exception that an extra price increase is allowed when the quality of the dwelling is improved by the landlord.

Improvements/changes of the dwelling

- Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?
- Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?
- Is the tenant allowed to make other changes to the dwelling?
- In particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)? fixing antennas, including parabolic antennas

Tenancy law discerns two categories: improvements and repairs. Here we discuss changes and improvements. The civil Code includes a regulation on changes of leased objects that are of semi-obligatory law for tenants.⁴⁸⁵ The general rule is that a tenant is, without consent, allowed to make changes to the dwelling that can easily be removed. For tenants, the law determines that the landlord has to consent to changes that do not result in a decrease in value and do not decrease the chance of the landlord to rent out the dwelling within 8 weeks.⁴⁸⁶ If he fails to do so, the tenant can start a court procedure

⁴⁸³ Art. 7:255 CC.

⁴⁸⁴ Art. 7:243 CC; Van der Hoek 2013, T & C (Huurrecht), 7:243 note 3.

⁴⁸⁵ Art. 7:215 CC; Art. 7:216 CC in conjunction with Art. 7:242 §2 CC.

⁴⁸⁶ Art. 7:215 §2 CC.

in which the landlord has to include the persons that have a real right in the dwelling.⁴⁸⁷ The court will as-of-right provide consent for the proposed changes if they meet the general rule. If not, he will ask whether the changes are necessary for an adequate use of the dwelling or add to the enjoyment of the house whereas the landlord does not have any weighty reasons to prevent the change.⁴⁸⁸ The court can add conditions to his consent, including the right for the landlord to increase the rent.⁴⁸⁹

The regulation is of semi-obligatory law with the exception of the façade of the building in which the dwelling is situated.⁴⁹⁰ This last provision was added on request of the housing corporation that deemed it necessary for their policies regarding liveability of neighbourhoods.⁴⁹¹ The provision is sometimes used to prevent the instalment of parabolic antennas by tenants, but cannot fully prevent the right of tenants because as the right to receive information as listed in Article 10 ECHR has horizontal effect. There have been various cases on the right of tenants to install a parabolic antenna, that have resulted in many nuances. The general rule is that a court will regard the provision that the right to change the façade can be excluded as a legal authorization of a third party (the landlord) to infringe the tenant's constitutional rights that is not unlimited and meets the requirement of proportionality and relativity. It will then weigh the landlord's interests against those of the tenant. Generally speaking, the court will ask: whether the parabolic antenna is disfiguring (which is for example not the case if it is not visible from the street)? If so, there should be an explicit provision in the contract to prevent the instalment and even then, there should be an alternative available for the tenant to gather the information he needs. On the other hand, the arrival of internet has made it less likely that the tenant will not be able to have access to his media-channels.⁴⁹²

When a tenant is handicapped, the alterations that he needs to use his house may fall under his legal right to add changes that are easily removable, or to his right to changes that are necessary for his enjoyment or for an adequate use of the leased object.

The other general rule is that the tenant has the right to take away the improvements and changes that he legitimately made, but does not have to do so without a court order (or a specific agreement with the landlord). If the landlord profits from the changes, he might have a claim based on unjustified enrichment.⁴⁹³ This is not often the case and a more common practice is that the tenant closes an agreement with the new tenant (if any) who will then buy (or accept) the improvements and changes to the dwelling.

- *Alterations of the dwelling by the landlord*
 - *What does the tenant have to tolerate?*
 - *Which procedures must be followed?*

⁴⁸⁷ Art. 7:215 §3 CC.

⁴⁸⁸ Art. 7:215 § 4 CC.

⁴⁸⁹ Art. 7:215 §5 CC.

⁴⁹⁰ Art. 7:215 § 6 CC.

⁴⁹¹ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 19.

⁴⁹² A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 19.1.

⁴⁹³ Art. 7:216 §3 CC.

The civil code includes an extensive regulation regarding the duties and rights of tenants with regard to works and renovations that concern his dwelling.⁴⁹⁴ The first distinction that is of importance is that between urgent works and renovations.

The tenant has to tolerate urgent works in his dwelling. These works may not necessarily concern defects of the dwelling. A tenant has for example to tolerate the replacement of new pipes in his dwelling, even when the old ones were functioning at the time. The difference between urgent works and renovation is that urgent works do not come with specific rights for the tenant (see directly below). He has to tolerate the works and cannot ask for compensation for his moving costs when he does not want to stay in his house during the works.

This is different when the works result in a renovation. For renovation of the dwelling, the landlord has to follow a specific procedure. He has to make the tenant a 'reasonable offer' and has to pay for his moving and refurbishing costs when he cannot stay in his dwelling when the work is carried out. The amount of this compensation is yearly set by the minister of housing.⁴⁹⁵ The landlord does not have to pay for the costs that are already covered by the municipality⁴⁹⁶.

The statute determines that when a tenant's dwelling is part of a block or building of at least ten houses, and 70 % of the inhabitants have agreed to the offer of the landlord, the offer is assumed to be reasonable. A tenant can still ask the court (within 8 weeks after acceptance) to rule that the proposal is unreasonable⁴⁹⁷. If the proposal is not accepted by 70 % of the tenants, it is the landlord who has to go to the court.

- *Uses of the dwelling*

As a general rule, the tenant is not obligated to live in the dwelling. However, the Civil Code requires the tenant to use his dwelling as a good lessee⁴⁹⁸ and that will under normal circumstances mean that he has to live in the dwelling. Of relevance here is that most of dwellings are owned by housing corporations that have a duty towards other potential tenants. This makes the duty to use the dwelling as a main residence of enhanced importance, because if it is not used accordingly the landlord (housing corporation) has an interest to rent the dwelling to another tenant.⁴⁹⁹ If a dwelling is used as a pied à terre and the landlord is not a housing corporation, the situation will be different. Still, the duty to use the dwelling does not necessarily mean that the tenant needs to have his main residence in his dwelling, if the contract does not say so. Therefore, most landlords include this duty in the contract. Note that the tenant has the burden of proof that he uses the dwelling as his main residence if the landlord claims otherwise.

⁴⁹⁴ Art. 7:220 CC.

⁴⁹⁵ Art. 7:220 §5 CC.

⁴⁹⁶ Art. 7:220 §6 CC.

⁴⁹⁷ Art. 7:220 §3 CC.

⁴⁹⁸ Art. 7:213 CC.

⁴⁹⁹ S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 5.2.

The landlord can prevent a tenant from living with (too many) other people, receiving guests or keeping animals if they are causing (severe) nuisance. A case in which six people were living in one apartment did not result in such nuisance unless they would cause damages to the dwelling. However, a situation in which twelve persons were using one dwelling combined with the refusal to end the situation resulted in rescission of the contract by the court. A tenant that was taking care of seventeen cats in a small house and caused severe nuisance for the neighbours was deemed to breach his contract, by the court in a manner that justified the rescission of the contract.⁵⁰⁰

In cases that do not concern severe nuisance, the landlord will have to include specific provisions in the contract, if he wants to forbid specific behaviour and the court will usually weigh the interests of the tenant against that of the landlord in cases he demands the rescission of the contract because of breach. In case of guests, the interdiction to receive guests will usually be unreasonable. This may be different in rooming situations. However, even then, the court is not likely to allow the rescission of the contract if the tenant only rarely received guests. The landlord cannot prevent a tenant to share a household with his partner or family. He can, however, include the interdiction to keep pets in the contract. This interdiction cannot be subject to reasonable interpretation which will mean that this does not include a goldfish or a hamster.

As a general rule, the tenant will have to use his dwelling in accordance with its destination.⁵⁰¹ This will in most circumstances prevent him from starting a hotel, or any other commercial activities in his dwelling even when this is not specifically forbidden in his contract. However, not every commercial activity is a severe breach of the contract. Especially not, when it does not cause nuisance to the neighbours and does not result in a change of destination of the dwelling (e.g. renting out one room as a hotel during specific holidays, vs running an all-year bed & breakfast in the dwelling).

Many court-cases dealt with illegal hemp-plantations of tenants in their dwellings. The existence of such a plantation is in itself not a cause for rescission of the contract. It is of importance if the plantation results in a change of destination of the dwelling (a plantation in one room vs virtually changing the whole dwelling into a plantation), if the plantation serves a commercial cause, if the tenant illegally taps electricity for the plantation, and if he causes nuisance to his neighbours.⁵⁰²

Videosurveillance

The landlord is responsible for the safety and quality of shared spaces in a building, and the outside of the building. In so far as videosurveillance is used for those purposes, it will be lawful and the tenant will have to pay for the costs as it will be included in the service costs.⁵⁰³ This also means that the tenant committees or unions will have a say (see below, Deliberation Act).

⁵⁰⁰ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 17.3.1.

⁵⁰¹ Art. 7:214 CC.

⁵⁰² A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 18.2.

⁵⁰³ Art. 8 Besluit Servicekosten. See for more information: <http://www.servicekosten.info/Servicecomponenten/Elektronischeapparatuur.html> (accessed 8 January 2014).

6.6 Termination of tenancy contracts

Table 6.14 Termination of tenancy contracts

	Independent dwelling in liberalized regime	Independent dwelling in regulated regime	Dependent dwelling in regulated regime (NB liberalized regime does not exist)
Ranking (regulation)	Freedom on price; strong regulation on other aspects	Most aspects of contract are regulated	Most aspects are regulated; termination-protection not as strong for tenants
Mutual termination	By agreement	By agreement	By agreement
Notice by tenant	Period equal to rent payment and not more than three months	Period equal to rent payment and not more than three months	Period equal to rent payment and not more than three months
Notice by landlord	3 months + 1 month per year with maximum of six months. Only for specific reasons (otherwise tenant will have to agree)	3 months + 1 month per year with maximum of six months. Only for specific reasons (otherwise tenant will have to agree)	3 months + 1 month per year with maximum of six months. Only for specific reasons (otherwise tenant will have to agree)
Other reasons for termination	the dwelling cannot be used due to a cause that landlord does not have to repair; municipality has closed the dwelling because of nuisance or violation of opium act	the dwelling cannot be used due to a cause that landlord does not have to repair; municipality has closed the dwelling because of nuisance or violation of opium act	the dwelling cannot be used due to a cause that landlord does not have to repair; municipality has closed the dwelling because of nuisance or violation of opium act

Table 6.15 Termination of tenancy contracts

	Campus-contract	Room in house of landlord
Ranking	Strongly regulated; exception only for termination rights for landlord	Strongly regulated; exception only for termination rights for landlord
Mutual termination	By agreement	By agreement
Notice by tenant	Period equal to rent payment and not more than three months	Period equal to rent payment and not more than three months
Notice by landlord	3 months + 1 month per year with maximum of six months. Only for specific reasons (otherwise tenant will have to agree)	3 months + 1 month per year with maximum of six months. Only for specific reasons (otherwise tenant will have to agree)
Other reasons for termination	- tenant is not longer a student; the dwelling cannot be used due to a cause that landlord does not have to repair; municipality has closed the dwelling because of nuisance or violation of opium act	- relation doesn't work out; the dwelling cannot be used due to a cause that landlord does not have to repair; municipality has closed the dwelling because of nuisance or violation of opium act

- *Mutual termination agreements*
- *Notice by the tenant*

Dutch tenancy law accepts three grounds for termination of contracts: - notice; - rescission and termination by mutual agreement. A contract does not end on its terms, the tenant has to give notice.

As a general rule, the tenant should respect a period that has the length of the period between two payments of at least one month, whereas he cannot be forced to respect a period more than three months. Thus, if he pays his rent every two months (this would be exceptional, monthly payments are the general rule), he should respect a period of two months, but when he pays his rent every six months, he only has to respect a period of three months⁵⁰⁴ In addition, the termination has to take place on the date where normally the rent would be due. Thus, if he normally pays his rent at the first day of the month, his contract will end at the first of the month.⁵⁰⁵

If tenancy contracts are closed for a fixed period, the tenant will have to respect that period and cannot terminate the contract unless agreed otherwise.⁵⁰⁶ In (very) exceptional circumstances, general principles of contract law, such as unforeseen circumstances or rules of good faith, may lead to a different result.

If the tenant keeps using the dwelling after the fixed period, the general rules will apply meaning that he can terminate the contract by notice within 1-3 months depending on the periods of payment.

⁵⁰⁴ Art. 7: 271 § 5 subsection a CC.

⁵⁰⁵ Art. 7: 272 § 2 CC.

⁵⁰⁶ *Aerts v Kneepkens*, Hoge Raad 10 August 1994, NJ 1994/688; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 16.3

Some other exceptional circumstances can result in the rescission of the contract. When a defect results in a situation that makes it impossible to live in the dwelling or that causes danger⁵⁰⁷, the tenant may then terminate the contract immediately without court interference⁵⁰⁸.

In addition, when a defect exists in the dwelling that landlord is under no obligation to restore but that, on the other hand, makes it impossible to enjoy the fruits of the contract⁵⁰⁹, the lessee (as well as the landlord) may terminate the lease.⁵¹⁰ The termination may still result in a duty to pay for damages, based on the specific rules for defects or the general duties of breach of contract. Examples hereof are defects that fall under the tenant's liability⁵¹¹ or under his accountability⁵¹²

Another example is when the dwelling cannot be used due to an unforeseen measure of a government. These situations do only apply when it is undisputed that the dwelling cannot be used, otherwise the lease can only be terminated by a court or will be replaced by a partial termination of the contract that will result in a lower rent for the period of the lease.⁵¹³

It is not uncommon for landlord and tenant to end a lease by mutual agreement. This is usually the case when the landlord needs the dwelling for a specific purpose (that can be a commercial interest or a personal interest) and has no other ground to terminate the agreement (which is usually the case). He will then have to negotiate with the tenant on the conditions (usually the pay off) under which he is willing to leave the dwelling.

- *Notice by the landlord*
- *Ordinary vs. extraordinary notice in open-ended or time-limited contracts; definition of ordinary vs. extraordinary (generally available in cases of massive rent arrears or strong antisocial behaviour)*

The general rule, that concerns open-ended contracts, by which the landlord can end the agreement is that he has to respect one month for every year that the agreement has lasted to give notice with a minimum of three months and a maximum of six months in advance.⁵¹⁴

In case of time-limited contracts the landlord has to give notice at the moment that parties have agreed on.⁵¹⁵

There are some exceptions to these rules that concern specific categories:

- Studenthousing (campus contracts); the contracts ends on its terms when the tenant is no longer registered as a student.⁵¹⁶

⁵⁰⁷ Art. 7:279 CC in conjunction with Art. 7:204 CC.

⁵⁰⁸ Art. 6: 267 §6 CC.

⁵⁰⁹ Art. 7:210 CC in conjunction with Art. 7:206 CC.

⁵¹⁰ Art. 6:267 CC.

⁵¹¹ Art. 7:217 CC.

⁵¹² Art. 7:217 §2 in conjunction with Art. 7:213 CC and Art. 7:219 CC.

⁵¹³ Art. 7:207 CC.

⁵¹⁴ Art. 7:271 §5 sub b CC.

⁵¹⁵ Art. 7:271 §1 CC.

⁵¹⁶ Art. 7:274 §4 CC.

- Contracts that are of short-term by nature of the agreement; the general rule of lease contracts applies which mean that they end on their terms,⁵¹⁷
 - Dwellings that are listed to be demolished by the municipality;⁵¹⁸
 - Dwellings that fall under the Vacant Property Act; the period of notice is not shorter than three months. In addition, if the period to give notice is not being taken into account, the notice is treated as if it was given in the right manner.⁵¹⁹
- o *Statutory restrictions on notice*
- for specific types of dwellings, e.g. public dwellings; dwellings recently converted into apartments etc.
 - in favour of certain tenants (old, ill, in risk of homelessness)
 - for certain periods after sale including public auction (“emptio non tollit locatum”), or inheritance of the dwelling
 - Requirement of giving valid reasons for notice: admissible reasons
 - Objections by the tenant
 - Does the tenancy have “prolongation rights”, i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?
 - Challenging the notice before court (or similar bodies)
 - in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law

The general rule is that a lease contract can only be terminated by the landlord on the specific grounds listed in the section on lease of dwellings (see part on termination).⁵²⁰ After sale of a dwelling, the buyer can give notice to the tenant if he respects a period of three years and has the intention to use the dwelling for himself.⁵²¹

The Civil Code determines that the court will rule on the moment that the tenant has to clear the building⁵²².

If the court rules that a specific circumstance provides reason to terminate the agreement, it may grant a *term de grâce* of not more than one month in specific circumstances, but the reasons for them are not listed as such in the civil code or other statutes. According to one comment there are three cases that may give rise to a term de grâce:

The breach of contract is (also) caused by a legal conflict of relevance to the case;
There are clear indications that the tenant will be able to fulfil his duties within one month;

There are evident indications that the tenant will not fall short of his obligations again.⁵²³

⁵¹⁷ Art. 7:232 §1 CC.

⁵¹⁸ Art. 7:232 §4 CC.

⁵¹⁹ Art. 16 §6 and §7 Leegstandswet (*Vacant Property Act*)

⁵²⁰ Art. 7:274 CC.

⁵²¹ Art. 7:275 §5 subsection b CC.

⁵²² Art. 7:273 §3 CC.

⁵²³ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), note 14.5,

Next to that, the *term de grâce* is dealt with in the section that limits the grounds for termination of the landlord to specific cases. The section provides the court the option to grant the tenant one month to fulfil his obligations or accept a reasonable offer (regarding the new price of his dwelling). In some cases the judge will grant an informal *term de grâce*. This is the case when the cause for termination cannot be made undone, for example in the situation of severe nuisance caused to neighbours. In such a case, the court may grant one month to tenant to prove that he has really changed his manners.⁵²⁴

- *Termination for other reasons*
 - *Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)*
 - *Termination as a result of urban renewal or expropriation of the landlord*
- *What are the rights of tenants in urban renewal? In particular: What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?*

Execution proceedings

If a landlord loses his property because his mortgagee takes possession of his property to auction it publicly, the tenant will lose his house unless he can cover the costs of the mortgagee. The court will evict the tenant who has no other rights than ask for a *term de grâce*.

If the landlord is expropriated, the (sub-) tenant is considered as an interested party and can join the expropriation procedure. The tenant is entitled to a full recovery of his damages. This can be more than just the moving and furnishing costs as. The tenant can be compensated for the price difference between the rent of his replacement dwelling and the expropriated dwelling and can even in some cases be compensated to allow him to buy a dwelling.

Tenants are not considered as interested parties, if a local government decides on urban renewal projects that do not result in expropriation. However, there is extensive regulation on renovation procedures and urban renewal procedures regarding the rights of tenants towards their landlords.

The landlord has the right to terminate the lease because of renovation works, because he wants to realise the new function of the building as mentioned in the zoning plan, and because he wants or needs to demolish the building in which the tenants are living and replace it with a new building⁵²⁵. It should however be proven that the tenant cannot return to the renovated or new-constructed building.

In case, of termination of the agreement the landlord is required to pay at least a minimum payment for moving and refurbishing costs.⁵²⁶ The minister of housing yearly decides on a minimum amount for these costs in the Regulation on the minimum contribution for moving- and furnishing costs for renovation (Regeling minimumbijdrage

⁵²⁴ Art. 7:274 §6 CC, Art. 7:280 CC; Van der Hoek 2013, T & C (Hurrecht), 7:274,note 16; 7:280,note 2

⁵²⁵ Art. 7:274 §1 subsection e and §3 subsection a CC.

⁵²⁶ Art. 7:275 §1 CC.

verhuis- en inrichtingskosten bij renovatie).⁵²⁷ In 2013, this minimum amount was set at € 5,658.

Termination of contract without court-interference

- Rescission because of closing of the dwelling by municipality

A specific situation exists when a municipality closes the dwelling because of violations of the Opiumwet⁵²⁸ (*Opium Act*), or severe nuisance. In such a situation the landlord can terminate the contract without court interference.⁵²⁹ In the specific circumstance that the tenant is not responsible for the behaviour that caused the municipality to close the dwelling, the city may have a duty to provide an alternative living space because of a violation of the tenant's constitutional rights (Article 8 ECHR).⁵³⁰

- Rescission because of impossibility

The other exception to the requirement that a contract can only be terminated by a court order, is when the enjoyment of the good has become impossible, due to a cause that the landlord does not have to repair, he and the tenant can terminate the contract.⁵³¹

6.7 Enforcing tenancy contracts

Table 6.16 Enforcing tenancy contracts

	Similar rules for all types of dwelling
Eviction procedure	Separate ruling of court required; can only be carried out by a bailiff.
Protection from eviction	No general rules on protection; courts may grant a term de grâce to tenant
Effects of bankruptcy	Bankruptcy will provide a reason for termination of contract but termination (based on non-payment) may be prevented if decision on 'clearing of debt for tenant' is taken by court (or as a preliminary decision by mayor & aldermen). Tenant will then have to fulfil duties of contract from then on but landlord cannot evict tenant because of previous breach.

- *Eviction procedure: conditions, competent courts, main procedural steps and objections*
- *Rules on protection ("social defences") from eviction*
- *May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?*

A landlord can evict a tenant if:

- The court has granted him the right to do so, after it has decided that he has the right to terminate the agreement.

Besides this, the local government can evict tenants if:

- They are causing severe nuisance (either related to drugs or criminal behaviour)
- It is dangerous to live in the house

⁵²⁷ Stb. 2010, 90

⁵²⁸ Opiumwet (*Opium Act*) (12 May 1928), Stb. 1928, 167, most relevant are articles 10 and 10a

⁵²⁹ Art. 7:231 §2 CC in conjunction with Arts 174, 174a Gemeentewet (*Municipalities Act*) jo Art. 6:267 CC; A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), no. 14.3.

⁵³⁰ A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 127.

⁵³¹ Art. 7:206 CC in conjunction with Note 7:210 §1 CC; A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 14.3.

The sole legal basis for the eviction is that the tenant does not longer have a legal right to live in the dwelling. In court cases, landlords will usually ask the court to terminate the lease and to grant the right to evict the tenant as a landlord cannot evict a tenant without a court order. Because of the general rule of Dutch tenancy law that leases for living space are closed for an unlimited period, the landlord will have to go to court anyway to end an agreement that a tenant does not want to end. As a contract cannot easily be terminated, the court will weigh the tenant's interests against the landlord's interests in the termination-procedure.

If the court has granted the termination, it will usually also grant the eviction.

It may grant a term de grâce to the tenant, if it rules that to be reasonable.

6.8 Tenancy law and procedure “in action”

To the extent that scientific sources are lacking, reporters are welcome to use any evidence (also newspaper articles, online sources, private interviews or even their own experience and opinion) in this section.

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in this field (“tenancy law in action”) is taken into account

- *What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?*

Tenancy law, in so far as it is written down in statutes, refers to organizations of landlords and tenants in two various contexts. The first context is in the Civil Code where it is stated that the semi-obligatory rules on defects and maintenance obligations of landlords and tenants, can be set aside by a standard-regulation that is adopted for the branch. This has never happened.⁵³² In addition there is a Tenants and Landlords (Consultation) Act (Wet op het overleg huurders verhuurder)⁵³³ that creates the duty for institutional landlords to confer with either committees of residents and/or tenant-organizations. Committees are established for a specific complex that exists of at least 25 dwellings⁵³⁴, whereas tenant organizations are associations or foundations that are established to promote the interests of (a specific group of) tenants.⁵³⁵ The act does not draw a distinction between housing corporations and other landlords but in practice the system is mostly functional in the context of housing corporations. The act provides three types of rights: -information; -advice; -approval. The last right is only reserved for tenant organizations and only if the landlord proposes a new regulation on service costs. The right of advice and the right of information concern most issues of the landlord's policy regarding his complex (tenant committees) or regarding his complexes

⁵³² Art. 7:242 CC; Van der Hoek 2013, T & C (Huurrecht), 7:242 note 3

⁵³³ Wet op het overleg huurders verhuurder (*Tenants and Landlords (Consultation) Act*) (27 July 1998), Stb. 1998,501.

⁵³⁴ Art. 1 G Wet op het overleg huurders verhuurder (*Tenants and Landlords (Consultation) Act*)

⁵³⁵ Art. 1 F Wet op het overleg huurders verhuurder (*Tenants and Landlords (Consultation) Act*)

in a neighbourhood or city (tenant organizations). The rights can be enforced in disputes at the Rental Commission.⁵³⁶

On the national level there are three important interest organizations: Aedes⁵³⁷ is the association of housing corporations, Real Estate Interest (*Vastgoed Belang*)⁵³⁸ is the organization of professional owners of real estate, and the Netherlands Union of Tenants (*Nederlandse Woonbond*)⁵³⁹ is a union of tenant organizations. They negotiate and lobby on national policies.

- *What is the role of standard contracts prepared by associations or other actors?*

Housing corporations use their own standard contracts. Most other landlords make use of the models that are made by the Real Estate Council of the Netherlands (*Raad voor Onroerende Zaken*),⁵⁴⁰ a 75 year old organization that was first established to promote the interests of professional landlords. Although these standard contracts have become general practice, their importance is limited as most of the issues are dealt with in the Civil Code in a (semi-) obligatory manner.

- *How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?*

There are three options: a procedure at the Rental Commission (1, in regulated rent-contexts only); a procedure at the court of justice, either at the section canton (2) or the court of justice itself (3). Mediation does exist, but as of now, it's only applied in few rental cases as normal litigation works usually fast.

All procedures are said to take 4-6 months on average.

- *Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?*

The fee of a procedure at the Rental Commission is € 25 for individuals. They will be reimbursed with this amount back if they win the case. Tenants that earn a minimum income can receive dispensation for the fee.

The sub district sector of the court of justice rules most tenancy law cases that are not ruled by the Rental Commission or concern an appeal from a verdict of that commission. The costs of a procedure are about € 300 for the registry of the case and € 97 for the process-server. If one loses the case, costs that have to be paid for the procedure (conviction to pay process costs) will range between € 300 and € 800.

⁵³⁶ Art. 8 Wet op het overleg huurders verhuurder (*Tenants and Landlords (Consultation) Act*)

⁵³⁷ Aedes, <http://www.aedes.nl/> (accessed 8 January 2014).

⁵³⁸ Vastgoedbelang, <http://www.vastgoedbelang.nl/> (accessed 8 January 2014).

⁵³⁹ Nederlandse Woonbond, <http://www.woonbond.nl/> (accessed 8 January 2014).

⁵⁴⁰ Raad voor Onroerende Zaken, <http://www.roz.nl/nl/roz> (accessed 8 January 2014).

Individuals are allowed to represent themselves in these cases. If they choose to make use of a lawyer, they can ask the *Legal Aid Board (Raad voor Rechtsbijstand)*⁵⁴¹ to pay the lawyer if their income does not meet the threshold of €25.200 (single household) or € 35.600 (family). In such a case they will have to pay a contribution that goes up to € 793.

For others, an insurance for legal costs about € 100 per year. The costs for a lawyer range from € 150 – 250 per hour.

As legal procedures are fast and relatively cheap, procedures and costs do not seem to provide a barrier to start a court procedure.

As to the amount of cases that were started before the Rental Commission: in 2009 there were 15,649 cases, in 2012 there were 7,867 cases. Of these cases, most (40-50 %) are concerned with the price, service costs (25-30%) and the increase of the rent. The high amount of cases in 2009, can be largely explained by a new system of rent subsidy that allowed the tax department to base the subsidy, not on what was paid by the tenant but what should have been paid based on the point system. As a result, many tenants (as well as the tax department itself) had to start a procedure for a decrease of their rent.⁵⁴²

The most important problem of fairness is that individual landowners (and tenants) are often not familiar with the (semi-) obligatory nature of tenancy law. As a result, they are often surprised that specific agreements are not binding, most notably the agreements on fixed terms of the contract that are in most cases invalid.

- *Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?*

The Rental Commission procedures take about 6 months. A procedure for the subdistrict court takes 4-6 months.

- *How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)*

A legal certainty issue may exist, because most of the tenancy law is only dealt with at the lower lever and appeals are rare. On the other hand, because of the semi-obligatory nature of tenancy law, the content of the law is easy to find. Secondary literature is available through university libraries, and court libraries for lawyers that cannot afford to pay for their own library.

- *Are there “swindler problems” on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?*

⁵⁴¹ Raad voor Rechtsbijstand (*Legal Aid Board*), <http://www.rvr.org/> (accessed 8 January 2014).

⁵⁴² Annual report Rent assessment committee 2012.

Swindler problems as mentioned in the example, are not often reported. More common would be the situation in which a tenant will offer his house on the market for subletting to which he will in most cases not be entitled.

The city of Amsterdam, as an example, runs a project office called bureau Searchlight (*Zoeklicht Bureau*) that investigates fraudulent practices that concern living space. The Bureau is a joined project of the city, the association of housing corporations, real estate brokers and Vastgoedbelang (see above). It looks for illegal subletting-cases but also for welfare related fraud. An example is if someone rents out his apartment illegally to a group of students for which he receives subsidy on his rent while he in fact lives with his partner. In such a case, he is not entitled to the subsidy and illegally renting out his apartment.⁵⁴³

- *Are the areas of “non-enforcement” of tenancy law (such as legal provisions having become obsolete in practice)?*

As tenancy law, was re-codified in 2003, this problem does not exist. One exception may be the ‘standardregulation’ example (see above).

- *What are the 10-20 most serious problems in tenancy law and its enforcement?*
 - Tenant is behind on his rent. This is considered as a breach of contract that can be a ground for rescission of the contract. Usually, a three-month period is applied as a threshold by the court to rule to rescind the contract. If, a tenant pays his rent irregularly this can be against his duties to behave as a good tenant and as such be sufficient ground for notice.
 - Defects of the dwelling may provide often a reason to start litigation. There are various options for tenants:
 - Suspend of payments; partly rescission of the contract; decrease of rent; tenant repairs the defects and settles the costs with the landlord.
 - The price for the service costs may result in a case at the Rental Commission (in case of regulated), or at the court.
 - Three situations are relevant:
 - A service cost procedure is started by the tenant because he believes that the price is too high for the services delivered;
 - The landlord starts a procedure for breach of contract because of non-payment of a part of the rent. The tenant states that he did not pay a part of the rent because the services for which he pays are never delivered. He may for example claim that the staircases of the apartment building are never cleaned although his landlord charges him for the costs;
 - The rent does not make a distinction between service costs and the basic rent (referred to as ‘bald rent’ in Dutch) for the living space. In such a situation, the tenant may start an all-in procedure in which he will ask the Rental Commission to discern the various costs and the mere rent. The Rental Commission will do so, and thereby lower the rent to 55 % of the maximum amount that, based on the point system, could have been charged. This procedure offers relief for tenants that are

⁵⁴³ Bureau Zoeklicht, <http://www.amsterdam.nl/gemeente/organisatie-diensten/wzs/aanpak-woonfraude/zoeklichtproject/werkt-zoeklicht/> (accessed 8 January 2014).

- paying too much for their dwelling, but of whom the rent as such is higher than the threshold for the regulated rent.
- Let's say that the tenant pays a monthly amount of € 900 for his dwelling. This is more than € 681,02 per month and therefore the rent seems to be liberalised. However, if the rent is not divided in (at least) the basic rent costs, the costs for energy and the service costs, an all-in rent exists. After the tenant has asked the landlord for a subdivision of these posts, he may start an all-in procedure if he did not receive an answer that satisfies him. The Rental Commission may discern that the costs of energy are € 125 per month, and service costs are € 150 including the use of the elevator. The basic rent is therefore € 675 which means that it falls within the regulated regime. Based on this, it will also make a calculation of the maximum amount of rent that can be charged, based on the point system. Suppose that the basic rent based on the point system should be € 450. The Rental Commission will rule that the rent can only be 55 % of this amount, which is € 247,50. From then on, the tenant will pay (€ 247,50 + € 150 + € 125) € 525,50 per month instead of the € 900 that he used to pay. The procedure, naturally provides a strong incentive against all-in rents for landlords.
 - Landlords will often litigate, claiming that tenants have not behaved as good tenants. Bad behaviour can be reason for notice or rescission of the contract. The difference is that the law determines that a tenancy contract stays in existence after notice. There is one (rare) example in which a judge allowed the landlord to end the contract based on notice but did decide that while the appeal was pending his verdict could not be executed. In such a situation, the landlord cannot evict his tenant.
 - The published cases that concern bad behaviour mostly deal with: aggressive behaviour towards neighbours or (employees of) the landlord, drugs (hemp-growing) and other types of nuisance.
 - Landlords, especially housing corporations, do not in all cases aim to evict the tenant. In many situations they will use the court verdict to force the tenant to change his behaviour.
 - A specific situation is when a tenant did not himself behave in the manner that resulted in the 'bad behaviour' procedure, but somebody that had access to his dwelling. The general rule is that the tenant is responsible for the behaviour of those that he gives access to his dwelling, but in some situations this may result in injustice. One example is that of a grandmother (the tenant), who was in the hospital when her grandson stored and dealt drugs in her house. Here the judge ruled in favour of the grandmother as the situation had only existed for the very short time of her stay in the hospital and she had not otherwise caused nuisance.⁵⁴⁴
 - Some cases deal with the right of tenant to alter his dwelling. Until recently, many cases of this category dealt with the right of tenants to place a satellite dish on their roof or balcony to receive foreign media channels (see above).
 - Finally, there are cases that concern the right of a landlord to renovate the tenant's dwelling. The cases mostly deal with the so-called reasonable offer that the landlord has to make tenant on the price and conditions under which he can re-enter his apartment. Tenants and landlords may litigate over whether a proposal is

⁵⁴⁴ Art. 7:219 CC, Hoge Raad 29 May 2009, WR 2009, 44/WR 2009, 92, A.R. de Jonge, *Huurrecht*, 6th ed. (The Hague: Boom Juridische uitgevers, 2013), 17.3.2.

reasonable or not. If so, and the tenant refuses to accept it, he may be given notice. After a case of the Supreme Court (*Herenhuisarrest*⁵⁴⁵) and a European Case (Polish Verdicts⁵⁴⁶), many landlords have tried to get a court verdict that would allow them to give notice to a tenant, based on the rules for urgency because of the discrepancy between the exploitation costs of the dwelling and the rent. In most cases, the courts have refused to rule in their favour.

- *What kind of tenancy-related issues are currently debated in public and/or in politics?*

Current debates on tenancy are:

- The 'landlord-levy' for landlords that own 10 dwellings or more in the regulated sector. As a result of this levy, that is mostly aimed at housing corporations, the government hopes to collect € 1,7 billion. Some politicians (most notably the well-known member of the senate Adri Duyvestein of the labour (social democrat) party) have argued against the levy as they are afraid that because of it corporations will stop to invest in working class- neighbourhoods, and point at the risk of ghettoization. The Nederlandse Woonbond, has strongly objected the levy on behalf of the tenants as it believes that landlords will increase rents to pay for the levy.
- Change of the pointsystem
- The national government has proposed changes in the point system that is now used to determine the price of houses in the regulated sector and to decide whether a dwelling falls in the regulated or the liberalized category. Some of the points are based on the categories: 'scarcity' and 'direct environment'. Scarcitypoints (either 15 or 25, based on the appraised value of the house per m²) are applied to dwellings in specific neighbourhoods where the market price of dwellings is much higher than what can be earned if the dwelling falls in the regulated category. The direct environment points are given for what can be found in the surroundings of the dwellings schools, parks, public transport, shops etc. and are diminished for 'nuisance factors' such as noisy roads, pollution etc. The system sometimes results in more environment points for houses that are situated in unpopular areas. The government has proposed to do away with the scarcity points and the direct environment points and replace them with points that are based on the value of the dwellings as determined by the municipality for the purposes of property tax collection. As a result, rents will (to a larger extent) reflect the market value of the houses. The new system has not been worked out in any detail, as of yet and parliament has stalled the debate because of the many questions of the Socialist Party and the Labour Party (Social Democrats) regarding the results of the new systems. One of the issues they have brought up is that the system may result in a decrease of the rent in less popular neighbourhoods that can be a disincentive for landlords to invest in such neighbourhoods.
- Skew-living (*scheefwonen*)
- A typical problem of the Dutch system that is often debated is that of skew-living (*scheefwonen*). This refers to the situation in which people occupy social housing at a rent that is too low in comparison to their level of income. It is not uncommon for

⁵⁴⁵ *Herenhuisarrest*, Hoge Raad 26 March 2010, WR 2010/56.

⁵⁴⁶ *Hutten-Czapska v Polen*, ECHR, Grand Chamber, 19 June 2006, application no. 35014/97.

people in the large cities with an income of for example € 90,000 per year to live in an apartment that only costs € 400 per month. The national government has thereto introduced a system that results in extra yearly rent increases for those that make more than € 43,000 per year. However, according to critics this threshold is too low, as those who earn a family income of € 43,000 may not find it easy to buy a house on the market. In addition, as long as the rent is regulated, these increases are not enough to bridge the gap between the market price of apartments (in case the tenant would consider to buy an apartment) and the regulated rents in the most popular neighbourhoods. Therefore, the problem of skew-living, as well as the proposed and the implemented solutions are still subject of much debate.

7 Effects of EU law and policies on national tenancy policies and law

7.1 EU policies and legislation affecting national housing policies

For efficiency's sake, a) and b) are described in the section below.

7.2 EU policies and legislation affecting national housing law

7.1 and 7.2 are supposed to include:

- *EU social policy against poverty and social exclusion*

Housing policy is a national state matter. Nevertheless, European policy against poverty and social exclusion has some effect on Dutch housing policy. The European Council requested the Member States in March 2000 to increase social inclusion and exclude social poverty by launching a Community strategy against poverty and exclusion.⁵⁴⁷ It is within this framework that, since 2001, all Member States of the European Union draw up National Action Plans to meet these aims.

Furthermore, the European Commission introduced the 'Europe 2020 strategy' which, among other objectives, focusses on social inclusion.⁵⁴⁸ Consequently, the Member States have to yearly rapport how this aim is converted into a National Reform Programme. With respect to housing, the European Commission recommends the Netherlands that further steps should be taken to relate rents to household income. Furthermore social housing should be made available to those who need it most.⁵⁴⁹

- *Consumer law and policy*

⁵⁴⁷ The legal basis concerning EU social policy is laid down in the 1992 Maastricht Social Policy Agreement. The Treaty of Amsterdam has integrated this policy in Article 151 of the Treaty on the Functioning of the European Union.

⁵⁴⁸ http://ec.europa.eu/europe2020/index_en.htm, 5 November 2013.

⁵⁴⁹ http://ec.europa.eu/europe2020/europe-2020-in-your-country/nederland/country-specific-recommendations/index_nl.htm, 5 November 2013.

The Council Directive on unfair terms in consumer contracts⁵⁵⁰ guarantees a minimum protection against unfair general terms in contracts, provided that the landlord is a commercial party and the tenant a consumer. This Directive is implemented in the Dutch Civil Code.⁵⁵¹ Clauses in general conditions which are in violation of the law are, depending on the type of clause, null and void or subject to annulment. It should be noted that only these clauses should be excluded from the tenancy contract. The contract itself is valid, unless this particular conditional is essential to qualify the contracts as a tenancy contract.

Furthermore, the Directive on Unfair Commercial Practices⁵⁵², protects the consumer against untruthful information or aggressive marketing techniques to influence the consumers choices. Tenancy contracts fall under the scope of this Directive and is implemented in the Articles 3:305d and 6: 193a- 163j.⁵⁵³

- *Competition and state aid law*

European competition and state aid law influence Dutch housing policy, more specific the social housing policy. Generally speaking, state aid is prohibited.⁵⁵⁴ However, there are exceptions for housing associations.⁵⁵⁵ The 15 December 2009 European Commission's decision states which conditions housing associations can receive state aid, without being in conflict with EU completion law.⁵⁵⁶ This decision was implemented in 2011.⁵⁵⁷

In general, state aid may be granted to work of Dutch housing associations that may be linked to services of general economic interest, such as the purchase, construction and rental homes with a maximum rent at or below the rent-control ceiling of € 652.52.⁵⁵⁸ Furthermore, it has been decided that the state-sponsored social housing should only be accessible for households with an average income of up to 33,000 euros.

⁵⁵⁰ Council Directive on unfair terms in consumer contracts 93/13/EEC of 5 April 1993, (OJEC 21.04.1993 N° L 095).

⁵⁵¹ E.g., Arts. 6: 231 - 235 CC and arts. 6: 237 - 247 CC

⁵⁵² Directive 2005/29/EC of the European parliament and the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

⁵⁵³ Art. 2 Directive on Unfair Commercial Practices.

⁵⁵⁴ Art. 107 (1) TFEU.

⁵⁵⁵ Art. 107 (2) TFEU.

⁵⁵⁶ State aid No E 2/2005 and N 642/2009 – The Netherlands Existing and special project aid to housing corporations.

⁵⁵⁷ Temporary regulation 'Tijdelijke regeling DAEB instellingen volkshuisvesting'.

⁵⁵⁸ See: Factsheet Tijdelijke regeling diensten van algemeen economisch belang toegelaten instellingen volkshuisvesting, available at <http://www.rijksoverheid.nl/onderwerpen/woningcorporaties/documenten-en-publicaties/brochures/2010/11/18/factsheet-tijdelijke-regeling-diensten-van-algemeen-economisch-belang-toegelaten-instellingen-volkshuisvesting.html>, 6 November 2013.

The implementation of the decision has effect for some of housing allocation, record keeping, finance projects and the administrative organization of the housing. In this fact sheet, these points are addressed.⁵⁵⁹

- *Tax law*

The Council Directive on the harmonisation of the laws of the Member States relating to turnover taxes allows Member States to decide that supply, construction, renovation and alteration of housing provided as part of social policy may be subject to reduced VAT rates.⁵⁶⁰ Tenancy contracts concluded by a tenant/consumer are not subject to Dutch VAT.

- *Energy saving rules*

The European Directive on the energy performance of buildings⁵⁶¹ requires Member States to introduce an energy performance certificate. It states how energy efficient a property is. This certificate should be available at the buildings construction, sale or lease. This Directive has not been implemented in Dutch law yet.

- *Private international law including international procedural law*

From an international private law point of view, several European regulations influence Dutch national tenancy law.

*Applicable law: Rome I Convention*⁵⁶²

Rome I Convention applies to contractual obligations in situations involving a choice of laws. The general rule is that parties may choose the governing law.⁵⁶³

It should be taken in to account that, where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.⁵⁶⁴

However, overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any

⁵⁵⁹ See: Factsheet Tijdelijke regeling diensten van algemeen economisch belang toegelaten instellingen volkshuisvesting, available at <http://www.rijksoverheid.nl/onderwerpen/woningcorporaties/documenten-en-publicaties/brochures/2010/11/18/factsheet-tijdelijke-regeling-diensten-van-algemeen-economisch-belang-toegelaten-instellingen-volkshuisvesting.html>, 6 November 2013.

⁵⁶⁰ Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates).

⁵⁶¹ Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings.

⁵⁶² Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

⁵⁶³ Art. 1 Rome I Convention.

⁵⁶⁴ Art. 3 § 3 Rome I Convention.

situation falling within their scope, irrespective of the law otherwise applicable to the contract under the Rome I Convention.⁵⁶⁵

Moreover, the application of a provision of the law of any country specified by the Rome I Convention may be refused only if such application is manifestly incompatible with the public policy of the forum.⁵⁶⁶

In absence of choice, the applicable law is determined based on where the property is located.⁵⁶⁷ Unless, the contract has a duration of maximum six months. For these contracts, the governing law is that of the country where the landlord has his habitual residence, provided that the tenant is a natural person and has his habitual residence in the same country.⁵⁶⁸

Rome I applies to tenancy contracts concluded after 17 December 2009.

Applicable law: Rome Convention⁵⁶⁹

Contracts concluded on or before 17 December 2009 are, for the applicable law, subject to the Rome Convention. Also in these cases, the governing law is determined based on where the property is located⁵⁷⁰, unless parties have chosen otherwise.⁵⁷¹

Jurisdiction: Brussel I Regulation⁵⁷²

The Brussel I Regulation lays down rules governing the jurisdiction in civil matters in the European Union countries. The general rule is that the court of the Member State in which the property is situated has the exclusive jurisdiction concerning tenancy contracts.⁵⁷³ This Regulation applies to legal proceedings instituted after the entry into force on 1 March 2002. For proceeding instituted before 1 March 2002, reference is made to Article 66 of this Regulation.

- *Anti-discrimination legislation*

European antidiscrimination legislation effects housing policy and tenancy law. For instance, the ECHR has vertical and horizontal effect.

Furthermore, the European Council's directives 2004/113/EC and 2000/43/EC were implemented in the Equal Treatment Act (*Algemene wet gelijke behandeling*). This Act prohibits discrimination on several fields, including the access to housing.

The Dutch government has founded the Dutch Institute for Human Right (*College voor de rechten van de mens*), which monitors and protect these rights.⁵⁷⁴ A complaint can be filed with this institute. For instance, in 2011, it declared that an association of owner-occupiers discriminated an occupant with a chronic disease, because the association

⁵⁶⁵ Art. 9 Rome I Convention.

⁵⁶⁶ Art. 21 Rome I Convention.

⁵⁶⁷ Art. 4 §1 (c) Rome I Convention.

⁵⁶⁸ Art. Art. 4 § 1 (d) Rome I Convention.

⁵⁶⁹ Convention 80/934/ECC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980.

⁵⁷⁰ Art. 4 Rome Convention.

⁵⁷¹ Art. 3 Rome Convention.

⁵⁷² Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

⁵⁷³ Art. 22 Brussel I Regulation.

⁵⁷⁴ <http://www.mensenrechten.nl/>, (accessed 6 November 2013).

did not granted her permission to park her mobility scooter in a certain area in the parking garage.⁵⁷⁵

- *Constitutional law affecting the EU and the European Convention of Human Rights*

The right to housing is a social right and laid down in Article 22 Dutch Constitutional. It creates a duty of care or the government to create sufficient social housing. This Article cannot be invoked in a court procedure. The State cannot held liable

With respect to the ECHR it can be said that it has horizontal and vertical effect. Several articles have influence on housing policy and tenancy law. One of these rights is the right of protection of the tenant's private sphere. E.g., A landlord may not enter a dwelling without his tenant's permission.⁵⁷⁶ Besides this, due to the freedom of opinion⁵⁷⁷, the tenant has the right to install a satellite dish in order to receive information from his home country. Also, due to the prohibition of discrimination, a landlord may not discriminate homosexuals or disabled potential tenants.

- *Harmonization and unification of general contract law (sources such as the Common European Sales Law, the Common Framework of Reference or the Principles of European Contract Law may be considered here)*

As far as the sources were uncovered, the harmonization and unification of unification of general contracts law have, up until now, have no effect on tenancy policies and tenancy law.

- *Fundamental freedoms*

Free movement of workers

The prohibition on obstacles to free movement of workers is applicable to policy areas such as housing. These workers must be treated equally as citizens of the particular Member State.

Free movement of goods

Free movement of goods is laid down in the Articles 28 and 29 TFEU. Impediments related to the import, transit and export of goods are prohibited.⁵⁷⁸ This has effect on housing policy as the Dutch government has to respect the free import, export and transit of goods for the housing market.

Free movement of services and establishment

The regulations concerning the free movement of services are laid down in the Articles 56 – 62 TFEU. Restriction to provide services within the Union by nationals resident in another EU Member State than that of the person for whom the service is provided, are

⁵⁷⁵ The decision can be found on <http://www.mensenrechten.nl/publicaties/oordelen/2011-30>, (accessed 6 November 2013).

⁵⁷⁶ Art. 8 ECHR.

⁵⁷⁷ Art. 10 ECHR. *Khurshid Mustafa and Ttarzibachi v Sweden*, 16 December 2008, application No. 23883/06.

⁵⁷⁸ The exceptions are laid down in Art. 36 TFEU.

prohibited. Art. 49 TFEU applies to self-employed persons and companies who wishes to establish in an another Member State.

The free movement of services is mainly detailed in the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

It regulated the several matters, such as: the access to information concerning Dutch regulations and the acknowledgement of certificates. However, services concerning social housing, the development or use of land, town and country planning and building standards are excluded from this Act.⁵⁷⁹

Free movement of capital

The free movement of capital and payment is laid down in Article 63 TFEU. It effects national housing policy as it applies in cases where other nationals wishes to purchase, use or sell real estate in other Member States.⁵⁸⁰

⁵⁷⁹ Recital 9 of the Preamble of the 12 December 2006 Directive 2006/123/EC.

⁵⁸⁰ The exceptions are laid down in the Arts. 64, 65, 66 and 75.

7.3 Table of transposition of EU legislation

DIRECTIVES	TRANSPPOSITION	RELATED SUBJECT	PART QUESTIONNAIRE
CONSTRUCTION			
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 N° L 134/114)	Act: Aanbestedingswet op defensie- en veiligheidsgebied (<i>Public Procurement concerning defence and safety Act</i>), repealed by Wet van 28 January 2013 inzake implementatie van richtlijn nr. 2009/81/EG van het Europees Parlement en de Raad van 13 juli 2009 betreffende de coördinatie van de procedures voor het plaatsen door aanbestedende diensten van bepaalde opdrachten voor werken, leveringen en diensten op defensie- en veiligheidsgebied, en tot wijziging van richtlijnen 2004/17/EG en 2004/18/EG (Aanbestedingswet op defensie- en veiligheidsgebied) (<i>Act concerning the implementation of directive nr. 2009/81/EG</i>) (Tweede Kamer, vergaderjaar 2010–2011, 32 768, nr. 4)	It is envisaged a special allocation procedure for contractors when the target is the construction of social housing (art. 34).	
Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJEC 11.02.1989 N° L 40/12)	Decree: Besluit van 22 december 2011, houdende wijziging van het Bouwbesluit 2012 betreffende correcties en enkele vereenvoudigingen van het Bouwbesluit 2012 (<i>Decree amending the Buildings Decree</i>) (Staatsblad, 2011 676)	About construction products: free movement and the certificates required.	
TECHNICAL STANDARDS			
Energy efficiency			
Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 N° L 315/1).	Implementation will be done before 5 June 2014, by amending: Act: Wet tot wijziging implementatie EU-richtlijnen energie-efficiëntie (<i>Act implementing the EU directives on energy efficiency</i>); Decrees: Besluit tot wijziging Besluit op afstand leesbare meetinrichtingen; and Besluit tot wijziging van het activiteitenbesluit.	Energy saving targets imposed to the State. It also deals with the Public Administration buildings and others that require greater energy savings.	
Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 N° L153/13).	Partially implemented. Decrees: Bouwbesluit 2012 en van de Regeling Bouwbesluit 2012 (<i>Buildings Decree 2012</i>)	Energy efficiency of the new and the existing buildings.	Part II 2.a 'Regulation on energy

	<i>and Regulations governing the Buildings Decree 2012)</i>		saving'.
Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 N° L 153/1).	Act: Wet van 6 juli 2011 tot wijziging van de Wet implementatie EG-richtlijnen energie-efficiëntie (<i>Act implementing the EU Directive on energy efficiency</i>) Decree: Besluit van 25 februari 2012, houdende regels betreffende de etikettering van het energieverbruik van energiegerelateerde producten (Besluit etikettering energieverbruik energiegerelateerde producten (<i>Decree on labelling the energy use</i>) (Staatsblad 2011, nr. 363)	Labelling and basic information for household electric appliances' users.	
Commission Delegated Regulation (EU) N° 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJEU 26.9.2012 N° L 258/1).	Direct effect as per 1 September 2013		
Commission Directive 98/11/EC of 27 January 1998 implementing Council Directive 92/75/EEC with regard to energy labelling of household lamps (OJEC 10.3.1998 N° L 71/1).	Commission Directive 98/11/EC of 27 January 1998 was appealed by Commission Delegated Regulation (EU) N° 874/2012		
Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 N° L 140/16).	Wet van 24 maart 2011 tot wijziging van de Wet milieubeheer, de Wet op de economische delicten en de Elektriciteitswet 1998 ter implementatie van richtlijn nr. 2009/28/EG, richtlijn nr. 2009/30/EG en richtlijn nr. 2009/33/EG (implementatie van de EG-richtlijn energie uit hernieuwbare bronnen, de EG-richtlijn brandstofkwaliteit en de EG-richtlijn schone en energiezuinige wegvoertuigen) (<i>24 March 2011 Act on amending the Environmental Management Act, Economic Offences Act, Electricity Act 1998</i>) (Staatsblad 2011, nr. 163)	Promotion of the use of renewable energy in buildings.	
Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (DOCE 14.8.2009 N° L 211/55).	Amended Acts: Elektriciteitswet 1998 en Gaswet (<i>Electricity Act 1998 and Gas Act</i>) (Wet van 12 juli 2012 tot wijziging van de Elektriciteitswet 1998 en van de Gaswet (implementatie van richtlijnen en verordeningen op het gebied van elektriciteit en gas) (<i>Act amending the Electricity Act 1998 and Gas Act</i>) Staatsblad 2012 334	Basic standards for electricity sector.	
Heating, hot water and			

refrigeration			
Commission Delegated Regulation (EU) N° 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJEU 6.7.2011 N° L 178/1).	Commission Delegated Regulation has direct effect and supplements Act: Wet van 6 juli 2011 tot wijziging van de Wet implementatie EG-richtlijnen energie-efficiëntie	Labelling and information to provide about air conditioners.	
Commission Delegated Regulation (EU) N° 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJEU 30.11.2010 N° L 314).	Direct effect	Labelling and information to provide about household refrigerating appliances.	
Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJEU 14.8.2009 N° L 211/94).	Amended Acts: Elektriciteitswet 1998 en Gaswet (<i>Electricity Act 1998 and Gas Act</i>) (Besluit van 12 juli 2012 tot vaststelling van het tijdstip van inwerkingtreding van de wet van 12 juli 2012 tot wijziging van de Elektriciteitswet 1998 en van de Gaswet (implementatie van richtlijnen en verordeningen op het gebied van elektriciteit en gas) en het Besluit uitvoering onafhankelijkheidseisen energierichtlijnen) (Staatsblad 2012, nr. 336)	Basic legislation about natural gas in buildings and dwellings.	
Council Directive of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 N° L 378/19).	-----	Legislation about heating and hot water in dwellings and buildings.	
Household appliances			
Commission Delegated Regulation (EU) N° 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household tumble driers (OJEU 9.5.2012 N° L 123/1).	Direct effect	Labelling and information to provide about tumble driers.	
Commission Delegated Regulation (EU) N° 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJEU 30.11.2010 N° L 314/1).	Direct effect	Labelling and information to provide about dishwashers.	
Commission Delegated Regulation (EU) N° 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of	Direct effect	Labelling and information to provide about washing machines.	

household washing machines (OJEU 30.10.2010 N° L314/47).			
Commission Delegated Regulation (EU) N° 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJEU 30.11.2010 N° L 314/64).	Direct effect	Labelling and information to provide about televisions.	
Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU 09.07.2003 N° L 170/10).	Repealed by Directive 2010/30/EU	Labelling and information to provide about household electric refrigerators and freezers.	
Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJEC 15.05.2012 N° L 128/45).	Repealed by Directive 2010/30/EU	Labelling and information to provide about household electric ovens.	
Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJEC 18.10.1996 N° L 266/1).	Repealed by Directive 2010/30/EU	Labelling and information to provide about household combined washer-driers.	
Lifts			
European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJEC 07.09.1995 N° L 213).	Decision: wijziging van het 'Warenwetbesluit machines en het Warenwetbesluit liften in verband met de implementatie van de herziening van de Europese richtlijn voor machines' (16 June 2008 Decision amending the Commodities Machines Decree and the Commodities)	Legislation about lifts.	
Boilers			

<p>Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, N° L 167). Amended by Council Directive 93/68/EEC of 22 July 1993 (BOE 27.03.1995 N° 73).</p>	<p>Amendment Act: Wet milieubeheer (<i>Environmental Management Act</i>) (Wet van 27 september 2007 tot wijziging van de Wet milieubeheer, de Wet energiebesparing toestellen en de Wet op de economische delicten ten behoeve van de implementatie van richtlijn nr. 2005/32/EG van het Europees Parlement en de Raad van de Europese Unie van 6 juli 2005 betreffende de totstandbrenging van een kader voor het vaststellen van eisen inzake ecologisch ontwerp voor energieverbruikende producten en tot wijziging van richtlijn 92/42/EEG van de Raad en de richtlijnen 96/57/EG en 2000/55/EG van het Europees Parlement en de Raad (Implementatiewet EG-richtlijn ecologisch ontwerp energieverbruikende producten)) (Staatsblad 2007, nr. 383)</p>	<p>Legislation about boilers.</p>	
Hazardous substances			
<p>Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEU 01.07.2011 N° 174/88).</p>	<p>Amended Decree: Besluit beheer elektrische en elektronische apparatuur (<i>Management electric and electronic devises Decree</i>) (Besluit van 28 september 2012 tot wijziging van het Besluit beheer elektrische en elektronische apparatuur (implementatie richtlijn 2011/65/EU betreffende beperking van het gebruik van bepaalde gevaarlijke stoffen in elektrische en elektronische apparatuur)) (Staatsblad, 2012, Nr. 469)</p>	<p>Legislation about restricted substances: organ pipes of tin and lead alloys.</p>	
CONSUMERS			
<p>Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 N° L 304/64).</p>	<p>Has not been implemented yet. On 18 January 2013 the legislative proposal will be submitted to the House of Representative. Book 6 of the Dutch Civil Code will be amended</p>	<p>Information and consumer rights. Legislation referred to procurement of services, car park. Immovables are excluded: lease of housing, but not of premises.</p>	<p>(RDL 1/2007) Part II 2.b. 'Ancillary duties of both parties in the phase of contract preparation and negotiation'.</p>

<p>Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) N° 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJEU 18.12.2009 N° L 337/11).</p>	<p>Besluit van 30 mei 2012 tot wijziging van het Besluit interoperabiliteit, het Besluit randapparaten en radioapparaten 2007, het Besluit universele dienstverlening en eindgebruikersbelangen, het Besluit vergoedingen Telecommunicatiewet, het Besluit voorwaardelijke toegang en het Frequentiebesluit, ter implementatie van de herziene telecommunicatierichtlijnen (Besluit implementatie herziene telecommunicatierichtlijnen) (<i>Implementatation of the amended Telecommunications Directive Decree</i>) (Staatsblad 2012, nr. 236)</p>	<p>Consumer protection in the procurement of communication services.</p>	
<p>Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJEU 01.05.2009, N° 110/30).</p>		<p>Collective injunctions infringements of Directives Annex I.</p>	
<p>Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJEU 27.12.2006, N° L 376/21).</p>	<p>Amended Act: Book 6 of the Dutch Civil Code</p>		
<p>Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) N° 2006/2004 of the European Parliament and of the Council (OJEU 01.6.2005 N° L 149/22).</p>	<p>Amendment Act: Wet handhaving consumentenbescherming (uitbreiding van bestuursrechtelijke handhavingsbevoegdheden) (<i>Consumer Protection (Enforcement) Act</i>)</p> <p>Wet van 25 september 2008 tot aanpassing van de Boeken 3 en 6 van het Burgerlijk Wetboek en andere wetten aan de richtlijn betreffende oneerlijke handelspraktijken van ondernemingen jegens consumenten op de interne markt (Staatsblad 2008, nr. 397)</p>	<p>Misleading advertising and unfair business-to-consumer commercial practices.</p>	
<p>Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJEC 04.06.1997 N° L 144/19).</p>	<p>Amended Act: Book 7 of the Dutch Civil Code (Staatsblad 2000, nr. 617)</p>	<p>Contracts relating to immovables are excluded, except from lease.</p>	
<p>Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 N° L 095).</p>	<p>Repealed by: Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive</p>	<p>Unfair terms</p>	<p>Part II 2.c 'control of contractual terms'.</p>

	1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 N° L 304/64).		
Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJEC 31.12.1985 N° L 372/31).	Repealed by: Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 N° L 304/64).	Information and consumer rights. Legislation referred to procurement of services. Contracts on immovables are excluded.	
HOUSING-LEASE			
Regulation (EC) N° 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 N° L 177/6).	Direct effect	Law applicable (art. 4.1.c and d and 11.5)	
Council Regulation (EC) N° 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC 16.01.2001 N° L 12/1).	Direct effect	Jurisdiction (art. 22.1)	
Commission Regulation (EC) N° 1920/2001 of 28 September 2001 laying down detailed rules for the implementation of Council Regulation (EC) N° 2494/95 as regards minimum standards for the treatment of service charges proportional to transaction values in the harmonised index of consumer prices and amending Regulation (EC) N° 2214/96 (OJEC 29.9.2001 N° L 261/46).	Direct effect	CPI harmonization. Art. 5 includes estate agents' services for lease transactions.	
Commission Regulation (EC) N° 1749/1999 of 23 July 1999 amending Regulation (EC) N° 2214/96, concerning the sub-indices of the harmonized indices of consumer prices (OJEC 13.8.1999 N° L 214/1).	Direct effect	CPI harmonization. Subscript 4: Lease, housing preservation and repair, water and other services.	Part II 2.d 'Index-oriented increase clauses'.
Council Regulation (EC) N° 1687/98 of 20 July 1998 amending Commission Regulation (EC) No 1749/96 concerning the coverage of goods and services of the harmonised index of consumer prices (OJEC 31.07.1998 N° L 214/12).	Direct effect		
Commission Regulation (EC) N° 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub-indices of the HICP (OJCE 21.11.1996 N°	Direct effect		

L 296/8).			
Recommendation 65/379/EEC: Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 N° L 137/27).		Discrimination on grounds of nationality. Equality in granting housing, aids, subsidies, premiums or tax advantages to workers who have moved within the EU.	
DISCRIMINATION			
Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 N° L 373/37).	Amended Act: Algemene wet gelijke behandeling (<i>Equal Treatment Act</i>) (Wijziging van de Algemene wet gelijke behandeling ter uitvoering van Richtlijn nr. 2004/113/EG van de Raad van de Europese Unie van 13 december 2004 houdende toepassing van het beginsel van gelijke behandeling van mannen en vrouwen bij de toegang tot en het aanbod van goederen en diensten)	Discrimination on grounds of sex.	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 N° L 180/22).	Amended Act: Algemene wet gelijke behandeling (<i>Equal Treatment Act</i>) (Wijziging van de Algemene wet gelijke behandeling en enkele andere wetten ter uitvoering van richtlijn nr. 2000/43/EG en richtlijn nr. 2000/78/EG (EG-implementatiewet Awgb)) (Staatsblad 2007, nr. 321)	Discrimination on grounds of racial or ethnic origin.	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.
IMMIGRANTS OR COMMUNITY NATIONALS			
Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJEU 18.06.2009 N° L 155/17).	Amended Acts: Algemene wet gelijke behandeling and Huisvestingswet (<i>Equal Treatment Act and Housing Allocation Act</i>) (Staatsblad 2011, 291)	Equality of treatment with housing (art. 14.1.g.) However, Member States may impose restrictions (art. 14.2).	
Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) N° 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJEU 30.04.2004 N° L 158/77)	Wet van 7 juli 2006 tot wijziging van de Wet werk en bijstand, van de Wet studiefinanciering 2000, van de Wet tegemoetkoming onderwijsbijdrage en schoolkosten en van de Vreemdelingenwet 2000 in verband met de totstandkoming van richtlijn 2004/38/EG betreffende het recht van vrij verkeer en verblijf op het grondgebied van de lidstaten voor de burgers van de Unie en hun familieleden, alsmede goedkeuring van een daarmee samenhangend voorbehoud bij het Europees verdrag	Discrimination on grounds of nationality. Free movement for European citizens and their families.	

	inzake sociale en medische bijstand (Staatsblad 2006, nr. 373)		
Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJEU 23.01.2004 N° L 16/44).	Amended by: Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. Directive 2011/51 EU will amend the Vreemdelingenwet.	Equal treatment in housing (art. 11.1.f.)	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU 03.10.2003, N° L 251/12).	Amended Decision: Vreemdelingenbesluit (<i>Aliens Decree</i>) (Staatsblad 2004, 496)	The reunification applicant shall prove to have an habitable and large enough dwelling (art. 7.1.a).	
Regulation (EEC) N° 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJEC 17.04.1964 N° L 257/2).	Direct effect	Equal treatment in housing and access to the housing applicants' lists (Art. 9 and 10.3).	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.
INVESTMENT FUNDS			
Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) N° 1060/2009 and (EU) N° 1095/2010 (OJEU 01.07.2011, N° L 174/1).	Wijziging van de Wet op het financieel toezicht, het Burgerlijk Wetboek, de Wet op de economische delicten en enige fiscale wetten ter implementatie van richtlijn nr. 2011/61/EU van het Europees Parlement en de Raad van de Europese Unie van 8 juni 2011 inzake beheerders van alternatieve beleggingsinstellingen en tot wijziging van de Richtlijnen 2003/41/EG en 2009/65/EG en van de Verordeningen (EG) Nr. 1060/2009 en (EU) Nr. 1095/2010 (PbEU 2011, L 174) (Tweede Kamer, vergaderjaar 2012–2013, 33 589, nr. 8)	Real estate investment funds	

8 Typical national cases (with sort solutions)

8.1 Is termination of the tenancy by the landlord possible on grounds of urgent private use due to renovation?

No, this is basically not possible, even if the rent is unprofitable. However, according to Hoge Raad 26 March 2010 (Van Helsdingen / Klein) WR 2010, 5 nr 56 it is possible in case of a structural imbalance between operating costs for the landlord and the rent paid by the tenant.

8.2 Has the tenant in case of illegal subletting any rights in case of a renovation proposed by the landlord?

According to the Civil Code the landlord must make a “reasonable proposal”. In assessing the reasonableness of the proposal all circumstances of the case should be taken in account. This includes not only the interests of the tenant, but also these of the illegal subtenant.

8.3 Does reduction of the rent by the governmental rent assessment committee (*huurcommissie*) result in a violation of the fundamental right to property (Article 1 First Protocol ECHR)?

A structural imbalance between operating costs and rental income can result in a disproportionate interference with the rights of the owner. That does not mean that a landlord has a right to profit, nor that an enlargement of that loss by rent reduction is unacceptable. See Gerechtshof Amsterdam 25 January 2011, WR 2011/60, with reference to ECHR Hutten-Czaspka/Poland

8.4 May landlord terminate the tenancy contract after sales of drugs by (family of) tenant?

Although the landlord has the right to terminate the tenancy contract, this may be unjustified due to the standards of good faith.

In the case of Gerechtshof Amsterdam 19 July 2011, WR 2012/74 the court of appeal judges that the landlord could not terminate the tenancy. Tenants living for 33 years in the house without any complaint. Actually no drugs were found and there are insufficient concrete evidence that the house has served as a place of dealing of drugs. If there was dealing, it was very limited. Not the tenants themselves, but their adult son - for which they are responsible - has committed the prohibited activities. The recurrence rate is nil. The court considers important that the neighbors never noticed anything of the drug activities..

8.5 May a tenant claim damages from the landlord in case of nuisance by another tenant?

Yes, in the case the landlord is obliged to take measures against the tenant, and does not fulfill its legal duty, and he is in default.

8.6 May the landlord claim damages from tenant in case of illegal subletting?

Yes. The Dutch Civil code (art. 6:104 Civil Code) gives the court a discretion to estimate the damages to be paid estimate on the amount of default profits or any portion thereof. It is not necessary that a specific loss is proved by the landlord but that any damage is likely. There is no particular degree of culpa by the tenant required. Well may the degree of culpability weight assigned to the question whether art. 6:104 BW will be applied and whether the damage will be calculated to the full amount of the profits. Incorrect is the view that the damages must be in a fair proportion to the actual loss suffered.

See Hoge Raad 18 June 2010 WR 2010/7 nr 74.

8.7 In case of the rental of a property above the deregulation threshold, when is a proposed rent increase unreasonable?

In assessing the reasonableness is not only the proposed rent in relation to the relevant market important, but all the circumstances of the case, such as the financial standing of tenants, must be taken into account.

See Gerechtshof 's-Hertogenbosch 21 December 2010 WR 2011/46

8.8 In the case tenants renting from year to year a "holiday house" (not allowed for permanent use) for many years may the landlord terminate the contract at the end of the current year, claiming that this is a rent of a house whose use by its nature is of short duration.

In answering that question is important the nature of the use and of the house and how landlord and tenants regard the duration of use (e.g, the contract contains a provision requiring the maintenance of summer homes on behalf of the landlord or the tenant is "similarly like this for permanently occupied dwellings. It is not decisive the tenants have a domicile elsewhere.

See Hoge Raad 8 January 1999, NJ 1999, 495

8.9 Must the landlord allow for substantial changes to the property by the tenant?

The main rule in the Civil Code is that for substantial changes the tenant needs permission. In case of housing should be given in case the changes does not affect the

letting potential nor affect the value of the property in a negative way. This right cannot be excluded in the tenancy contract, with exception of changes to the exterior of the house.

8.10 How to assess if a certain space (e.g. an attic) is part of the rented housing?

The judge should assess what the parties had in mind, taking into account also the factual situation of the property. It is not conclusive how the use is specified or qualified in the contract.

9. Tables

9.1 Literature

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9.3 Abbreviations

BBSH

Besluit Beheer Sociale Huursector

CFV

Centraal Fonds voor de Volkshuisvesting

FBI

Fiscale Beleggingsinstelling

GDP

Gross Domestic Product

GFC

Global Financial Crisis

ISV

Investeringsbudget Stedelijke Vernieuwing

IVBN

Vereniging van Institutionele Beleggers in Vastgoed, Nederland

LTV

Loan-to-value

NHG

Nationale Hypotheek Garantie

VAT

Value Added Tax

WEW

Stichting Waarborgfonds Eigen Woningen

WSW

Waarborgfonds Sociale Woningbouw