

Commercial Property - Austria

Supreme Court redefines tenant's duties at end of lease

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Background

The Supreme Court recently ruled on the permissibility of clauses in rent agreements requiring the tenant to repaint the leased property and refurbish the flooring at the end of the lease, as well as on contractual penalties that would apply following late handover of the leased premises at the end of the lease. The decision applies to both commercial and residential lease agreements, and is not limited to consumer contracts.

The Federal Chamber of Workers and Salaried Employees has previously instigated a series of lawsuits against major property management companies, requesting them to refrain from using certain clauses in their standard rent agreements.⁽¹⁾

The present decision is the fifth of its kind and deals with 29 typical contract clauses. Most importantly, it covers clauses obliging the tenant to repaint the rental property in white paint and to recondition the flooring (eg, tiles, carpet, parquet) at the end of the rental period. Moreover, the admissibility of a penalty for a tenant's late return of the property has been acknowledged under certain circumstances.

Unlike many previous decisions, the reasoning for this decision was based not on the Consumer Protection Act or the Rent Act, but on general principles of contract law. The impact of the decision is thus not limited to certain types of tenant or types of leased property; it will also affect commercial tenants and all newly developed structures.

Decision

Unconditional obligation to repaint

Under Austrian law, a tenant must return the leased premises in the same condition as at the start of the lease, subject to normal wear and tear. In other words, the tenant must repair any damages that go beyond normal wear and tear. This provision is not mandatory and may be altered by agreement to the contrary.

The clause in question ordered the tenant to repaint the property in white at the end of the term, regardless of the condition of the paint.

The Supreme Court held that this clause deviated from Austrian contract law, as it did not take into account whether the rental property was handed over to the tenant with fresh paint and whether any damages to the paint went beyond normal wear and tear. The agreement offered no objective justification for this deviation from contract law. Therefore, the court considered the clause to be void.

Obligation to recondition flooring

A second clause in the contract required the tenant to recondition the flooring to the same state as at the time that rental commenced, taking into account wear and tear resulting from careful, contract-compliant use.

In contrast to the repainting obligation, the Supreme Court recognised this limitation regarding exceptional use; the reference to careful and contract-compliant use made it clear to the average tenant that normal use would not give rise to an obligation to recondition the flooring. Therefore, the court considered the clause to be in line with existing legislation and thus admissible.

Penalty for late return by tenant

A third clause contained a contractual penalty equal to three times the monthly gross

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rent, which would apply if the leased property were not handed back to the landlord on the agreed or judicially determined eviction date. The penalty did not apply if the tenant was not at fault.

According to the Supreme Court, the interest of the landlord in the timely return of the rental property is worth protecting in order to enable further leasing. Considering the usual duration of an eviction dispute, a penalty amounting to three months' gross rent was not deemed unreasonable. The Supreme Court therefore found the clause admissible.

Comment

The Supreme Court did not forbid outright or permit any of the three clauses stated above; rather, the court held that the clauses may be permissible under certain circumstances, some of which were outlined by the court.

An obligation to repaint the leased property at the end of the lease will likely be permissible if it relates to damages that go beyond normal wear and tear, provided that the damage was caused by the tenant or persons for which the tenant was responsible. Other possible justifications would be that the obligation to repaint was taken into account when calculating lease payments.

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Endnotes

(1) For further details please see "[Bombshell for landlords: Supreme Court blacklists 39 standard clauses](#)".

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