

# Two or more units? Supreme Court clarifies exception to Rent Act

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### Introduction

The Rent Act applies to both residential and commercial leases. It contains significant constraints on lease agreements, such as restrictions on the termination of agreements by landlords, maintenance duties and rent caps. Exceptions to the Rent Act give landlords greater flexibility with regard to their lease agreements. One of these exceptions concerns buildings which house no more than two units – in particular, the act does not apply to lease agreements in such buildings. The rationale behind this rule is that the owner of a smaller building is typically less professional than the owner of a bigger building.

The assessment of whether a building contains more than two units can be difficult. The Supreme Court recently had to decide whether a storage room and a separate building contained on the same property – both used by the landlady – should be taken into account when applying this rule.<sup>(1)</sup>

### Facts

The plaintiff was the owner of a compound of buildings consisting of a former farmhouse and a barn situated around a courtyard. The barn was built by the plaintiff after she had purchased the farmhouse and was used to park agricultural machines and vehicles. It was separated from the courtyard by a wall, but was accessible from the courtyard through a door in the wall. It extended five metres into the neighbouring plot of land, which was also owned by the plaintiff.

The plaintiff rented out the former farmhouse and courtyard to the defendant for commercial use. The barn was not part of the lease agreement. Moreover, the plaintiff kept a storage room in the farmhouse for herself. This storage room was accessible by a separate entrance from the neighbouring property.

The plaintiff argued that the barn was a single tenant unit and thus that the Rent Act did not apply. The defendant contested this by arguing that there were two units in addition to the rented premises (ie, the storage unit and the barn).

### Decision

First, the court analysed the legal effect of the storage unit. The court held that individual rooms which are not part of another lease agreement count as additional units, provided that they can be rented out individually. Thus, if there are at least two residential or commercial units in the building, the additional room will make the Rent Act applicable to the lease agreements for all units.

An exception is made for rooms which are typical in a single-family or two-family house (eg, storage rooms and garages). In the court's view, these rooms do not change the character of the house – it is

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still considered a small building. Therefore, these rooms should not be considered when assessing the number of units in a building. However, if an individual room is rented out to a third party, it will be considered a separate entity and count as a unit.

In the case at hand, the individual room (the storage room) was not rented out to a third party, but used by the landlord herself. The Supreme Court held that it did not constitute a separate unit because of the special facts of the case – that is, the room was accessible only through the leased premises or the neighbouring property, and therefore could not be rented out to a third party.

The court went on to analyse whether the barn should be considered a separate unit, even though it was a separate building. In general, the Supreme Court is of the opinion that all buildings on a plot of land should be considered, unless they are independent economic units. This is to be determined by several criteria, such as whether the buildings:

- have separate or shared utility lines;
- are of the same age;
- are used in the same way;
- are physically separated or form a compound of buildings; and
- are in the same condition.

Not all of these criteria have to be fulfilled in each case.

In the case at hand, the Supreme Court decided that the barn was separate from the farmhouse because they were:

- built at different times;
- physically separated; and
- used for different purposes.

The barn even had its own access road which did not lead across the courtyard.

Therefore, the Supreme Court held in favour of the landlord and ruled that neither the storage room nor the barn were to be taken into account when assessing whether the exception applied. The Rent Act thus did not apply to the lease.

## **Comment**

It may be advisable for landlords to combine smaller apartments or convert excess rooms into storage rooms or garages in order to reduce the number of units available in a house and avoid surpassing the two-unit limit. This may render all future rent agreements outside the Rent Act.

Landlords should also avoid renting out individual rooms to third parties (eg, neighbours), as these lease agreements, while generating hardly any profit, may actually have a substantial impact on the property, rendering all future leases within the Rent Act.

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## **Endnotes**

(1) Supreme Court April 13 2016, 10 Ob 14/16f.

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