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Kārlis Ūdris

RESIDENTIAL TENANCY AS A VIABLE
SUBSTITUTE TO HOME-OWNERSHIP IN
LATVIA

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Abstract

In light of the high rates of owner-occupancy and the view of residential tenancy being an inferior type of tenure, the Latvian government, after multiple unsuccessful attempts over the past decade, has implemented a new regulation for residential tenancy to cure the situation. This article presents a comparative analysis of both, the regulatory environment and the present economic and social situation, of the tenancy market in the Baltic states. Based on the findings, and by adding a theoretical framework of the necessity of a sound residential tenancy market, an assessment of possibility for the new Latvian tenancy law to reach its aims is presented.

Key words: tenancy; Baltic states tenancy law; Latvia tenancy law; regulatory equilibrium; comparative law; rental market; tenancy market; housing; Dzīvojamo telpu īres likums

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INTRODUCTION

Residential tenancy has a potential to become a viable substitute for home-ownership for many people. However, in light of the high share of home-ownership existing in the Baltic states, it is often viewed as an inferior and a last-resort type of tenure. The roots for it grow in the historical development of the Baltic states. During the half-a-century long Soviet occupation there existed very limited rights to own private property. Soon after regaining independence, a wide scale restitution and privatization was implemented. However, not everyone was entitled to take part in the process. The restitution created a class of people that could carry on renting their dwellings, however, the landlord was not the state anymore. To protect them, rigid tenant-protective laws were established. In conjunction with the tough economic situation, the housing stock kept on deteriorating. Nowadays, due to underinvestment in the housing stock, still a considerable part of population lives in poor quality dwellings.

For a proper functioning, the tenancy relationships require balance of rights and obligations between the parties.¹ Only if there exists this balance, residential tenancy can transform from a by-constraint to a by-choice type of tenure in the long-run. To assess the level of balance in tenancy relationships in the Baltic states, a comparative study of the pre-2021 tenancy regulations in Estonia, Latvia and Lithuania is performed. Elements that provide stability to the tenant, at the same time limiting the flexibility of the landlord, are examined. These include: i) rent control and price adjustments, ii) renewal rights, iii) unilateral termination rights, and iv) the applicability of the principle of 'sale does not break hire' in case of a change of ownership of a dwelling. As private landlords are profit oriented individuals, their main consideration of supplying their dwelling to the rental market is the surety and regularity of income. Accordingly, the available dispute resolution procedures are compared among the Baltic states, which play a significant role in reducing the risk of being stuck with a defaulting tenant.

The findings of the comparative study of legislation need to be plotted against the current state of development of the tenancy market in the Baltic states. Only in this way it is possible to assess if the varying approaches to the same problems have brought varying results. A common obstacle to an economic and social research related to rental markets is the absence of high-quality market data, since the parties tend to hide their tenant status or underestimate their rental price, in order to evade applicable tax payments. Before implementing a new tenancy regulation, it should be assessed, if its goal should be to promote tenancy as a long-term option of tenure, or the opposite – to promote it as an intermediate stop on the way up the housing ladder. The home-ownership, although preferred by far the largest part of the population of the Baltic states, is, unintentionally, praised too excessively. The seemingly substantial financial benefits by being a real estate investor investing in your own home are overestimated in the long-run.² At the same time, spill-overs from the increased mobility that are possible when being a tenant are not captured.³ For the implications of a regulatory act to reach its target groups, the target

¹ Sergio Nassare-Aznar, "Leases as an Alternative to Homeownership in Europe. Some Key Legal Aspects", *European Review of Private Law* 22, No. 6 (2014), p. 817.

² Robert J. Shiller, *Irrational Exuberance: Revised and Expanded Third Edition*, (Princeton, New Jersey: Princeton University Press, 2015), p. 28.

³ Stephen K. Mayo and James I. Stein, "Housing and Labor Market Distortions in Poland: Linkages and Policy Implications", *Journal of Housing Economics* 4, no. 2 (1995), p. 177.

groups have to be evaluated beforehand. Each of the different players in the tenancy market possesses different needs and different goals. Unsurprisingly, those tend to collide from time to time. A good regulation limits these collisions to the minimum.

The topicality of this article lays in the fact that ultimately, after almost a decade of unsuccessful attempts, the Latvian parliament has passed a new law on residential tenancy.⁴ The new tenancy law will be analysed on the same elements of stability important to the tenant, and on the same offered level of surety of income important to the landlord. The success of a regulatory approach in reality can only be measured after some time has passed from its implementation, or at soonest when some economic data is available for the period when it was in force. As the new tenancy law is in force for only seven months as of writing this article, a theoretical judgment on the possibility of it fulfilling its predefined aims will be drawn. The new tenancy law aims to balance the rights and obligations of parties to a tenancy contract, and improve the affordability of adequate housing. However, from a purely theoretical perspective, the means do not seem to reach the ends in the long-run.

The aim of this article is to assess the potential success, or failure, of the new tenancy law, in light of the historical development and previous regulatory and economic situation in the residential tenancy market in Latvia and the other Baltic states. This article suggests a hypothesis:

The new regulation of the tenancy market in Latvia will promote tenancy as a viable substitute to home-ownership.

The tasks to be performed to reach the research aim include:

1. Provide an insight on the historical background that shaped the regulations of residential tenancy and housing conditions of the Baltic states;
2. Perform a comparative analysis of the pre-2021 regulations of residential tenancy in the Baltic states;
3. Present a theoretical framework on the benefits of tenancy as a stable type of tenure;
4. Assess the economic and social conditions of residential tenancy in the Baltic states;
5. Analyse the new law of residential tenancy in Latvia.

The questions that have to be answered to reach the research aim:

1. Which of the pre-2021 residential tenancy regulations in the Baltic states provide the most stability to the tenant, and the least amount of risk to the landlord?
2. Why should residential tenancy be promoted as stable type of tenure?
3. Is there a correlation between the provided stability to the tenant and the least amount of risk to the landlord on one side, and the level of development of residential tenancy market on the other?
4. Will the new law of residential tenancy reach its aims?

The scope of research of this article is limited to tenancy relationships between private parties, therefore, the implications of the regulations on social housing provided by

⁴ "Dzīvojamo telpu īres likums" [Residential Tenancy Law], Latvijas Vēstnesis, 65A, 06.04.2021. Available on: <https://likumi.lv/ta/id/322216-dzivojamo-telpu-ires-likums>. Accessed January 26, 2022.

the government or municipality are not assessed. Additionally, the existing problems and corresponding solutions for tenants of restituted and denationalized dwellings are not in the scope of this article, due to the political nature of such relationships. Similarly, the social aspect of providing housing, that is indirectly enshrined as state responsibility in the European Convention on Human Rights is out of scope of this article.

1. THE BEGINNING: DEVELOPMENT OF RENTAL MARKET IN THE BALTIC STATES

This chapter will provide an overview of the history of Estonian, Latvian and Lithuanian real estate market development in the view of tenancy regulation and housing policies. The starting point is the occupation of Baltic states and their incorporation into the Soviet Union. The economic, political and legal systems of all three countries were transformed from well-functioning market economies to soviet-style command economies. Private property was nationalized, an influx of people from other soviet republics was organized, massive housing construction was performed, and a quasi-ownership system of tenure was introduced. After the restoration of independence, large scale privatization and restitution was organized. Being acquainted with the historical developments, will let the reader understand the underlying reasons for implementing socially protective regulation of tenancy and the deterioration and shortage of housing stock.

1.1 Housing policy during Soviet occupation

1.1.1 Nationalization of property

In 1940 after the establishment of Soviet occupational power in the Baltic states, the nationalization of private property began in all three countries. In Latvia, Presidium of the Latvian SSR passed a decree "On Nationalization of Spacious Buildings". Spacious buildings were defined in the decree as having the total useful space of at least 220 square meters inside Riga and other larger cities, and 170 square meters in smaller towns. Additionally, i) all buildings where state institutions were located, ii) which were of historical or artistic significance, and iii) whose owners had escaped the country during the war and were living abroad, were nationalized as well. During the following five decades more nationalization of real estate occurred.⁵ In Estonia, the Soviet state became the owner of all land, while companies and private individuals possessed a right to use the land. The latter were allowed to build, sell and buy houses and apartments in housing cooperatives. However, the land beneath and around the buildings legally did not belong to them.⁶ In Lithuania, similarly to the other Baltic states, almost all individual and state-owned property was confiscated or expropriated to the Soviet Union.⁷

⁵ On the Conformity of Section 13 of December 20, 2004 Law "Amendments to the Law "On Residential Tenancy" with Sections 1, 91 and 105 of the Republic of Latvia Satversme: Judgement of the Constitutional Court of the Republic of Latvia from March 8, 2006 in the Case No. 2005-16-01, Section 1. Available on: http://www.satv.tiesa.gov.lv/wp-content/uploads/2005/07/2005-16-01_Spriedums_ENG.pdf. Accessed January 26, 2022.

⁶ Merje Feldman, "Justice in space? The restitution of property rights in Tallinn, Estonia", *Ecumene* 6, no.2 (1999), p.167.

⁷ Cheryl E. Stovall, "Former-Citizenship Restitution: A Proposal for an Equitable Resolution of Confiscated Lithuanian Property", *Chi.-Kent J. Int'l & Comp. Law* 11, no. 1 (2011), p. 7.

1.1.2 Tenure during the Soviet regime

The Soviet system of tenure differed from that of capitalism considerably. The latter places rights of ownership above the rights of use. However, in Soviet system the rights of use subordinated the rights of ownership. The tenants occupying apartments in public buildings did not hold the right of ownership. Nevertheless, their rights of use of the residential space they occupied matched or even exceeded in many ways the rights associated with ownership in capitalist systems.⁸

The fundamental importance of housing in the Soviet system disallowed free agreement of the legal position of parties to a rental contract. Tenancy was governed by the Civil Codes and special statutes of the Soviet Republics. The freedom to contract was severely limited, as the tenancy agreements had to conform to model contracts. Once a member of a family had received an occupation order and concluded a tenancy contract, all of the members of the family of the tenant acquired rights to use the residential dwelling. Therefore, the tenant was merely a representative of the family members that lived with her. The official tenant could not do anything to restrict the rights of her family members to use the residential dwelling. Thus, for example, by divorce both former partners were entitled to occupy an equal share of the residential dwelling. Similarly, a new member of a family by marriage could only be allowed in the apartment if all other adult family member residing in the dwelling agreed on that. The goal of the Soviet system was the provision of residential accommodation and communal services for each family without payment. The goal was set to be reached by the 1970s, however, that did not fulfil. During the 1960s, rental payments already amounted to only five percent of the monthly income of the tenant.⁹ Later, no one referred to 'renting' of a residential space but to 'personal use'. The 'personal use' developed as an institution independent from that of rental tenure. The rights to use of the apartment could be inherited, transferred to relatives or exchanged in between right holders. The rights constituted a 'quasi-ownership of housing'.¹⁰

1.1.3 Residential housing policy in the Soviet Union

The Soviet Union under Stalin's governance enjoyed unprecedented levels of urbanization. The Stalinist policy of industrialization and collectivization of countryside, which begun in 1929, made millions of peasants move from farmlands to urban centres. In 1926 26.3 million people (18.9% of the population) lived in urban environments. By 1939 the number had reached 56.1 million people (33% of the total population). However, Stalin's policy of prioritizing heavy industry above housing production led to many of the new urban inhabitants living in barracks.¹¹

After the incorporation of the Baltic states into the Soviet Union, the above-described urbanization policies started to apply there. Moreover, the Soviet authorities started

⁸ Peter Marcuse, "Privatization and its Discontents: Property Rights in Land and Housing in the Transition in Eastern Europe", in *Cities After Socialism: Urban and Regional Change and Conflict in Post-Socialist Societies*, eds. Gregory Andrusz, Michael Harloe, and Ivan Szelenyi, (Oxford, the UK: Blackwell, 1996), p. 135.

⁹ Bernard Rudden, "Soviet Housing Law", *The International and Comparative Law Quarterly* 12, no. 2 (1963), pp. 600-604.

¹⁰ Martin Lux, "Public Housing Policies: Economic and Social Perspectives", in *Housing Policy: An End or A New Beginning?*, ed. Martin Lux, (Budapest, Hungary: Open Society Institute, 2003), p. 26.

¹¹ Henry W. Morton, "Housing in the Soviet Union", *Proceedings of the Academy of Political Science* 35, no. 3, The Soviet Union in the 1980s (1984), p. 71.

russification process of the Estonian, Latvian and Lithuanian societies by settling large numbers of people of Soviet nationalities, mostly Russians, Byelorussians and Ukrainians, in Latvia and Estonia. The population of Estonia grew from 845 000 people in 1945 to 1 566 000 in 1989, with the main driving force being immigration. Large number of those migrants were accommodated in the buildings that were nationalized and whose former owners had been killed or had fled abroad. Many of those buildings were located in the most prestigious districts of Riga, Tallinn and Vilnius.¹²

In 1953, after Stalin's death, the leadership of the Soviet Union started to draw their attention away from rebuilding the war-torn heavy industry to construction of adequate housing stock for the urban environments. Under the rule of Nikita Khrushchev, the housing construction was revolutionized by using pre-fabricated load bearing concrete panels instead of bricks. One of the main advantages was time saving, as the construction could be continued during winter periods. The other – demand for skilled labour decreased as the panels could be assembled with less specific skills than construction of buildings in the conventional way. However, the quality in comparison with the conventional construction methods declined substantially. Buildings were cold, water penetrated through the walls, ceilings and floors were sagging. On top of that, in order to decrease costs, the ceiling height was lowered, rooms were made smaller, corridors narrower, and bathroom and toilet were combined in a single unit. Furthermore, this type of construction turned cities' environment monotonous and architecturally inexpressive. However, the Soviet leadership's view was that building a thousand adequate apartments makes citizens better off than building seven hundred good ones.¹³

1.2 Restoration of independence

After restoration of independence from the Soviet Union in 1990, the transformation of all sectors of economy began in the Baltic states. The goal was to transform the existing command economy with strong state intervention to a liberal market-based economy with minor state control.¹⁴ This process inevitably changed also the housing sector.

1.2.1 Privatization

Privatization is the transfer of state-owned property to private ownership. As noted earlier, soon after the Soviet occupation private property, including residential buildings and land, was nationalized. Prior to the beginning of privatization in 1991 approximately 65% of residential dwellings in Estonia were publicly owned.¹⁵ Public ownership of residential dwellings in Latvia was of approximately the same proportion.¹⁶ Likewise, more than 70% of residential dwellings were publicly owned in Lithuania.¹⁷ The privately-owned buildings in 1991 were mostly single-family homes. The multi-apartment houses were almost exclusively publicly owned, with the exception of dual ownership in housing cooperatives.

¹² Feldman, *supra* note 6.

¹³ Morton, *supra* note 11, pp. 72-73.

¹⁴ Sandra Berzups, "Privatization at the Crossroad of Latvia's Economic Reform", *ILSA Journal of International & Comparative Law* 1 (1995), p. 172.

¹⁵ Anneli Kährik, "Housing privatisation in the transformation of the housing system - The case of Tartu, Estonia", *Norsk Geografisk Tidsskrift* 54, no.1 (2000), p. 4.

¹⁶ Austin J.Jaffe, Bengt Turner, and Anders Victorin, *Property Rights and Privatisation in the Baltic Countries*, (Copenhagen, Denmark: Nord, 1995), p. 94.

¹⁷ Vytautas Jonaitis and Jurga Naimavičienė, "Analysis of Housing Sector in Lithuania", *International Journal of Strategic Management* 7 (2003), p. 172.

The sitting tenants of residential dwellings that were not put forward to restitution and denationalization, could privatize the dwelling they occupied. This included mostly the residential buildings constructed during the Soviet regime, as well as buildings where there was no pre-war owner or heir of an owner. All residents of the Baltic states received privatization vouchers from their respective governments. The amount of them depended on the number of years worked, age, number of children, and the years resided in the country. These privatization vouchers, besides cash, could be used for privatization.¹⁸

1.2.2 Restitution

Restitution is the return of property to the proper owner, or substitution of it in monetary value.¹⁹ The process of returning the real property - land, buildings and apartments - to pre-war owners or heirs of them in Latvia besides restitution, is referred to as denationalization. In Estonia and Lithuania, the term restitution is used.

After 1990, restitution was placed on top of political agenda in all three Baltic countries. The large-scale deportations, emigration and forced evictions under Stalin's rule of the Soviet Union created a wide support in the society of Estonia for the return of illegally confiscated property.²⁰ However, there exists two sides of the same coin. The restitution of buildings awarded some with property, in the same time limiting privatization rights of others. As discussed in the previous section, sitting tenants were allowed to privatize the residential dwelling they occupied. However, this right was limited to tenants occupying dwellings that were not restituted. The number of tenants whose rights to privatization of their dwelling were limited is estimated to be 47 200 people in Estonia (corresponding to three percent of total population).²¹ In Latvia, the number of tenanted denationalized apartments was 29 084, with the tenants occupying them constituting the same three percent of total population as in Estonia.²² In Lithuania, however, only 7 300 denationalized apartments were tenanted, with the tenants occupying them accounting for only half a percent of the population.²³

In Estonia and Latvia laws were passed to safeguard the tenants of denationalized and restituted dwellings. In Estonia, the expiry date of the pre-restitution tenancy contracts was set at July 1, 1997. It was later prolonged by five years, and additional five years if the tenant had respected the terms and conditions of the tenancy contract. The rent level was

¹⁸ Janis Kursis, "Housing privatization in the Baltic States", in *Housing and Environment - Report of the Vienna Workshop* (Nairobi, Kenya: United Nations Centre for Human Settlements (Habitat), 1999). Available on: <http://www.nzdl.org/gsd/mod?e=d-00000-00---off-0cdl--00-0----0-10-0---0---0direct-10--4-----0-1l--11-en-50---20-about---00-0-1-00-0--4---0-0-11-10-0utfZz-8-00&cl=CL1.80&d=HASH16ced04f610cd5230c91a2.10.8&x=1>. Accessed January 26, 2022.

¹⁹ Definition of 'restitution'. Available on: <https://dictionary.law.com/Default.aspx?selected=1831>. Accessed January 26, 2022.

²⁰ Feldman, *supra* note 6.

²¹ Martin Lux and Anneli Kährlik, "Housing restitution and privatization: both catalysts and obstacles to the formation of private rental housing in the Czech Republic and Estonia", *International journal of housing policy* 12, no. 2 (2012), p. 142.

²² Anotācija likumprojektam "Grozījumi likumā „Par dzīvojamo telpu īri” [Annotation to draft law "Amendments to law "On Residential Tenancy"]. 04.06.2004. Available on: https://www.saeima.lv/Likumdosana/8S_DK/lasa-dd=LP0856_0.htm. Accessed January 26, 2022.

²³ Akvilė Mikelėnaitė, *TENLAW: Tenancy Law and Housing Policy in Multi-level Europe. National Report for Lithuania*, (Bremen, Germany: Zentrum für Europäische Rechtspolitik der Universität Bremen (ZERP), 2014), p. 11. Available on: https://www.uni-bremen.de/fileadmin/user_upload/fachbereiche/fb6/fb6/Forschung/ZERP/TENLAW/Reports/LithuaniaReport_09052014.pdf. January 26, 2022.

fixed in restituted dwellings by the municipality until 2004. In 2007 the maximum prolongation period of pre-restitution tenancy contracts had also expired.²⁴ In Latvia, rent ceilings were introduced by law to protect the tenants and compensate them for not being able to privatize their occupied dwelling. It was meant to be a temporary short-term solution.²⁵ However, only in 2007 the Constitutional Court of the Republic of Latvia abolished the rent ceiling as being unconfirming with the Constitution.²⁶ In contrast, Lithuania approached the situation differently, by vacating the properties that had to be restituted. Of all the sitting tenants, 46% were offered a dwelling owned by the municipality. The rest received either a financial compensation from the government, or were given a land plot to build an individual residential house.²⁷

3. COMPARATIVE ANALYSIS OF STABILITY OF TENANCY RELATIONS IN THE BALTIC STATES

In the following chapter a comparative analysis of tenancy regulation between two private parties in Latvia, Estonia and Lithuania will be performed. The regulation of tenancy relations between a private tenant and municipal, state or other kind of social housing provider is out of scope of this article. First, the legal framework regulating tenancy in all three countries will be presented. Second, a comparative analysis of the regulation of residential tenancy will be provided. Third, the efficiency of judicial organs among Baltic states will be compared. Finally, conclusions will be drawn to assess the level of stability the different regulations provide to tenants and landlords in the Baltic states. The pre-2021 tenancy law will be used for Latvia in this chapter, as it corresponds to the economic data on the tenancy market available at the moment of writing this article. Additionally, it allows for comparison with the new law on residential tenancy.

3.1 Legal norms applicable to tenancy regulation

The Civil Law of the Republic of Latvia²⁸ (hereinafter, Civil Law) distinguishes between a rental [īre] and lease [noma] contract. A contract which grants one party the right to use a fruit-bearing property in order to gain the fruit for a certain payment is lease, however, all other contracts granting use of a property for a certain payment are rental contracts.²⁹ Therefore, the English language translation of the terms should not be confused with the definition of them in Anglo-Saxon law, where the difference of lease and rent depends, principally, on the length of the contract.³⁰ A note under Article 2112 of Civil Law warns that the rent of residential dwellings is regulated in a special law.

²⁴ Lux and Kahrik, *supra* note 21, p. 143.

²⁵ Constitutional Court 2006, *supra* note 5, Section 17.3.

²⁶ *Ibid.*, Section 17.7 and 18.

²⁷ *Supra* note 23, p. 10.

²⁸ Civillikums [The Civil Law], Valdības Vēstnesis, 41, 20.02.1937. Available on: <https://likumi.lv/doc.php?id=225418>. Accessed January 26, 2022.

²⁹ *Ibid.*, Section 2112.

³⁰ Definition of 'lease'. Available on: <https://dictionary.law.com/Default.aspx?selected=1122>. Accessed January 26, 2022.

The special law regulating tenancy of residential dwellings is the law On Residential Tenancy³¹ which was passed in 1993. The law has since been amended multiple times, with the last amendment being passed in 2010. It has been substituted by a new law on residential tenancy in 2021. The purpose of the law On Residential Tenancy is formulated in Article 1 - regulate the relationship between the tenant and landlord of a residential dwelling, irrespective of who the landlord is. It also states in Article 1 that, Civil Law and other laws are applicable to tenancy of residential dwellings insofar this law does not regulate it. However, the rental of non-residential premises is out of scope of this law.³²

The hierarchy of Latvian legal norms is: 1) the Constitution [Satversme], 2) laws, 3) Cabinet regulations, 4) binding regulations of municipal governments.³³ As will be seen onwards, there exist contradictions between the Civil Law and law On Residential Tenancy. Both of them are laws, thus both of them belong to level two in the legal hierarchy. Consequently, the norms on conflict of laws have to be applied. In cases when there exists a contradiction in between a general and a special legal norm of equal legal force, the general norm shall be applicable insofar it is not restricted by the special norm.³⁴

Although the above-mentioned legal norms cover most aspects of tenancy of residential dwellings, other legal norms are also relevant. A non-exhaustive list of those norms includes: i) Law On Assistance in Solving Apartment Matters³⁵, ii) On Privatisation of State and Local Government Residential Houses³⁶, iii) On the Denationalisation of Building Properties in the Republic of Latvia³⁷, iv) On Restitution of Building Properties to Rightful Owners³⁸, and v) Civil Procedure Law³⁹.

The regulation of tenancy of residential dwellings in Estonia is incorporated in the Law of Obligations Act as Chapter 15 in Part 3.⁴⁰ Unlike in Latvia, the law does not distinguish between rental of residential dwellings and business premises. However, falling

³¹ Par dzīvojamo telpu īri [On Residential Tenancy], Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 7, 18.02.1993. Available on: <https://likumi.lv/doc.php?id=56863>. Accessed January 26, 2022.

³² *Ibid.*, Article 1.

³³ Oficiālo publikāciju un tiesiskās informācijas likums [Law On Official Publications and Legal Information], Latvijas Vēstnesis, 96, 20.06.2012, Section 9(1). Available on: <https://likumi.lv/ta/en/en/id/249322-law-on-official-publications-and-legal-information>. Accessed January 26, 2022.

³⁴ *Ibid.*, Section 9(6)2.

³⁵ Par palīdzību dzīvokļa jautājumu risināšanā [Law On Assistance In Solving Apartment Matters], Latvijas Vēstnesis, 187, 22.12.2001. Available on: <https://likumi.lv/ta/en/en/id/56812-law-on-assistance-in-solving-apartment-matters>. Accessed January 26, 2022.

³⁶ Par valsts un pašvaldību dzīvojamo māju privatizāciju. [On Privatisation of State and Local Government Residential Houses], Latvijas Vēstnesis, 103, 11.07.1995. Available on: <https://likumi.lv/ta/en/en/id/35770-on-privatisation-of-state-and-local-government-residential-houses>. Accessed January 26, 2022.

³⁷ Par namīpašumu denacionalizāciju Latvijas Republikā. [On the Denationalisation of Building Properties in the Republic of Latvia], Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 46, 21.11.1991. Available on: <https://likumi.lv/ta/en/en/id/70829-on-the-denationalisation-of-building-properties-in-the-republic-of-latvia>. Accessed January 26, 2022.

³⁸ Par namīpašumu atdošanu likumīgajiem īpašniekiem [On Restitution of Building Properties to Rightful Owners], Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 46, 21.11.1991. Available on: <https://likumi.lv/doc.php?id=70828>. Accessed January 26, 2022.

³⁹ Civilprocesa likums [Civil Procedure Law], Latvijas Vēstnesis, 326/330, 03.11.1998. Available on: <https://likumi.lv/ta/en/en/id/50500-civil-procedure-law>. Accessed January 26, 2022.

⁴⁰ Võlaõigusseadus, [Law of Obligations Act], RT I 2001, 81, 487, 01.07.2002. Available on: <https://www.riiqiteataja.ee/en/eli/ee/507032019001/>. Accessed January 26, 2022.

outside the scope of Chapter 15 of Law of Obligation Act is the lease of: i) a term shorter than three months, holiday homes, and guest rooms, ii) premises with the intention to sublease rooms for profit, iii) part of a dwelling when the other greater part is used by the lessor herself, iv) social dwellings leased by public authorities to persons in need and students.⁴¹

As all the aspects of residential tenancy are governed in a single law, which is also fairly recent if compared to relevant Latvian legal acts, the collision between general and special norms is less problematic.⁴² The Law of Obligations Act was passed in 2001 and entered in force in 2002. It partially substituted the Dwellings Act of 1992⁴³, provisions of which were meant to protect the tenants of restituted buildings. However, the restrictive rules of which adversely affected the rest of the market.⁴⁴

In Lithuania, a mixed approach is taken in regulation of the residential tenancy relations. The regulation is included in the Lithuanian Civil Code⁴⁵ as *lex specialis* in Book Six (Law on Obligations) Part Four (Nominate Contracts) Chapter 31 (Lease of dwellings). The *lex generalis* of lease can be found in the same Book Six of the Civil Code. Just as in Latvia, the *lex generalis* is applicable insofar the situation is not regulated in *lex specialis*. The Lithuanian Civil Code is written from scratch and passed by the Parliament in 2000. From 1990 until the introduction of the new Lithuanian Civil Code, an amended Lithuanian Civil Code of the Soviet Socialist Republic of Lithuania was used. The main goal of the new law was to foster creation of a market economy, by aligning individual responsibility on people for their life conditions. The state has only to supply social aid to people in need. Considering the orientation towards market economy where a consumer is an indispensable part, also the tenant is positioned and protected as a weaker party in tenancy relations by creating the special regulation for residential tenancy.⁴⁶

3.2 Rent control and price adjustments

Freedom of contract prevails in determining rental price in Latvia. A first generation rent control⁴⁷ existed in Transitional Provisions of the Law On Residential Tenancy as a safeguard for tenants of restituted and denationalized dwellings. Parties were allowed to negotiate on prices, however, if no common agreement was reached, the law allowed the landlord to set the rental price predefined in the law. The direct first generation rent control was abolished in Latvia after the amendments to law On Residential Tenancy passed in 2004⁴⁸ were

⁴¹ *Ibid.*, Paragraph 272.

⁴² Irene Kull, Julia Kolomijceva and Ave Hussar, "Comparative Remarks on Residential Tenancy Law in Latvia and Estonia", *Juridiskā zinātne / Law Journal of University of Latvia* 8 (2015), p. 7.

⁴³ Elamuseadus, [Dwelling Act], RT 1992, 17, 254, 01.07.1992. Available on: <https://www.riigiteataja.ee/en/eli/501072015010/>. Accessed January 26, 2022.

⁴⁴ Ave Hussar, "Estonia: Prospects for Steady Improvement", in *Private Rental Housing in Transition Countries: An alternative to owner occupation?*, eds. József Hegedüs, Martin Lux, and Vera Horváth, (London, the UK: Palgrave Macmillan, 2018), p. 216.

⁴⁵ Lietuvos Respublikos Civilinis Kodeksas [Civil Code of the Republic of Lithuania], Valstybės žinios, Nr. 74-2262, 06.09.2000. Available on: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.404614?ifwid=nj21zp55m>. Accessed January 26, 2022.

⁴⁶ Mikelēnaitė, *supra* note 23, p. 82.

⁴⁷ First-generation rent control freezes or caps the nominal rent, which leads to a fall in real rent due to inflation, ending at a rent that is significantly below market level.

⁴⁸ Grozījumi likumā "Par dzīvojamo telpu īri" [Amendments to law "On Residential Tenancy"]. Latvijas Vēstnesis, 210, 30.12.2004. Available on: <https://likumi.lv/ta/id/98777-grozijumi-likuma-par-dzivojamo-telpu-iri>. Accessed January 26, 2022.

deemed incompatible with the Constitution in 2006 by the judgment of the Constitutional Court⁴⁹.

However, indirect second generation rent control⁵⁰ is still stipulated by other means in law On Residential Tenancy.⁵¹ Increase or decrease in rental payments must be in writing⁵² or by tacit agreement of parties⁵³. A contract that has been concluded in good faith must be upheld by both of the parties, irrespective of the hardship they might incur.⁵⁴ Therefore, increasing rent is only allowed if the tenancy contract contains a clause permitting it. However, the landlord has to provide the tenant with the reason for increase and the financial calculations that demonstrate that the increase is justified.⁵⁵ Rent is defined as a sum of maintenance fees of the dwelling (including the corresponding common areas of the building and land) and profit.⁵⁶ An exhaustive list of expenses that can be included in the maintenance fees charged to the tenant is provided for by the law.⁵⁷ Additionally, a special normative act exists explaining the methodology of the calculation of the maintenance fees.⁵⁸ However, there exists no limitation on profit that the landlord is allowed to earn by renting out her dwelling. If the parties are not able to negotiate a rental price, the court decides on the amount of rent. For its calculations, the court uses the formula of maintenance fees plus profit.⁵⁹ However, as noted above, the calculation of the appropriate level of profit is not regulated by law and is left at court's discretion. The courts shall decide on it being guided by the sense of justice and general principles of law.⁶⁰ The consequences of this might be subjective findings of individual judges. Therefore, guidelines for judges or a summary of court practice on the issue would be a welcome addition.⁶¹ As an exception, raising the rent for tenants occupying dwellings located in restituted and denationalized houses that were previously subject to direct first generation rent control does not require a special clause in the tenancy contract. The reason for the exception being that the parties' freedom to contract was limited at the time of conclusion of the contract, as they were subject to exogenous obligatory terms. Nevertheless, the landlord has to adhere to rules regulating rent increase as in the standard procedure.

⁴⁹ Constitutional Court 2006, *supra* note 5.

⁵⁰ Second-generation rent control is any regulation of the rental market that does not fulfil the criteria of the first-generation. In general, it regulates the landlord – tenant relationship by limiting the allowed changes in an existing tenancy contract.

⁵¹ Julija Kolomijceva, *TENLAW: Tenancy Law and Housing Policy in Multi-level Europe. National Report for Latvia*, (Bremen, Germany: Zentrum für Europäische Rechtspolitik der Universität Bremen (ZERP), 2014), p. 123. Available on: https://www.uni-bremen.de/fileadmin/user_upload/fachbereiche/fb6/fb6/Forschung/ZERP/TENLAW/Reports/LatviaReport_09052014.pdf. January 26, 2022.

⁵² On Residential Tenancy, *supra* note 31, Section 13.

⁵³ Civil Law Latvia, *supra* note 28, Section 1488.

⁵⁴ *Ibid.*, Section 1587.

⁵⁵ On Residential Tenancy, *supra* note 31, Section 13.

⁵⁶ *Ibid.*, Section 11.

⁵⁷ *Ibid.*

⁵⁸ Dzīvojamās telpas īres maksā ietilpstošo apsaimniekošanas izdevumu aprēķināšanas metodika [Methodology of calculation of maintenance fees corresponding to a residential dwelling], Latvijas Vēstnesis, 73, 15.04.2016. Available on: <https://likumi.lv/ta/id/281530-dzivojamas-telpas-ires-maksa-ietilpstoso-apsaimniekosanas-izdevumu-aprekinasanas-metodika>. Accessed January 26, 2022.

⁵⁹ Rolands Krauze, *Par dzīvojamo telpu īri. Likums ar komentāriem. Otrās papildinātais izdevums*. [On Residential Tenancy. Law with commentary. Second supplemented edition] (Rīga, Latvia: Tiesu namu aģentūra, 2005), p. 75.

⁶⁰ Civil Law Latvia, *supra* note 28, Section 5.

⁶¹ Kolomijceva, *supra* note 51, p. 124.

Similar to Latvia, also in Estonia freedom of contract is respected when determining rental price. First generation rent control was abolished in 2004 by passing a law⁶² that abolished the rent cap that was since 1998 active for dwellings located in restituted houses. This was not the first rent cap abolishment, as from 1993 to 1998 a rent cap existed for all dwellings located in Estonia.⁶³ The decision of the Estonian Parliament was contested by the president of Estonia on the conformity of it with the Constitution.⁶⁴ The Constitutional Court decided on conformity, thus abolishing first generation rent control for all dwellings in Estonia.

The law differentiates between increase of rental payment in contracts for unspecified and specified term. The right to increase rental payment is guaranteed for by the law to the landlord in case of a tenancy contract for unspecified time. Though, the rent can only be increased at maximum once in six months with a notification 30 days prior.⁶⁵ As for a rental contract of specified term, a periodic increase in rent is only allowed if such a clause is included in the contract. Moreover, additional conditions have to be satisfied: i) the contract has to be concluded for minimum three years, ii) the periodic increase shall not happen more than once a year, and iii) the increase or the basis of its calculations have to be precisely defined.⁶⁶ There is no limitation on the initially agreed amount of rent⁶⁷, however the tenant may contest an excessive increase of rent.⁶⁸ A rent is considered excessive, if the landlord receives an unreasonable benefit from the rent. However, it is clearly defined that rent cannot be excessive: i) for luxurious dwellings, and ii) if it does not exceed the usual rent for a similar dwelling in a similar location.⁶⁹ If the initially agreed rent was excessive and not contested by the tenant, and if the increase is only incremental, it does not allow the tenant to contest the increase.⁷⁰

Lithuania is, theoretically, an outlier among the countries reviewed, as first generation rent control prevails in relation to freedom of contract according to the Lithuanian Civil Code. The amount of rent for dwellings that are rented out for profit by enterprises, organizations and legal persons shall not exceed the maximum permitted amount set out in accordance with the procedure established by the government.⁷¹ However, as a paradox, it is not yet applicable in practice due to incomplete auxiliary legislation. Consequently, nobody

⁶² Elamuseaduse ja Eesti Vabariigi omandireformi aluste seaduse § 12¹ muutmise seadus [Act to Amend the Dwelling Act and § 12¹ of the Republic of Estonia Principles of Ownership Reform Act], RT I 2004, 85, 577, 20.07.2004. Available on: <https://www.riigiteataja.ee/akt/826401>. Accessed January 26, 2022.

⁶³ Review of constitutionality the petition of the President of the Republic to review the constitutionality of the Act to Amend the Dwelling Act and § 121 the Republic of Estonia Principles of Ownership Reform Act: Judgment of the Constitutional Review Chamber of the Supreme Court from December 2, 2004 in the Case No. 3-4-1-20-04., paragraph 16. Available on: <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-20-04>. January 26, 2022.

⁶⁴ *Ibid.*

⁶⁵ Law of Obligations Act, *supra* note 40, Paragraph 299.

⁶⁶ *Ibid.*, Paragraph 300.

⁶⁷ Ave Hussar, *TENLAW: Tenancy Law and Housing Policy in Multi-level Europe. National Report for Estonia*, Bremen, (Germany: Zentrum für Europäische Rechtspolitik der Universität Bremen (ZERP), 2014), p. 123. Available on: https://www.uni-bremen.de/fileadmin/user_upload/fachbereiche/fb6/fb6/Forschung/ZERP/TENLAW/Reports/EstoniaReport_18062014.pdf. Accessed January 26, 2022.

⁶⁸ Law of Obligations Act, *supra* note 40, Paragraph 303.

⁶⁹ *Ibid.*, 301.

⁷⁰ Hussar (2014), *supra* note 67, p. 124.

⁷¹ Civil Code Lithuania, *supra* note 45, Article 6.583.

follows the rule, and nobody enforces it, since it is incomplete.⁷² It should also be noted that the rent cap is not applicable to tenancy contracts concluded in between two natural persons. This pertains the concept of a weaker party in consumer relationships, where one of the parties has to be a professional for the other to be a consumer.

As in Latvia, there is no differentiation between contracts concluded for specified and unspecified term with regards to alterations of rental payment. The modification of rent after the conclusion of a tenancy contract is allowed only if a clause permitting it is included in the contract, or if a mutual agreement is achieved between the parties. As for the former, the rent modification is allowed not more than once a year. Additionally, the parties are not allowed to contract outside the boundaries set by the law on rent increase. Clauses that permit: i) unilateral modification of the amount of rent by the landlord, ii) modification of rent more than once a year, or iii) modification of rent during the first 12 months of the term of the tenancy contract, shall be null and void.⁷³ As opposed to the, theoretical, maximum permitted initial amount of rent which is imposed only to landlords that are legal persons, the prohibition on modifications of rent during the term of the contract is imposed also on private landlords.

In all Baltic countries in practice there exists no first generation rent control, with the exception of Lithuania, where it exists in tenancy law but due to incomplete auxiliary legislation it does not work in practice. However, all of the Baltic countries have second generation rent control, which protects increases in rental payments in already concluded contracts. Similarly, landlords in all three countries have to provide a reason for the increase in rent, which shall be based on increases in costs not profit. Estonia is the only one which treats tenancy contracts for unspecified term differently by allowing unilateral increase in rent even if not explicitly stipulated in the tenancy contract. To compensate for that, tenants are allowed to contest an excessive rent. However, it is just a theoretical possibility, since market level rental payments are explicitly said to be not excessive. It can be deduced that, in relation to rent control and price adjustments, Estonia provides the most flexibility to the landlord with Latvia and Lithuania being equal. Nevertheless, the flexibility is only provided for landlords renting out their dwelling for unspecified term. Therefore, tenants that are occupying a dwelling for a specified term are equally protected among the Baltic states against unexpected increase in rental payments.

3.3 Renewal of tenancy contract

The regulation of renewal of tenancy contracts in Latvia was altered to the detriment of tenants in 2001.⁷⁴ Before the amendments, the tenant was granted a right to ask for an extension to a tenancy contract concluded for specified term. The landlord was only allowed to reject the extension of the tenancy contract, if i) the tenant had breached the previous contract, ii) the landlord urgently needs the dwelling for herself or her family, iii) capital repairs are necessary in the dwelling or the building where the dwelling is located, or the building needs to be demolished, or iv) the contract contained an explicit statement that tenant has to vacate the dwelling when the term has passed. It was modified, so the requirement for the prolongation clause to be included in the tenancy contract, for it to be in

⁷² Mikelēnaitē, *supra* note 23, p. 121.

⁷³ Civil Code Lithuania, *supra* note 45, Article 6.583.

⁷⁴ Grozījumi likumā "Par dzīvojamo telpu īri" [Amendments to law "On Residential Tenancy"], Latvijas Vēstnesis, 110, 20.07.2001. Available on: <https://likumi.lv/ta/id/26316-grozijumi-likuma-par-dzivojamo-telpu-iri>-. Accessed January 26, 2022.

force. If a prolongation clause is not explicitly written in the tenancy contract, it is at landlord's discretion to decide upon prolongation of a tenancy contract requested by tenant. However, the landlord still possesses the right to reject an explicitly stated prolongation in the abovementioned situations i), ii) and iii).⁷⁵ It should be noted, that all tenancy contracts concluded until December 31, 2001 can be renewed according to the old regulation.⁷⁶

The only alteration of a prolonged tenancy contract is its term. All other contractual terms stay intact. Therefore, a tenancy contract that has been prolonged after December 31, 2001, is still regulated by the pre-2002 version of the law On Residential Tenancy⁷⁷. Neither of the versions of the law On Residential Tenancy include automatic prolongation of the tenancy contract. Therefore, it is the requester's obligation to ask for prolongation.⁷⁸ Tacit prolongation of a tenancy contract is also possible according to Civil Law⁷⁹, even if there exists no prolongation clause in the tenancy contract. If the tenant continues to use the dwelling after the term of the contract, continues to pay rent to the landlord, the landlord accepts such payments, and has not requested the tenant to vacate the dwelling, the contract is deemed to be prolonged.⁸⁰ If a dispute arises on the term of a tacitly prolonged tenancy contract, the court decides on it.⁸¹ Due to the freedom of contract, private parties are allowed to decide on the duration of the tenancy contract, including, but not limited to, automatically renewing chain contracts or contracts for life.⁸² These contracts are not void, unless they are fictive in nature or their aim is to circumvent the law.⁸³

In Estonia, specified term residential tenancy contracts terminate upon the expiry of them.⁸⁴ Neither of the parties have an obligation to renew them, unless they so agree or have agreed before concluding the expired contract. Tenancy contracts tacitly renew automatically in Estonia if no action is taken by either party to the contract. Contracts concluded for a specified term that is shorter than two years automatically renew as contracts for unspecified term if tenant continues to use the dwelling, and if no other will is expressed: i) within two weeks from the moment of expiry by the tenant, or ii) within two weeks by the landlord from the moment she learned that the tenant had not vacated the dwelling. Contracts that are concluded for a specified term that is longer than two years possess the same automatic renewal characteristic, except the notification period is prolonged to two months before expiry for both parties to the contract.⁸⁵ As in Latvia, the tacit renewal changes only the term of the contract leaving all other contractual provisions intact.⁸⁶

In Lithuania, tenancy contracts renew automatically upon their expiration if no action is taken by either of the parties. For the contract to expire, the landlord has to notify the tenant in writing three months before the day of expiry on her intentions regarding the

⁷⁵ On Residential Tenancy, *supra* note 31, Section 6.

⁷⁶ *Ibid.*, Transitional Provisions, Article 1.

⁷⁷ Krauze, *supra* note 59, p. 25.

⁷⁸ *Ibid.*, p. 28.

⁷⁹ Civil Law Latvia, *supra* note 28, Section 1488.

⁸⁰ Irene Kull and Ave Hussar, "Elements of stability of tenancy relations in Baltic States", in *Tenancy Law and Housing Policy in Europe: Towards Regulatory Equilibrium*, ed. Christoph U. Schmid, (Cheltenham, the UK: Edward Elgar Publishing, 2018), p. 185.

⁸¹ Krauze, *supra* note 59, p. 24.

⁸² Kolomijceva, *supra* note 51, p. 122.

⁸³ Civil Law Latvia, *supra* note 28, Section 1415, 1438, and 1592.

⁸⁴ Law of Obligations Act, *supra* note 40, Paragraph 309.

⁸⁵ *Ibid.*, Paragraph 310.

⁸⁶ *Ibid.*, Paragraph 312.

renewing of the contract. The renewed contract may be altered by the landlord, including the term and the rental payment. It is the tenant's obligation to reply in writing to the landlord within one month of receiving the proposal for renewal or termination. If no action is taken by the tenant, it is regarded as tacit renewal on the terms proposed by the landlord. However, if the tenant has disagreed with the proposed conditions within the stipulated time limits, it is at landlord's discretion to accept them or apply for a judicial review within one month of receiving the written proposal from the tenant. The court will then decide on the conflicting clauses.⁸⁷ A unique option for the sitting tenant among the reviewed countries, is the priority right to renewal of the tenancy contract against other prospective tenants, if she has duly performed her obligations during the term of the original contract.⁸⁸ If the landlord, after rejecting the sitting tenant's proposal of renewal, rents out the dwelling to another person on the same conditions within one year of the rejection, the former tenant has a right to ask the court to declare the new tenancy contract null and void, as well as claim damages that have arisen due to the termination of the initial contract.⁸⁹

In all three Baltic countries there exists no universal right for the tenant to demand a renewal of an expired tenancy contract. Likewise, all three countries respect tacit prolongation of tenancy contracts. The disparity arises in automatic prolongation of a tenancy contract. In Latvia, the tenant herself is responsible to ask for a prolongation – the tenancy contract does not renew automatically even if a renewal right is specifically stated in the contract. In the other two Baltic countries, tenancy contracts renew automatically if no action is taken by either of the parties. In case of Estonia for unspecified term, and in case of Lithuania – for a term up to one year. Furthermore, Lithuanian law provides for additional safeguard of non-discriminatory nature for the sitting tenant – the priority right against newcomer tenant to conclude a contract on the same terms and conditions as offered to the newcomer. To sum up, Latvian tenants seem to be the least protected and Lithuanian the most. However, the difference mainly lies in regulating the party which has to make an action to renew a tenancy contract. In all three countries, if the landlord wishes, she is allowed to reject renewal of a contract if such a renewal has not been included in the terms of the tenancy contract.

3.4 Unilateral termination of a tenancy contract

In Latvia, a tenant is allowed to terminate the tenancy contract unilaterally by giving a notice to the landlord one month in advance. This is not the case, if the parties have contracted on different terms, or if all of tenant's adult family members living under the same tenancy contract disagree.⁹⁰ Contract freedom between parties is allowed as far as setting a different notification period, retainment of security deposit by the landlord in case of early termination, or other special procedural matters. However, the tenant shall not be deprived of the right to single-handedly terminate the tenancy contract. If a tenancy contract for unspecified term has been concluded by the parties, a notice has to be sent: i) six months in advance, if the payment schedule is less frequent than monthly, ii) a month in advance, if the payment is monthly, and iii) a week in advance if the payment is weekly.⁹¹ The only compensation that the landlord is entitled to must be based on direct losses arisen from

⁸⁷ Civil Code Lithuania, *supra* note 45, Article 6.607.

⁸⁸ *Ibid.*

⁸⁹ Mikelénaitė, *supra* note 23, p. 107.

⁹⁰ On Residential Tenancy, *supra* note 31, Section 28.

⁹¹ Civil Law Latvia, *supra* note 28, Section 2166.

damages to the dwelling, as the tenant is responsible for upkeeping the dwelling in a sound condition.⁹² Landlord shall not be entitled to any unearned profit.⁹³ It is not allowed for the parties to agree on any other terms, besides those written in the law On Residential Tenancy, for the landlord to terminate the contract unilaterally. The only modification allowed that might be for the benefit of the landlord is choosing dispute resolution through arbitration instead of litigation, since arbitration should be less time-consuming than litigation.

The six legal grounds for unilateral termination of a tenancy contract by landlord are presented in the following paragraph. Firstly, if the tenant: i) damages or destroys the rental dwelling, ii) uses the dwelling for unintended purposes, or iii) violates in another way the conditions of use of the dwelling by making other people living in the same common apartment or house unbearable.⁹⁴ The common factor of all three termination grounds is a breach of contract or law. The court shall evict the tenant and all her family members, without asking the landlord to provide them with a dwelling of similar quality on the same terms as in the original contract.⁹⁵ It should be noted that illegal construction performed by the tenant in the dwelling does not constitute sufficient basis for termination of a contract.⁹⁶ Secondly, if the tenant: i) owes rental payments for more than three months, although she could use the dwelling without limits, or ii) does not pay for basic services (cold water, sewage, heating, garbage disposal) for more than three months.⁹⁷ As all adults living in the dwelling under the same tenancy contract are jointly liable for rent payments, all of them, not only the tenant, shall be evicted by court without providing another dwelling. For the liability to arise, it has to be proven that the tenant was able to use the dwelling and basic services without restrictions in full amount.⁹⁸ Thirdly, if the landlord has taken a decision to tear down the building where the dwelling is located.⁹⁹ The obligation to provide the tenant with a substitute dwelling of similar quality applies irrespective of the reasons for demolition of the building, *e.g.*, the building is in an emergency technical condition. It is the landlord's duty to take care of the building and keep it in a sound technical condition.¹⁰⁰ The court is to decide if the provided substitute dwelling is of similar quality, by evaluating, beside other circumstances, the size and technical condition of the dwelling.¹⁰¹ Fourthly, if the landlord has decided to perform capital repairs of the dwelling or the building where the dwelling is located, and it cannot be performed with tenant occupying the dwelling.¹⁰² Landlord has to provide the tenant with a similar dwelling, analogously to situation of building demolition. Additionally, the landlord has to prove the validity of her intentions.¹⁰³ It can be achieved by

⁹² On Residential Tenancy, *supra* note 31, Section 42.

⁹³ Kalvis Torgāns, Andris Grūtups, Gunta Višņakova, Sandis Petrovičs, Erlens Kalniņš, Kaspars Balodis, Agris Bitāns, *Latvijas Republikas Civillikuma komentāri: Ceturtā daļa. Saistību tiesības* [Commentary on the Civil Law of the Republic of Latvia: Part Four. Law of Obligations], (Riga, Latvia: Mans Īpašums, 2000), p. 484.

⁹⁴ On Residential Tenancy, *supra* note 31, Section 28¹.

⁹⁵ Krauze, *supra* note 59, p. 100.

⁹⁶ Republic of Latvia Supreme Court Senate Judgment in case Nr. SKC-191/2004. Available on: http://www.at.gov.lv/files/uploads/files/docs/summaries/2004/Apkopojums_Par_dzivojamo_telpu_iri.dqc. Accessed January 26, 2022.

⁹⁷ On Residential Tenancy, *supra* note 31, Section 28².

⁹⁸ Krauze, *supra* note 59, p. 114.

⁹⁹ On Residential Tenancy, *supra* note 31, Section 28³.

¹⁰⁰ Krauze, *supra* note 59, p. 120.

¹⁰¹ *Ibid.*, p. 121.

¹⁰² On Residential Tenancy, *supra* note 31, Section 28⁴.

¹⁰³ Civil Procedure Law, *supra* note 39, Section 93.

providing the tenant and the court with appropriate documents that present: i) the need for the capital repairs, ii) approval of the reconstruction project by the building authority, and iii) sufficiency of financial means to perform the capital repairs. A landlord who owns a denationalized property is exempt from the obligation to provide the tenant with a substitute dwelling, if the property was denationalized more than seven years ago. However, it is only applicable if the denationalized house is kept as a residential building after reconstruction. The exception from the norm in a way 'rewards' the landlords for having acquiesced with the rent ceiling and other tenant protective measures of the tenancy law, by making it financially more viable to reconstruct their inherited buildings. However, if the tenant has been categorized by the municipality as financially disadvantaged, the process of eviction can be postponed until the municipality provides the tenant with a dwelling.¹⁰⁴ In reality, this can mean that the landlord is forced to continue to fulfil the social responsibility of the municipality for an indefinite time. Fifthly, if the dwelling is needed for personal use for the landlord. Yet, this clause is only applicable to landlords that are: i) natural persons, and ii) the original owners of the denationalized house, or their heirs.¹⁰⁵ The landlord has to prove to the tenant and the court the need for the apartment. There exist no prescribed conditions that have to be fulfilled. Each case has to be evaluated individually.¹⁰⁶ The municipal government has to provide the tenant, irrespective of her financial well-being, with a similar dwelling within a year of landlord's application. Therefore, the eviction can take place only after the substitute dwelling is provided. The conditions in this clause are more limited, as they do not apply to landlord's who have acquired a denationalized house in a different manner than inheritance. Nevertheless, the definite obligation for the municipal government to provide the substitute dwelling within a year is less uncertain as the obligation in the previous clause. Sixthly, if: i) the tenant has sub-rented the dwelling without consent of the landlord, or ii) other persons live in the dwelling unlawfully.¹⁰⁷ As this is a breach of the contract by the tenant, she shall be evicted by the court without providing a substitute dwelling. However, the burden of proof lies on the landlord in this situation. In reality, it is problematic to prove the fact that other persons live in the apartment besides the tenant, her family and other people lawfully living there. The tenant is allowed to invite guests, yet there are no laws which prescribe the duration which distinguishes visiting from permanently living in a dwelling. Moreover, the tenant should be notified of the breach in writing at least one month in advance of eviction. If the breach is cured during this one month, then the eviction shall not take place as the foundation of it has vanished.¹⁰⁸

In Estonia, the rights to unilateral termination of a tenancy contract can be classified in four separate groups: i) ordinary termination of a tenancy contract for specified term, ii) extraordinary termination of a tenancy contract for specified term, iii) ordinary termination of a tenancy contract for unspecified term, and iv) extraordinary termination of a tenancy contract for unspecified term.

A contract that is concluded for a specified term ends upon expiry of it. There are no ordinary grounds for either party to terminate it any sooner.¹⁰⁹ Termination in extraordinary procedure can be done immediately. However, the reason for terminating the contract extraordinarily shall be declared good of, if the terminating party cannot "...be presumed to

¹⁰⁴ Krauze, *supra* note 59, p. 126.

¹⁰⁵ On Residential Tenancy, *supra* note 31, Section 28⁵.

¹⁰⁶ Krauze, *supra* note 59, p. 130.

¹⁰⁷ On Residential Tenancy, *supra* note 31, Section 28⁶.

¹⁰⁸ Krauze, *supra* note 59, p. 132.

¹⁰⁹ Law of Obligations Act, *supra* note 40, Paragraph 309.

continue performing the contract taking into account all the circumstances and considering the interests of both parties¹¹⁰. The terminating party shall have a compelling reason.¹¹¹ A non-exhaustive list of compelling reasons for the landlord to terminate a tenancy contract is provided for in the law as follows: i) the dwelling is used by the tenant for non-stipulated reasons, without prudence, or by disturbing neighbours and other residents of the building¹¹², ii) the tenant breaches the payment terms considerably (owes more than three months of rent, or has not made any due payment for at least three months)¹¹³, iii) the dwelling is in a condition that possesses a serious health hazard to its residents¹¹⁴, or iv) the tenant is bankrupt¹¹⁵. Extraordinary reasons for a tenant to terminate a contract include, beside others, the situation when a tenant cannot use the dwelling for reasons dependant on the landlord.¹¹⁶ A compelling reason is interpreted by the Estonian Supreme Court as always being unexpected to the parties. Additionally, the court should consider whether the terminating party's interest is more significant and would become seriously damaged if the contract was not terminated prematurely.¹¹⁷ Furthermore, if the circumstances on the basis of the extraordinary termination arise from the party requesting the termination, it amounts to a breach of the contract. Thus, the party requesting termination may be liable to pay a reasonable compensation to the other party.¹¹⁸ A special regulation applies for long-term contracts that are concluded for longer than 30 years. Either of the parties to the contract are allowed to terminate it after at least 30 years have passed in an ordinary procedure.¹¹⁹ This exception cures for 'erroneous' decisions made in the past, for example, the conclusion of a long-term contract for a fixed rental payment which after 30 years has significantly lost its value in real terms due to inflation. However, this type of exit is not allowed if the contract has been concluded upon death of one of the parties.¹²⁰

Estonian legislation treats tenancy contracts concluded for unspecified term similar as lease contracts are treated in Latvian Civil Law¹²¹. Therefore, the landlord has equivalent rights to the tenant in terminating a tenancy contract concluded for unspecified time. The difference between ordinary and extra ordinary termination rests in the delivery time of the notification of the intention to terminate the contract to the other party. In ordinary procedure both parties can terminate the contract by delivering a notification three months in advance (if parties have not mutually agreed on a longer term).¹²² Termination on extraordinary grounds must be made in the same procedure as discussed above for contracts concluded for definite term.

For all of the situations listed above, Estonian law provides for an additional protective measure for the tenants. They are allowed to contest the termination of the

¹¹⁰ *Ibid.*, Paragraph 313.

¹¹¹ Ave Hussar and Irene Kull, "The Landlord's Limited Right to Terminate a Residential Lease Contract: Estonian Law in Comparative Perspective", *Juridica International* 24 (2016), p. 81.

¹¹² Law of Obligations Act, *supra* note 40, Paragraph 315.

¹¹³ *Ibid.*, Paragraph 316.

¹¹⁴ *Ibid.*, Paragraph 317.

¹¹⁵ *Ibid.*, Paragraph 319.

¹¹⁶ *Ibid.*, Paragraph 314.

¹¹⁷ Republic of Estonia Supreme Court Judgment of 21 May 2004 in case Nr. 3-2-1-62-04, paragraph 14. Available on: <https://www.riigiteataja.ee/akt/762224>. Accessed January 26, 2022.

¹¹⁸ *Ibid.*, Paragraph 18.

¹¹⁹ Law of Obligations Act, *supra* note 40, Paragraph 318(1).

¹²⁰ *Ibid.*, Paragraph 318(2).

¹²¹ Civil Law Latvia, *supra* note 28, Section 2166.

¹²² Law of Obligations Act, *supra* note 40, Paragraph 312.

contract and invoke a hardship clause, which enables the prolongation of the contract for up to three years. It has to be proven by the tenant that the termination of the contract will result in serious consequences for her or her family.¹²³

In Lithuania, the tenant has a right to unilaterally terminate any tenancy contract by giving a notification in writing to the landlord one month in advance. However, if the tenant fails to deliver such written notification and vacates the dwelling, the landlord is entitled to claim damages that have arisen to her due to this. The tenant, after delivering the notification, is still allowed to reverse her intentions and recall the notification. If the dwelling has not been rented out to another tenant already, the landlord is obliged to continue the contract with the sitting tenant. If the tenant, together with her present and former family members occupying the dwelling move elsewhere, the contract is deemed to be terminated from the day the dwelling was vacated.¹²⁴ Therefore, the right of reversing the intentions is only exploitable if the tenant has not already vacated the dwelling. In case of the tenant's decision to terminate the contract, the landlord is allowed to visit the dwelling for inspection, and to present it to prospective future tenants.¹²⁵ This is a practical clause that is often included in the tenancy contracts. By making it an imperative norm the inspection is still possible, even if it was not explicitly mentioned in the tenancy contract.

Similar to Estonia, also in Lithuania contracts concluded for specified and unspecified term are treated differently regarding the unilateral termination of them. A contract that is concluded for a specified term may only be prematurely terminated by the landlord if the tenant has breached the contract. As in Latvia, an exhaustive list of breaches that may trigger termination of the tenancy contract by the landlord is provided. The list includes: i) an arrear of rent or public utility services for more than three months (except, if a longer term has been agreed upon in the contract), ii) damaging or destroying the dwelling by tenant, her family members or other persons residing with her in the same dwelling, iii) using the dwelling for other purposes than designated by the tenancy contract, or iv) acting in an improper way which renders it impossible for other persons to lead a normal life in the same dwelling or neighbourhood. By terminating the contract on the grounds of a breach, the landlord does not have to provide a substitute dwelling to the tenant.¹²⁶ However, any unilateral premature termination of the tenancy contract by the landlord shall be approved exclusively in judicial proceedings.¹²⁷ Contracts that are concluded for unspecified time, may be unilaterally terminated by the landlord by giving a written notification to the tenant six months in advance.¹²⁸ As opposed to Estonia, the landlord can terminate the contract without providing any reason to the tenant.

All three Baltic countries allow the tenant to terminate a tenancy contract freely with no limitations. Tenants in Latvia are the most protected, as tenancy contracts for both, specified and unspecified term, are equally protected against termination by the landlord. The Estonian and Lithuanian regulation protects contracts concluded for a specified term alike. In both countries, same as in Latvia, the landlord has a very limited right with grounds prescribed in the law to unilaterally terminate the contract. Lithuanian regulation allows the termination of tenancy contracts for an unspecified term without any limitations, whereas the

¹²³ *Ibid.*, Paragraph 326.

¹²⁴ Civil Code Lithuania, *supra* note 45, Article 6.609.

¹²⁵ *Ibid.*

¹²⁶ Civil Code Lithuania, *supra* note 45, Article 6.611.

¹²⁷ *Ibid.*, Article 6.610.

¹²⁸ *Ibid.*, Article 6.614.

Estonian regulation provides a little more protection to the tenant by stipulating the need to reason the termination in good faith or good practice. Additionally, the Estonian law provides a hardship excuse for the tenant by allowing her to postpone the termination of a contract for up to three years. According to Kull and Hussar, one best practice is hard to define. However, it seems that the stringent Latvian regulation, preventing the raising of rent and termination of a tenancy contract for unspecified term, may hinder the offer side of the market.¹²⁹

3.5 Change of ownership of the dwelling

The principle of 'sale breaks hire' [Kauf bricht Miete] has been known already in the laws of Ancient Rome. At that time there existed an abundance of land, therefore the tenant could find another land plot to rent without great difficulty, and ask the landlord for compensation of the damages. From a theoretical perspective this is also valid, since the property rights prevail over obligations. However, in light of social justice in the second half of the 19th century an opposite principle was set forth to the German legal system – 'sale does not break hire' [Kauf bricht nicht Miete].¹³⁰ Nowadays, the latter principle is more widely accepted in Europe than the former.¹³¹

Latvian legal system honours both of the principles – 'sale breaks hire' and 'sale does not break hire'. Under Civil Law a tenancy and lease contract is binding to third persons only if it is registered in the Land Register.¹³² If the tenancy or lease contract is not registered in the Land Register, the new owner of the dwelling may decide to terminate it unilaterally. In that situation the previous owner has breached her obligation to uphold the contract, thus she can be liable for damages incurred by the tenant.¹³³ However, as the situation is also described in the law On Residential Tenancy, it overrides the general legal norms of the Civil Law. Sale of a residential dwelling does not break residential tenancy contracts concluded for the use of that dwelling by any of the previous owners, even if they are not registered in the Land Register.¹³⁴ The residential tenancy contract is binding to the new owner irrespectively if the ownership was changed by a civil contract, restitution, or denationalization.¹³⁵ The principle is also present in the law on restitution¹³⁶ and denationalization¹³⁷, explicitly noting the binding nature of the soviet time tenancy contracts on the new landlords.

The principle of 'sale does not break hire' has caused a significant amount of discussion in the legal society in Latvia. The problems identified arise in: i) forced sale auction of a property when the new owner was not aware of the existing residential tenancy

¹²⁹ Kull and Hussar, *supra* note 80.

¹³⁰ Konstantīns Čakste, *Civiltiesības. Lekcijas. Raksti* [Civil rights. Lectures. Articles], (Riga, Latvia: Zvaigzne ABC, 2011), p. 174.

¹³¹ On Compliance of the First Sentence of Section 8 of the Law On Residential Tenancy with Section 105 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court of the Republic of Latvia from July 7, 2014 in the Case No. 2013-17-01, p. 14. Available on: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2013/10/2013-17-01_Spriedums_ENG.pdf#search=. Accessed January 26, 2022.

¹³² Civil Law Latvia, *supra* note 28, Section 2126.

¹³³ *Ibid.*, 2174.

¹³⁴ On Residential Tenancy, *supra* note 31, Section 8.

¹³⁵ Krauze, *supra* note 59, p. 34.

¹³⁶ Restitution Law Latvia, *supra* note 38, Section 12.

¹³⁷ Denationalization Law Latvia, *supra* note 37, Section 12.

contract during the auction¹³⁸, ii) regular purchase of a residential real estate with 'surprise' tenancy contracts¹³⁹, and iii) fictive tenancy contracts concluded in bad faith by the debtor before losing the property in auction¹⁴⁰. The principle has also been contested on conformity with Article 105 of Constitution of Latvia.¹⁴¹ The case was joined of two separate submissions to the court, which contested the same norm of the law On Residential Tenancy. Nevertheless, they differed by the way the encumbered property was acquired – auction or purchase. However, the submission where the encumbered property was purchased was later dropped by the court due to inactivity of the submitter. The Constitutional Court declared that the principle of 'sale does not break hire' is compatible with the particular case of auction sale, since: i) it inherently possesses a higher amount of risk than general sale¹⁴², ii) the benefit of the public exceeds the loss of the individual¹⁴³, and the fact that contested norm can be abused *per se* does not make it inconsistent with the Constitution¹⁴⁴. However, if the submission where the property was acquired in general sale had not been dropped, the outcome could have been different, as the grounds for conformity would have been insufficient.¹⁴⁵

The principle of 'sale does not break hire' is respected also in Estonian legislation. For more clarity, the transfer of the property due to bankruptcy proceedings or in forced auction sale is explicitly listed as not breaking the existing tenancy agreement.¹⁴⁶ To protect the acquirer of the property from 'surprise tenancy agreements', the possession of the dwelling by the tenant is necessary. It allows the new owner to be aware of existing tenancy agreements by visiting the dwelling before purchasing it.¹⁴⁷ Furthermore, the new owner of the property is allowed to terminate a specified term tenancy contract prematurely if she urgently needs the dwelling for her personal use. The lawful termination still leaves the seller of the property liable for damages incurred by the tenant.¹⁴⁸ However, the threshold for 'urgent need' is set rather high by the Supreme Court of Estonia. Simply increasing profit does not constitute 'urgent need'.¹⁴⁹ Only registration of a specified term tenancy contract in the Land Register safeguards it against premature termination. For the benefit to the tenant, she is allowed to demand the landlord for the contract to be registered in the Land Register.¹⁵⁰

Lithuania is an outlier regarding the status of the tenant if the ownership of the dwelling is changed. The tenancy contract shall remain in force and be binding on the new owner of the dwelling only if it had been registered in the Public Register within the

¹³⁸ Jānis Lapsa, "Dzīvojamās telpas īres līguma saistošais spēks" [The Binding Nature of a Tenancy Contract], *Jurista Vārds* No. 30 832 (2014), p. 3. Available on: <https://juristavards.lv/doc/264948-dzivojamas-telpas-ires-liguma-saistosais-speks/>. Accessed January 26, 2022.

¹³⁹ *Ibid.*

¹⁴⁰ Rolands Neilands, "Fiktīvie īres līgumi", *Jurista Vārds* No. 38 941 (2016). Available on: <https://juristavards.lv/doc/269296-fiktivie-ires-ligumi/>. Accessed January 26, 2022.

¹⁴¹ Constitutional Court Latvia (2014), *supra* note 131.

¹⁴² *Ibid.*, p. 28.

¹⁴³ *Ibid.*, p. 38.

¹⁴⁴ *Ibid.*, p. 37.

¹⁴⁵ Lapsa (2014), *supra* note 138, p. 3.

¹⁴⁶ Law of Obligations Act, *supra* note 40, Paragraph 291.

¹⁴⁷ Kull and Hussar, *supra* note 80, p. 190.

¹⁴⁸ Law of Obligations Act, *supra* note 40, Paragraph 323.

¹⁴⁹ Republic of Estonia Supreme Court Judgment of 23 April 2008 in case Nr. 3-2-1-80-08, paragraph 13. Available on: <https://www.riigiteataja.ee/akt/13023948>. Accessed January 26, 2022.

¹⁵⁰ Law of Obligations Act, *supra* note 40, Paragraph 324.

procedure established by laws.¹⁵¹ Consequently, the tenancy contract may only be invoked against third persons if it is registered in the Public Register.¹⁵² The registration of a tenancy contract in the Public Register is voluntary.¹⁵³ Moreover, the parties have to mutually agree to initiate the registration. Most of the times the landlord is against the registration of the tenancy contract in the Public Register, since unregistered tenancy contracts: i) allow for easier tax evasion¹⁵⁴, and ii) allow the landlord to sell the dwelling for a higher price, since the new owner is free to decide on the use of it. The registration also involves costs, which might hinder both parties from performing it. Nonetheless, the tenant has the right to terminate the lease contract unilaterally if the ownership of the dwelling is changed.¹⁵⁵

Only Latvian laws guarantee absolute protection against termination of a tenancy contract, if the ownership of a dwelling is changed. Estonia comes close, as the tenancy contract can be terminated by the new owner only if she needs the dwelling for her personal use. However, threshold of own need is set rather high by the Estonian courts and the previous owner is liable for damages incurred by the tenant if the tenancy contract is terminated. Additionally, the tenant can demand the tenancy contract to be registered in the Land Register which guarantees absolute protection of it. In Lithuania tenants are the least protected as the principle of 'sale does not break hire' is applied only to tenancy contracts registered in the Public Register. To a further detriment, only the landlord has a right to register the tenancy contracts in the Public Register. As such registration impairs the possible of tax evasion by landlord and lowers the value of her property, it is most of the times not performed.

3.6 Dispute resolution

All disputes in Latvia related to residential tenancy shall be brought to court in general proceedings.¹⁵⁶ Rental Boards can be established by municipal authorities. Until today such institution exists only in Riga.¹⁵⁷ However, the decisions of the Rental Board are only recommendations, and if either of the party disagrees with them, they can be appealed in the first instance courts. According to the Civil Procedure Law, alternative dispute resolution in arbitration proceedings or through mediation is allowed.¹⁵⁸ Krauze believes that there are no practical benefits for choosing alternative dispute resolution between parties instead of litigation.¹⁵⁹ However, it could be argued that a benefit exists – time economy. Decision of an arbitral tribunal is binding and cannot be appealed by the parties. Additionally, arbitral proceedings take only six weeks.¹⁶⁰

In Estonia, disputes arising from tenancy contracts similarly to other civil matters are litigated in regular courts. The claim shall be filed in the county court according to the

¹⁵¹ Civil Code Lithuania, *supra* note 45, Article 6.585.

¹⁵² *Ibid.*, Article 6.579.

¹⁵³ Lietuvos Respublikos nekilnojamojo turto registro įstatymas [Law on the Real Estate Register of the Republic of Lithuania], Valstybės žinios, Nr. 100-2261, 16.10.1996, Article 15. Available on: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.31770/asr>. Accessed January 26, 2022.

¹⁵⁴ Mikelénaitė, *supra* note 23, p. 89.

¹⁵⁵ Civil Code Lithuania, *supra* note 45, Article 6.494.

¹⁵⁶ On Residential Tenancy, *supra* note 31, Section 50.

¹⁵⁷ Rīgas pilsētas Īres valde [Riga City Rental Board]. Available on: <https://mvd.riga.lv/nozares/rigas-pilsetas-ires-valde/>. Accessed January 26, 2022.

¹⁵⁸ Civil Procedure Law, *supra* note 39, Section 23.

¹⁵⁹ Krauze, *supra* note 59, p. 34.

¹⁶⁰ Riga Arbitration Court, p 5. Available on: https://court.lv/download/court_presentation_en.pdf. Accessed January 26, 2022.

location of the dwelling.¹⁶¹ County courts are first instance courts and their judgment can be appealed in the standard procedure to circuit courts as second instance courts¹⁶², and the Supreme Court as third instance¹⁶³. Additionally, municipal entities are allowed to establish Lease Committees for resolution of tenancy disputes in their territories.¹⁶⁴ Lease Committees are independent institutions. Their decisions can be challenged in regular courts, though only if there is not a final decision by a Lease Committee already in force on an exact same dispute.¹⁶⁵ The use of arbitral tribunals for dispute resolution can be agreed upon by parties. However, they can only be used for disputes relating to rental payments of tenancy contracts. A choice of an arbitral tribunal shall be null and void, if the dispute is related to validity or cancellation of residential tenancy contract, or vacating a dwelling thereof.¹⁶⁶

Also in Lithuania, tenancy disputes are resolved in courts in general proceedings as they are in connection with or arising out of civil relationships.¹⁶⁷ There is no special jurisdiction for tenancy disputes.¹⁶⁸ However, parties are allowed to choose arbitration as a place for dispute resolution.¹⁶⁹ Typically time for dispute resolution in arbitral proceedings is less than in litigation in national courts¹⁷⁰ However, if the landlord is a legal person, and if the arbitral clause in the tenancy contract was part of a standard contract that could not be modified by the tenant before signing, it can be declared null and void according to consumer law.

To compare the time parties might have to spend in dispute resolution in general court proceedings, the average amount of time for court proceedings in the Baltic states is displayed in Figure 1. As can be seen, the time needed for court proceedings varies greatly among the Baltic states. Dispute resolution in all three instances combined in Latvia takes approximately 50% more time than in Estonia, and around the same time as in Lithuania. By assuming that not the majority of disputes are appealed in all three instances, the difference is even more prominent. Proceedings in the first instance in Latvia on average take more than 200 days, which is approximately two times more than in the other Baltic states.

¹⁶¹ Tsviilkohntumenetluse seadustik [Code of Civil Procedure], RT I 2005, 26, 197, 20.04.2005, Paragraph 99. Available on: <https://www.riigiteataja.ee/en/eli/513122013001/consolide>. Accessed January 26, 2022.

¹⁶² *Ibid.*, Paragraph 12.

¹⁶³ *Ibid.*, Paragraph 13.

¹⁶⁴ Üürivaidluse lahendamise seadus [Lease Dispute Resolution Act], RT I 2003, 15, 86, 22.02.2003, Paragraph 2. Available on: <https://www.riigiteataja.ee/akt/992494>. Accessed January 26, 2022.

¹⁶⁵ Hussar (2014), *supra* note 67, p. 94.

¹⁶⁶ Code of Civil Procedure EE, *supra* note 161, Paragraph 718.

¹⁶⁷ Lietuvos Respublikos Civilinio Proceso Kodekso Patvirtinimo, Įsigaliojimo Ir Įgyvendinimo Įstatymas [Code of Civil Procedure of the Republic of Lithuania], Valstybės žinios, Nr. 36-1340, 06.04.2002, Article 22. Available on: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.162435>. Accessed January 26, 2022.

¹⁶⁸ Mikelénaitė, *supra* note 23, p. 88.

¹⁶⁹ Code of Civil Procedure LT, *supra* note 167, Article 23.

¹⁷⁰ Vilnius Court of Commercial Arbitration. Available on: <https://www.arbitrazas.lt/steigejai.htm>. Accessed January 26, 2022.

Time needed to resolve litigious civil and commercial cases at all court instances, 2019 (instance/in days)

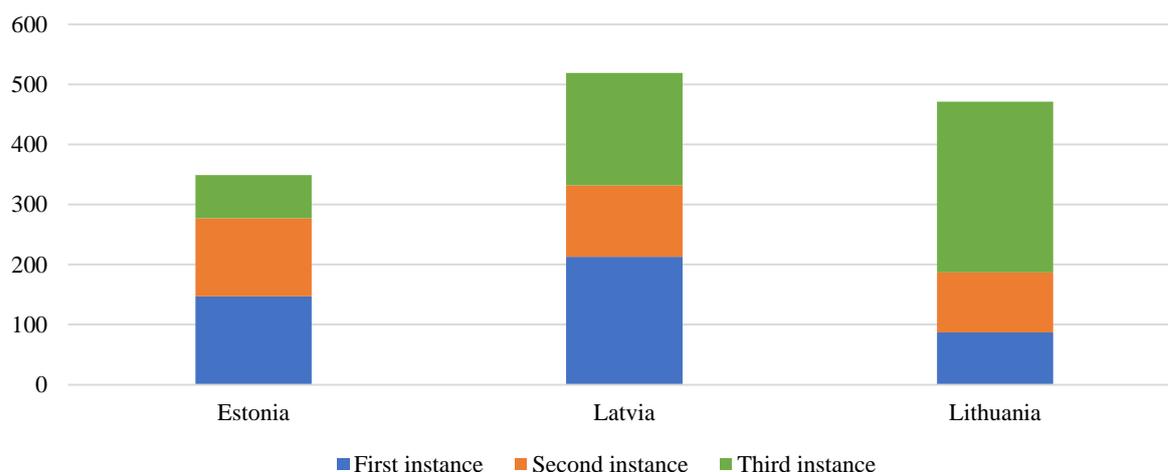


Figure 1. Time needed to resolve litigious civil and commercial cases at all court instances, 2019.¹⁷¹

All three Baltic states regard disagreements over tenancy contracts as civil disputes, thus they have to be litigated in standard proceedings in courts. Riga and Tallinn municipalities have established special municipal bodies for such disputes. However, their decisions are not binding and can be appealed in general courts. Latvia and Lithuania both allow alternative dispute resolutions through arbitral proceedings to settle all matters related to disputes over tenancy matters. Nevertheless, the most prominent difference among the Baltic states is in the time it takes to settle disputes in court proceedings, which on average is almost twofold in first instance courts in Latvia.

3.7 Remarks on balance of tenancy relationships

All of the Baltic States have a *lex specialis* for regulation of residential tenancy relationships. The freedom of contract is limited, in order to provide the tenant more stability. However, more stability for tenant concurrently means less flexibility for landlord. Both, Estonia and Lithuania, have adopted new laws for tenancy regulation at the beginning of this millennium right before joining the European Union. The Latvian pre-2021 law regulating the aspects of residential tenancy is from 1993. Consequently, its main purpose at the time of introduction was to prevent a social unrest by protecting the sitting tenants in light of restitution and privatization.¹⁷²

First generation rent controls, which limit by law the initial amount of rent a landlord can charge to a tenant, are in reality foregone in the Baltic states. They existed for all dwellings in Estonia up to 1998, and for dwellings in denationalized houses in Estonia until 2004 and Latvia until 2006. They were introduced as a safeguard against social unrest in the

¹⁷¹ European Commission, *The 2021 EU Justice Scoreboard*, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions COM(2021) 389, p.10. Available on: https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2021.pdf. Accessed January 26, 2022.

¹⁷² Jānis Lapsa, "Dzīvojamo telpu īres tiesiskās attiecības noteikti gaida pārmaiņas" [Residential tenancy relations are bound for change], *Jurista Vārds* No. 7 809 (2014), p. 19. Available on: <https://juristavards.lv/doc/263807-dzivojamo-telpu-ires-tiesiskas-attiecibas-noteikti-gaida-parmainas/>. Accessed January 26, 2022.

times when the countries were transferring from planning to market based economies. Nevertheless, on both occasions such stringent limitations to landlord's right to use her property were deemed incompatible with the Constitution. As a paradox, this type of rent control was never practically introduced in Lithuania, however, it is theoretically present at the moment. This situation exists due to incomplete auxiliary legislation which would set the actual limits on rental payments. Second generation rent control, besides limiting if and how rental payments for existing and new tenancy contracts can be increased, governs also maintenance and landlord – tenant relationship.¹⁷³ Laws stipulate such limitations in all three Baltic countries. Increases in rental payments have to be explained to the tenant and based on the actual increase in maintenance costs of the building where the dwelling is located. In such way an unjust enrichment of landlords is prohibited. Major differences exist in the treatment of tenancy contracts for unspecified term. Estonian legislation allows for unilateral increases in rental payments, which is a logic counterpart to the permitted unilateral termination of the unspecified term tenancy contract by the landlord. Latvian and Lithuanian tenancy laws treat tenancy contracts for specified and unspecified term alike in relation to rental payment increase. Too stringent rules on rent controls may seriously harm landlords that have concluded tenancy contracts soon after the regaining of independence of Baltic states, since the transition to the market economy brought with itself substantial rates of inflation and necessary investments in building maintenance. That, together with ageing and deterioration of housing stock, not only disrespects landlords' right to a profit, but also harms tenants' living conditions, as rental payments often do not cover even the upkeep of the property.¹⁷⁴

None of the Baltic states provide the tenant with an unconditional and universal right to renewal of a tenancy contract. Before the amendments that came in force in 2002, Latvian tenancy law presupposed such renewal, if it specifically had not been repudiated in the tenancy contract. However, after alteration the contract terminates upon expiry of it and the parties need to renegotiate the prolongation of it, if they have not agreed on the opposite in the initial contract. Automatic renewal of tenancy contracts is still in force in Lithuania and Estonia, if neither of the parties have not expressed a will to discontinue their contractual relationship. Nevertheless, automatic renewal should not be confused with an unconditional right to renewal. An automatic renewal occurs only if both parties have remained silent. Moreover, the tenancy contract is automatically renewed for only up to a year in Lithuania and into a contract for unspecified term in Estonia. Such rules focus on the mere procedural actions of delivering termination notifications and ignore the substance of the will of the parties, which is expressed in the term of the tenancy contract. Similarly, the interpretation of the Latvian courts which denies the prolongation of a tenancy contract which contains a prolongation clause because of an undelivered notification to the landlord by the tenant, ignores the substance of the tenancy contract. Automatic renewal can well be substituted with the tacit renewal which is enshrined in the Civil Law in all three countries. It corrects for oblivion, by focusing on the actions of both parties. The priority right for the sitting tenant that is present in the Lithuanian legislation cures for potential ill-founded discrimination by the landlord in the process of contract renewal.

¹⁷³ Richard Arnott, "Rent Control", in *The New Palgrave Dictionary of Economics and the Law*, ed. Peter Newman, (London, the UK: Palgrave Macmillan UK, 2002), p. 1705.

¹⁷⁴ Jānis Lapsa, "Likumprojekta "Dzīvojamā telpu īres likums" svarīgākie aspekti" [Most important issues of "Draft Law on Residential Dwelling Tenancy"], *Jurista Vārds* No. 23 1029 (2018): p. 18. Available on: <https://juristavards.lv/doc/272845-likumprojekta-dzivojamo-telpu-ires-likums-svarigakie-aspekti/>. Accessed January 26, 2022.

Parties are free to choose between entering into specified or unspecified term contracts. The asymmetries of tenancy relationship allow tenants in all Baltic states to terminate the tenancy contracts unilaterally without stating specific reasons. To increase stability for tenants, landlords are allowed to unilaterally terminate the tenancy contracts only in situations provided for in the law. An extraordinary situation occurs in Latvia regarding the termination of contracts concluded for unspecified term since they are treated equally to contracts for specified term. By entering this type of contract, landlord has to be aware that terminating it will not be possible unless the tenant is in breach of it. In the other two countries, contracts for unspecified term allow for more equal distribution of flexibility between the parties. Specified term contracts are equally regulated among the countries, by safeguarding the tenant from unexpected decisions by the landlord. At the same time, by renting out the dwelling for a specified term, the landlord is able to better calculate her return, risk and expected inflation during the term of the contract. Erroneous assumptions of future inflation can be cured by the limited term of the tenancy contract. Consequently, there exists a certain tendency towards time limited contracts.¹⁷⁵

Registration in the Land Register is an absolute shield of protection for tenants in all three Baltic countries in case of the change of ownership of the dwelling they are occupying. The reasoning supporting it is that the acquirer of the dwelling could not have been unaware of the existing tenancy contract. However, the principle of 'sale does not break hire' is respected in Latvia and Estonia also in cases where the tenancy contract is not registered in the Land Register. The Latvian law protects an unregistered tenancy contract on the same level as a registered one. Although, there has been a considerable amount of discussion of it in the legal and business society, the Constitutional Court approved the principle's conformity with the Constitution. The main arguments in support of such decision being that: i) the benefits to the public in form of tenure security and inviolability of private life exceed the damage caused to an individual's rights and legal interests, and ii) the fact that a legal norm can be abused *per se* does not make it incompatible with the Constitution. Similarly, the Estonian law provides a high degree of protection for unregistered tenancy contracts by allowing termination only if the new owner urgently needs the dwelling for own use. Additionally, the tenant is granted to demand for the tenancy contract to be registered in the Land Register. The least protection in this matter is granted in Lithuania where only registered contracts are protected against termination after change of ownership. The Estonian system seems to be the most balanced one. As the new landlord has an option to use the acquired dwelling herself even if she was not aware of an existing tenancy contract, at the same time granting contract registration rights to the tenant.

On many occasions, even in light of the most sophisticated tenancy law, landlords and tenants cannot come to an agreement and disputes arise. All of the Baltic states regard disputes over tenancy issues as civil disputes and they are, by default, to be litigated in standard proceedings in general courts. However, Latvian and Lithuanian law allows the parties to choose arbitration instead of litigation if they so wish. Such choice should result in time economy. Time economy arising from more effective court proceedings is of utmost importance to landlords. Private landlords are profit oriented. In some instances, their dwellings might be mortgaged and require regular mortgage payments. Therefore, regularity of cash flow is as important as profit. Furthermore, on many occasions tenants who have failed to pay rent have no official income. Thus, the arrears, even if there exists a court decision, might never be repaid to the landlord. In case of a long court dispute the defaulting

¹⁷⁵ Kull and Hussar, *supra* note 80, p. 195.

tenant keeps occupying the dwelling and the arrears continue to rise. This situation not only lowers the profit, but might lead to default on mortgage payments by landlord. The average time of court proceedings in three instances is similar in Latvia and Lithuania, however, it is almost 50% longer than in Estonia. As not all disputes are litigated in all three instances, the time needed for litigation in lower court instances is even more important. The average time of first instance court proceedings is approximately two times longer in Latvia than in the other Baltic states.

An effective tenancy regulation should offer stability to tenants and flexibility to landlords. Finding the right balance is crucial, as a well-developed tenancy market requires strong demand and strong supply at the same time. Private landlords are profit oriented. Thus, they take a decision to offer their dwelling for rent not for social reasons. All the reviewed aspects of tenancy regulation offer stability for tenant and decrease the flexibility of landlord. The higher the expected stability of tenancy, the higher the demand for such type of tenure. Nevertheless, the loss in flexibility can be justified as the landlord is compensated in monetary terms for the loss of right to freely use her property. However, if the monetary compensation is deprived from the landlord, the loss of right to freely use her property does not seem appealing to her anymore. As a consequence, the efficiency of judicial proceedings is the most important aspect to the landlord in lowering the risk of loss of profit and distortions to cash flow.

Based on the qualitative analysis, the reviewed tenancy regulations could be ranked according to two factors: i) the amount of stability granted to the tenant, and ii) the amount of risk minimization granted to the landlord. An overview of the compared elements of stability in tenancy relations among the Baltic states is presented in the table included in Appendix 1. Kull and Hussar argue that tenants seem to enjoy the most protection in Lithuania, followed by Latvia and Estonia.¹⁷⁶ Similar findings are present in Cuerdo *et al.*, where Lithuanian regulation is ranked higher than Latvian in the scale of tenant protection (Estonia is left out of the comparison).¹⁷⁷ Consequently, the Lithuanian and Latvian tenancy market should possess a higher demand as the tenants should feel more secure in those countries. As the Estonian courts are more efficient and landlords are less constrained by tenancy law, the Estonian market should possess the largest supply of private rental dwellings.

4. THE ECONOMIC ASPECTS OF SOUND TENANCY MARKETS

This chapter will provide an insight on the current situation in the tenancy markets in the Baltic states and establish a theoretical framework for a sound tenancy market. First, economic and social aspects will be presented by graphical means. Second, the economic reasons for developing a sound tenancy market will be presented, focusing on the benefits of mobility. Third, the players of the tenancy market and their needs will be analysed.

4.1 Current situation in tenancy market in the Baltic States

To gain an oversight of the situation in the tenancy market in the Baltic states, the distribution of population by tenure status in 2019 is presented in Figure 2. Four types of tenure are distinguished, namely: i) owner, no outstanding mortgage, ii) owner, with

¹⁷⁶ *Ibid.*, p. 196.

¹⁷⁷ Carlos Cuerdo, Sona Kalantaryan and Peter Pontuch, "Rental Market Regulation in the European Union", *European Economy – Economic Papers* 515 (2014), p. 8.

mortgage, iii) tenant, rent at market price, and iv) tenant rent at reduced price or free. Data is presented for all three Baltic states, with the average of the European Union (hereinafter, the EU) Member States being shown for perspective. By combining the proportion of both types of owner-occupancy, the results are as follows: Lithuania – 90.4%, followed by Estonia with 81.7%, and Latvia with 80.2%. The average number for the EU is 69.1 %. The EU as a whole exhibit a certain tendency towards owner occupation, with the Baltic states experiencing a significant level of owner-occupation of dwellings. Additionally, a significantly smaller proportion of population have a mortgage in the Baltic States than in the EU. The reason for it being the breakdown of the Soviet Union, which led to the restitution and privatization, as presented in Chapter 1. Tenancy relations are divided between market price and social tenancy. The amounts of market price tenancy are as follows – Latvia 7.7%, Estonia 4.5% and Lithuania 1.1%. The amounts of social tenancy are, respectively, 12.0%, 13.8%, and 8.6%. The amount of social tenancy is directly related to public policy of a country, as it requires direct expenditure from the government for construction and maintenance of the buildings. Therefore, the proportion between tenancy at market prices and owner-occupancy cannot be exclusively attributed to the existing regulatory regime.

Distribution of population by tenure status, 2019

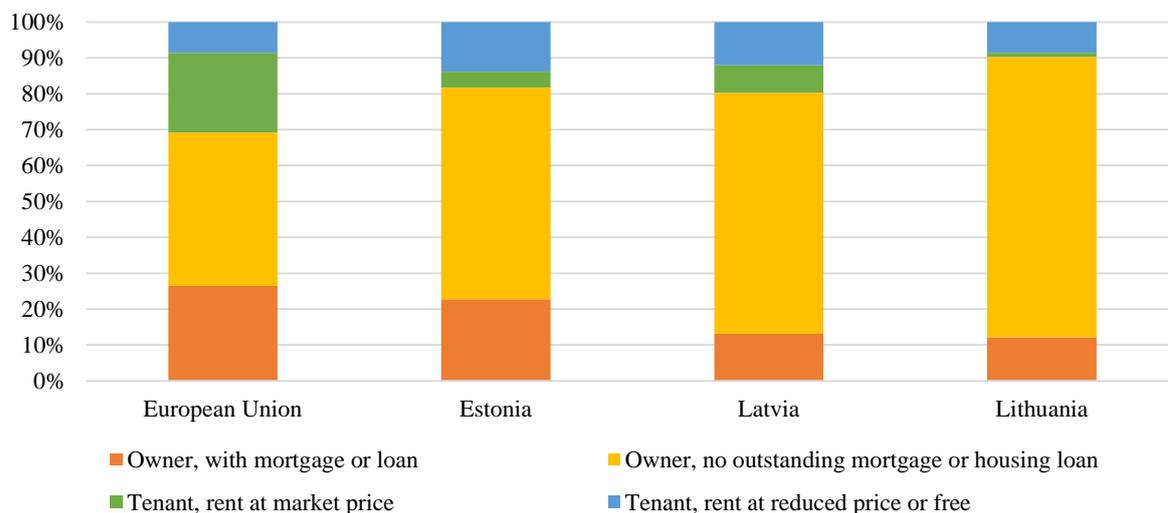


Figure 2. Distribution of Population by Tenure Status, 2019.¹⁷⁸

The proportion of population renting their dwelling at market price from 2009 until 2019 is shown in Figure 3. It clearly shows that tenancy at market price is a significantly more preferred type of tenure in Latvia, than in Lithuania. Nevertheless, it is still around three times less preferred than on average in the EU. The trend lines represent a seemingly steady increase in this type of tenure in Latvia and Estonia, and stagnation in Lithuania. However, the increase over the 10-year period is only around 1% in Latvia and Estonia. At the same time, Lithuania has experienced a decrease of 0.5%.

¹⁷⁸ Eurostat, Distribution of Population by Tenure Status, 2019. Available on: https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_lvho02&lang=en. Accessed January 26, 2022.

Distribution of population by tenure status - Tenant, rent at market price

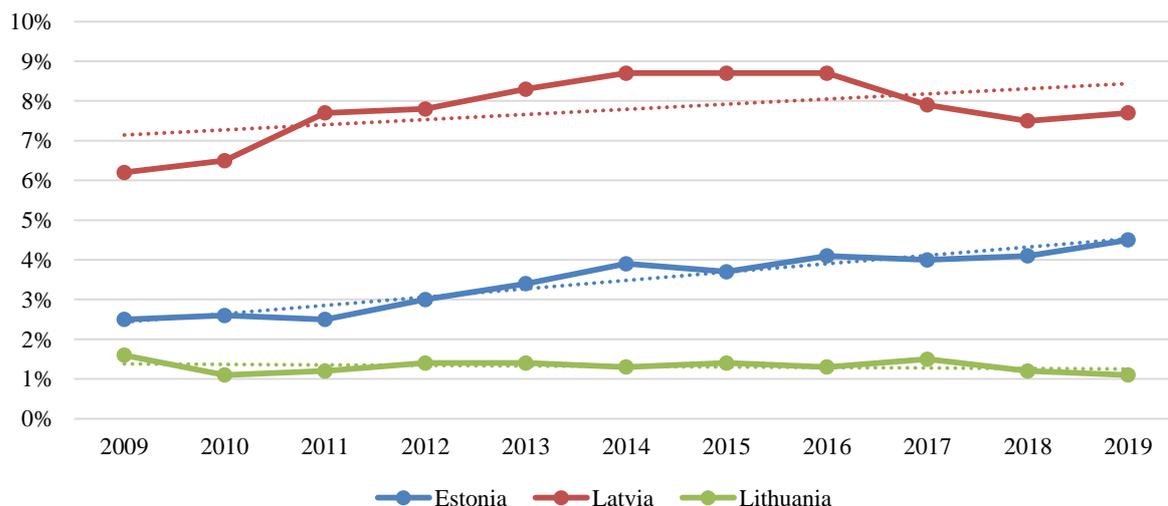


Figure 3. Distribution of Population by Tenure Status - Tenant, Rent at Market Price.¹⁷⁹

One of the reasons when choosing in between different types of tenure is the financial affordability of them. Figure 4 depicts housing cost overburden rate for different tenure types. It is defined as the share of population living in households where the total household cost represents more than 40% of disposable income.¹⁸⁰ As can be seen, this indicator is the highest for households that have chosen, or have been forced to choose, tenancy at market price as the type of tenure. However, that does not, necessarily, mean that rental payments are comparatively higher in the countries where this indicator is higher. One of the reasons might be that households that are less financially stable are forced to choose this type of tenure. A supporting argument for this hypothesis is the fact, that the indicator in some countries for owner-occupied no mortgage tenure type is higher than owner-occupied with mortgage, although the absolute expenditures are higher in the latter due to mortgage payments. Following this reasoning it can be implied that in Latvia tenancy at market price is a preferred option not predominately for financially deprived households.

¹⁷⁹ Eurostat, Distribution of Population by Tenure Status - Tenant, Rent at Market Price. Available on: http://appsso.eurostat.ec.europa.eu/nui/show.do?query=BOOKMARK_DS-057102. Accessed January 26, 2022.

¹⁸⁰ Eurostat, Statistics Explained. Available on: https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Housing_cost_overburden_rate. Accessed January 26, 2022.

Housing cost overburden rate by tenure status, 2019

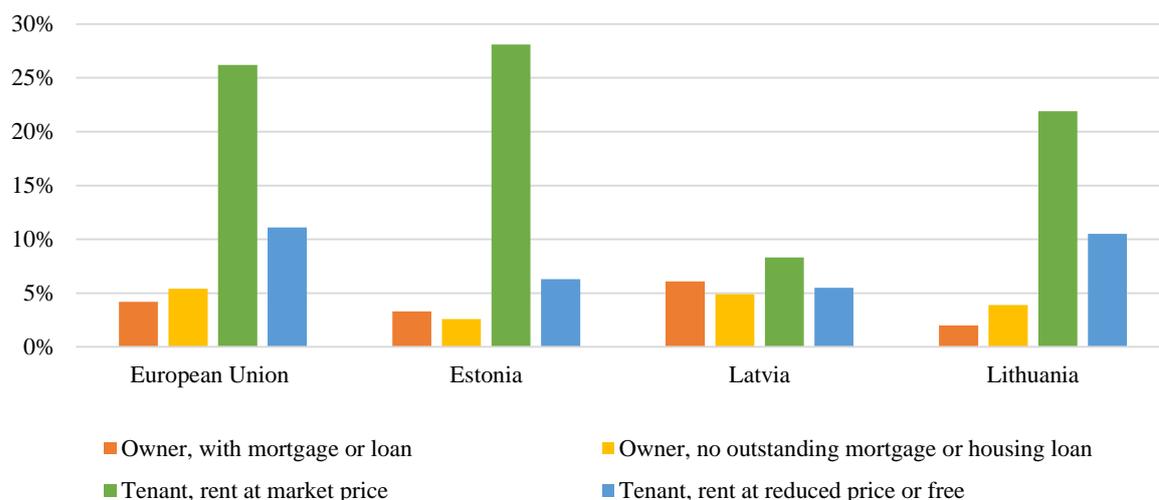


Figure 4. Housing Cost Overburden Rate by Tenure Status, 2019.¹⁸¹

Costs of living can be decreased by choosing a smaller dwelling, as often one of the factors influencing the amount of rental payment is the physical area and number of rooms of the dwelling. Consequently, the previous indicator can be decreased by lowering the costs associated with household. Figure 5 depicts the overcrowding rate by tenure status in 2018 in the Baltic states and the EU. It is defined as the share of population living in a household with not enough number of rooms relative to the size of the household.¹⁸² It can be seen that a significantly higher share of the population in Latvia than in the other countries lives in overcrowded households. The share is particularly higher for tenancy at market prices. It can be implied that: i) households in Latvia tend to choose smaller dwellings, in order to decrease costs, or ii) are forced to choose smaller dwellings due to lack of supply, or iii) multiple generations tend to live together in a relatively small household, in order to decrease costs or for personal reasons.

¹⁸¹ Eurostat, Housing Cost Overburden Rate by Tenure Status, 2019. Available on: <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=tessi164&lang=en>. Accessed January 26, 2022.

¹⁸² The household is overcrowded, if at its disposal is not at least: i) one room for the household, ii) one room by couple in the household, iii) one room for each single person aged 18 and more, iv) one room by pair of single people of the same sex between 12 and 17 years of age, v) one room for each single person between 12 and 17 years of age and not included in the previous category, or vi) one room by pair of children under 12 years of age. Eurostat. Statistics Explained. Available on: <https://data.europa.eu/euodp/en/data/dataset/SoA5tPIBI4yvq23Iffl8q>. Accessed January 26, 2022.

Overcrowding rate by tenure status, 2019

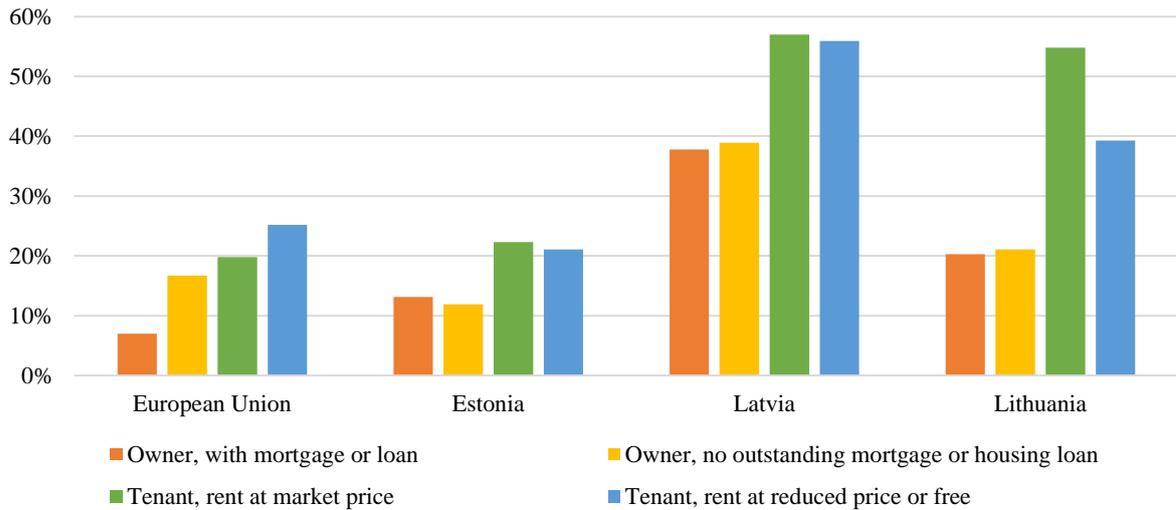


Figure 5. Overcrowding Rate by Tenure Status, 2019.¹⁸³

Another way to decrease costs of living is choosing a lower quality dwelling, that correspondingly is less expensive as well. However, the choice might be made due to purely financial reasons or the lack of supply on the market of dwellings of higher quality. Figure 6 visualizes the severe housing deprivation rate by tenure status in 2018 in the Baltic states and the EU. It is defined as corresponding to overcrowded households that are in poor technical condition or lack amenities.¹⁸⁴

Severe housing deprivation rate by tenure status, 2018

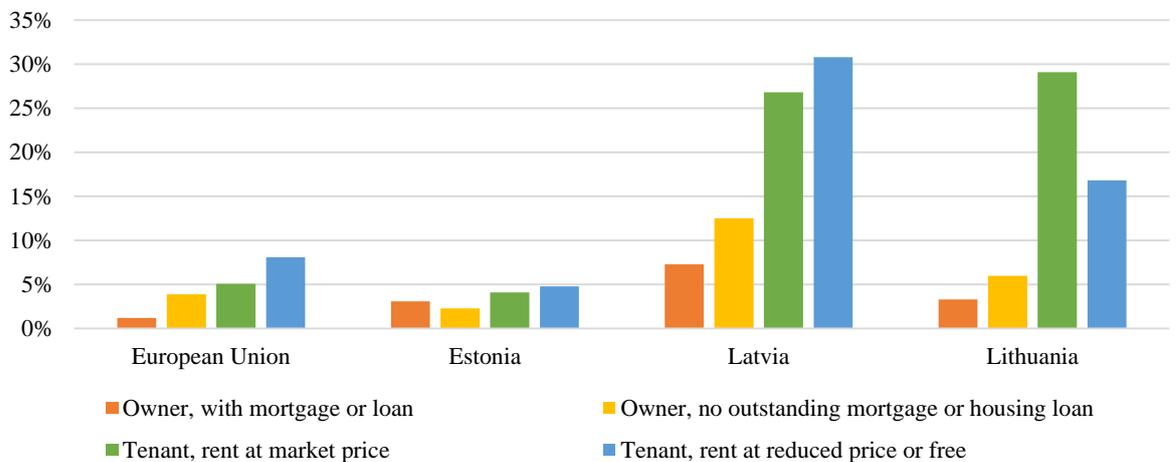


Figure 6. Severe Housing Deprivation Rate by Tenure Status, 2018.¹⁸⁵

¹⁸³ Eurostat, Overcrowding Rate by Tenure Status, 2019. Available on: <https://ec.europa.eu/eurostat/databrowser/view/tessi173/default/table?lang=en>. Accessed January 26, 2022.

¹⁸⁴ Severe housing deprivation corresponds to the share of population living in a dwelling which, besides being overcrowded, exhibits at least one of the following: i) has a leaking roof, ii) lacks a bath, a shower and an indoor flushing toilet, or iii) is too dark. Eurostat. Statistics Explained. Available on: <https://data.europa.eu/euodp/en/data/dataset/v6uEw3BH0qeUEYZ8rzO62A>. Accessed January 26, 2022.

¹⁸⁵ Eurostat, Severe Housing Deprivation Rate by Tenure Status, 2018. Available on: https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_mdho06c&lang=en. Accessed January 26, 2022.

To complement the previously presented data, Figure 7 depicts the share of total disposable income that households in the Baltic states and the EU spend on housing costs. As can be seen, tenants in Latvia spend only 10% of their disposable income on rental payments, as opposed 12.5% in Lithuania, 20% in Estonia, and 25% on average in the EU. The relatively small rental payments represent the previously shown relatively high overcrowding and severe housing deprivation rate.

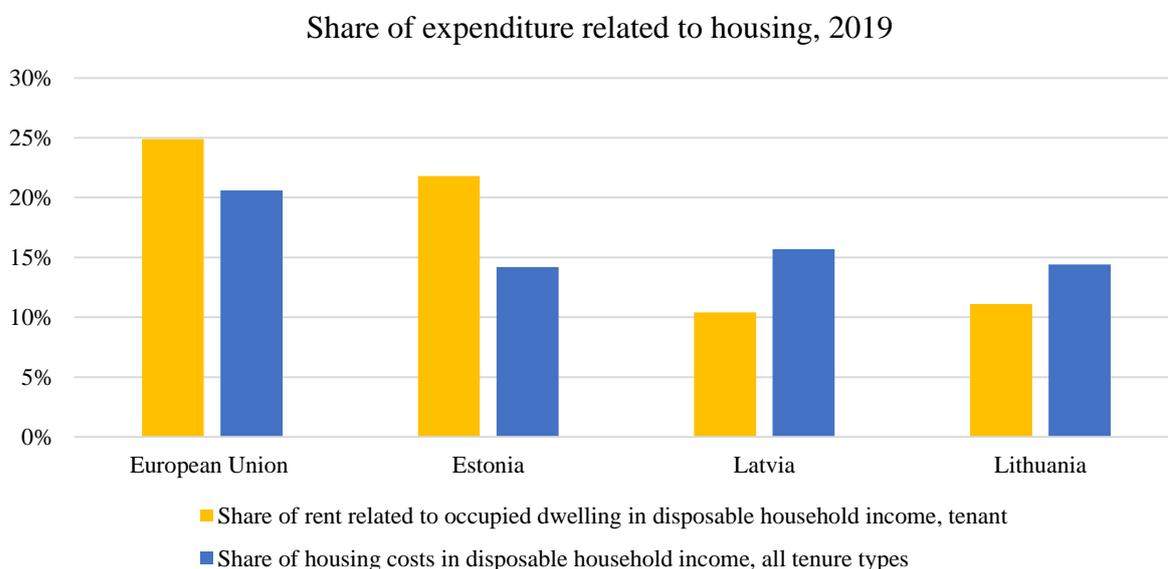


Figure 7. Share of Expenditure Related to Housing, 2019.¹⁸⁶

As already suggested, the choice of living in an overcrowded and severely deprived dwelling might be related to shortage of supply of adequate dwellings. Such shortage through the simple laws of supply and demand leads to relatively high prices of the already existing adequate dwellings. The short supply of the existing adequate dwellings segregates the market in two segments: i) small dwellings in poor technical condition, that are affordable for the less financially stable households, and ii) adequate dwellings that are not available to the less financially stable households. Additionally, as the share of expenditure is low for rental payments in Latvia and the quality is also low, it can be implied that households would be willing to spend more on rental payments, if that would increase the quality of the rented dwelling proportionally. However, as adequate quality dwellings are scarce, the increase in costs by choosing an adequate dwelling is not proportional to the increase in quality.

Figure 8 depicts the share of population that has moved to another dwelling in the last five years. Tenants at market price seem to be the most mobile class of tenure in all countries. However, Latvia is a clear outlier in this respect – more than twice as little tenants at market price have moved to another dwelling in the period 2007-2012¹⁸⁷. Multiple explanations could be implied for such phenomena. First, the already previously mentioned scarcity of dwellings of adequate quality. Second, a significant number of tenants possess long-term tenancy contracts in denationalized houses, that include rental payments that are severely below the current market rate. These tenants are not incentivized to move as moving would force them to terminate their existing beneficial tenancy contracts.

¹⁸⁶ Eurostat, Share of Expenditure Related to Housing, 2019. Available on: https://ec.europa.eu/eurostat/databrowser/view/ilc_md01/default/table?lang=en and https://ec.europa.eu/eurostat/databrowser/view/ilc_md02/default/table?lang=en. Accessed January 26, 2022.

¹⁸⁷ The most up-to-date data available from Eurostat.

Share of population having moved to other dwelling within the last five year period, 2012

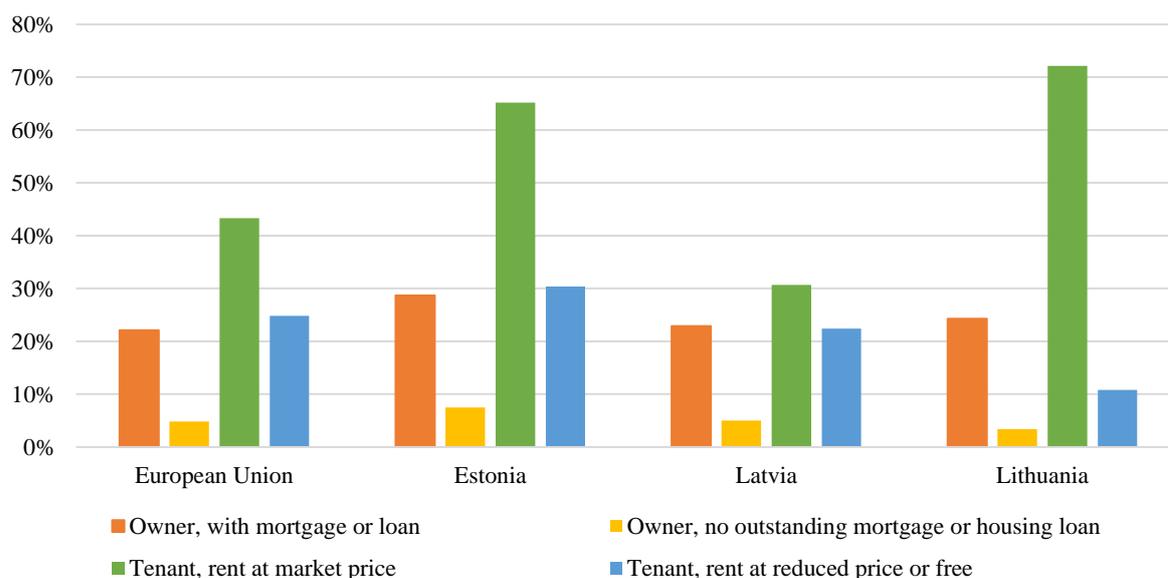


Figure 8. Share of Population Having Moved to other Dwelling within the Last Five Year Period, 2012.¹⁸⁸

Based on the economic data presented in the previous paragraphs, the tenancy market in the Baltic states can be characterized. All three Baltic states exhibit a high share of owner-occupied dwellings – 80% in Latvia and Estonia, and 90% in Lithuania. The massive privatization and denationalization after the breakdown of the Soviet Union is the main reason for it. Rental at market prices seems to be the most developed in Latvia, with its share being seven times higher than in Lithuania. However, it is still relatively small when compared to the average size in the EU. Both, Latvia and Lithuania, have a high share of total population that live in overcrowded households. It is especially prominent for households that are renting their dwelling. The reasons for the significant difference among the Baltic states do not seem to be directly related to the tenancy regulation. None of the countries impose limitations on the minimum size, or the minimum number of rooms per person in the dwelling. At first glance, in Latvia and Lithuania, the private rental market seems to be financially accessible to most of the population, as on average only 10% in Latvia, and 15% in Lithuania, of household's disposable income is spent on rent. Nevertheless, the quality of rental dwellings in Latvia and Lithuania is severely worse than Estonia. The relatively small share of disposable income spent, together with the small in size and low on quality dwellings, indicate at short supply of adequate quality dwellings in the private rental market in both countries. Furthermore, the low levels of housing cost overburden in Latvia for private rental dwellings indicate that such type of tenure is not chosen by only the financially unstable households. Consequently, the private rental market of adequate quality housing units has room for expansion, until the share of disposable income on rent reaches the European Union average of 20%. The more than twice as low share of tenants who have moved to another dwelling in Latvia compared to the other Baltic states is another indicator of short supply of adequate dwellings in the private rental market.

¹⁸⁸ Eurostat, Share of Population Having Moved to other Dwelling within the Last Five Year Period, 2012. Available on: https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_hcmp05&lang=en. Accessed January 26, 2022.

4.2 Objectives of tenancy regulation

To assess the level of residential tenancy regulation's success, the goals the politicians have set for it to achieve have to be understood. The public policy goals of tenancy regulation can be divided in two groups: i) the economic benefits one type of tenure might bring over another, ii) the social benefits of providing housing to people. Both of them are important to the society as a whole, and consequentially should be at interest to the politicians.

Tenure can be divided in two key types: i) home-ownership, and ii) rental. With the latter being divided between profit rental, which is privately owned and rented out at market prices, and cost-rental, which is, usually, directly or indirectly government owned and is rented out at sub-market prices. By developing a tenancy regulation, the politicians should have a clear view if they are willing to achieve an increase in the home-ownership or rental type of tenure. Each of the tenure types have their own benefits and drawbacks.

The first benefit of home-ownership is an acquisition of an asset. People have a feeling that the money paid in rent is spent, as opposed to money paid for mortgage is invested. However, people in general tend to be over-optimistic for the returns of their investment in real estate. As an example, in the United States the real inflation adjusted prices of real estate have risen on average only 0,3% per year in the period from 1890 to 2014. The phenomena can be explained with the infrequency of the real estate purchase – people remember the price they bought their dwelling for multiple years ago, but tend to forget the average price level of consumer goods at that time.¹⁸⁹ Aggregating such data on the Baltic states, will not be of significant value, due to the half a century long Soviet occupation and accompanying derogation of property rights and non-existence of market economy. However, it can be inferred that due to the similar overall levels of long-term inflation in developed countries, the outcome would be similar. Nevertheless, choosing home-ownership over tenancy still allows for acquiring an asset over time, which makes it financially more attractive over longer term, provided there is no significant decline in asset prices. The second benefit is the housing safety that is related to home-ownership. If the dwelling is privatized, as a significant number of dwellings are in the Baltic states, or the mortgage has been repaid, the risk of homelessness is considerably lower, in case of unemployment or other personal financial distress. Additionally, according to Rohe and Lindblad multiple social benefits arise from home-ownership, including:

...greater participation in social and political activities, improved psychological health, positive assessments of neighborhood, and high school and post-secondary school completion. The jury is still out, however, on several other claims including improved physical health, and both the cognitive abilities and positive behaviors of children.¹⁹⁰

One of the drawbacks to home-ownership is high entry costs in the form of down payment for a mortgage or outright purchase of a dwelling. The other noteworthy drawback is the loss of flexibility and high transaction costs in case of a need to move to another location due employment or personal reasons.

¹⁸⁹ Shiller, *supra* note 2.

¹⁹⁰ William M. Rohe and Mark Lindblad, *Reexamining the Social Benefits of Homeownership after the Housing Crisis*, (Cambridge, Massachusetts: Joint Center for Housing Studies, Harvard University, 2013), p. 45. Available on: <https://www.jchs.harvard.edu/sites/default/files/hbtl-04.pdf>. Accessed January 26, 2022.

Tenancy cures for the drawbacks of home-ownership, as it is more flexible and allows for easier and less expensive mobility of the population. A weak tenancy market that is characterized by constituting a small share of the total tenure market and housing restrictions, such as rent controls, may imply inefficiencies for the economy as a whole. Tenants in rent-controlled housing markets, as well as people who live in owner-occupied dwellings move less frequently.¹⁹¹ Disrupted mobility of labour diminishes the overall productivity and aggregate income. Shortage of housing stock available for rent in regions of a country which possess higher than average marginal productivity will refrain from labour moving there. Hence, the potential of gaining more productivity will be lost.¹⁹² Evidence shows that countries with more developed tenancy markets, such as Germany and France, have a higher intra-country mobility of workforce.¹⁹³ Furthermore, tenancy market can be entered with less costs than home-ownership, since there is no down payment or large expenditure for outright purchase of a dwelling. The low entry costs make the tenancy market especially attractive to people of low income or young age, who have not been able to save up the necessary amount of money to purchase a dwelling. As an additional benefit, the maintenance of the rented dwelling is at landlord's responsibility, which reduces the risk of unexpected significant repair costs. One of the main disadvantages of tenancy, is the significant expenditure accrued over long-term without any acquired asset. The second major drawback is the instability in case of reduction in income, which, usually, happens at retirement age, since the retirement benefits are just a fraction of regular income.

The presented analysis of the type of tenure shows that each of the them have benefits and drawbacks. As there is no single best tenure option for all society members, both of them should be preserved. As the expansion of tenancy market would allow for labour mobility and the resulting productivity gains, the expansion should be the objective of the tenancy regulation. Additionally, the improvement of availability of the tenancy market to young people and people of lower income groups should be an objective as well.

4.3 Participants in the rental market

The two major players in a rental market are the landlords, who provide the supply, and the tenants, who provide the demand. A typical problem is inconsistency and lack of good quality data on the residential rental market. The real estate purchase transactions are all entered in the Land Register, which allows for gathering high quality market data on the activity and price level. However, there exists no mandatory registration of tenancy contracts in the Land Register. Moreover, individual players in the residential rental market are prone to tax evasion, and therefore do not register rental agreements with the tax authorities.¹⁹⁴ Therefore, it is adequate to infer that the actual number of dwellings rented by private individuals, as well as the rental price of them is underreported.

Three types of players in the supply market of residential real estate can be distinguished: i) individual and small-scale landlords, ii) institutional investors, and iii) non-profit or limited profit providers of social housing, including governments and municipalities.

¹⁹¹ Anna M. Hardman and Yannis M. Ioannides, "Residential Mobility and the Housing Market in a Two-Sector Neoclassical Growth Model", *The Scandinavian Journal of Economics* 101, no. 2 (1999), p. 315.

¹⁹² Mayo and James, *supra* note 3.

¹⁹³ Duncan Maclennan, John Muellbauer and Mark Stephens, *Asymmetries in Housing and Financial Market Institutions and EMU*, (London, the United Kingdom: Centre for Economic Policy Research, 1999), p. 21.

¹⁹⁴ Ministry of Finance of the Republic of Latvia. Available on: <https://www.fm.gov.lv/lv/enu-ekonomika>. Accessed January 26, 2022.

The first category is the largest in almost all countries. There is no precise data available on the Baltic states. However, as in general there are almost no institutional investors acting in residential tenancy markets in the Baltic states, it can be implied that almost all of the private rental dwellings are rented out by individual and small-scale landlords.¹⁹⁵ Individual landlords are not all homogeneous, however, some typical characteristics can be distinguished. First, they are conscious of payment regularity. Payment defaults might mean just statistical data for large scale institutional investors, however, for individual landlords that can be a financial disaster. Consequently, they tend to overestimate the risk associated with tenancy, based on the stories they have heard from their peers and relatives. Second, the income from the rental dwelling adds to their daily cashflow and might be an important contribution to their standards of living. Third, they might not calculate the financial returns thoroughly. Instead, they are likely to rely on rough estimates. On many occasions, they might not even make simple rate-of-return ratio calculations, as they are looking for an additional income or long-term investment that is inheritable. Four, they are open to operating in the informal sector. The reasons might be a too high level of taxation, or too high level of bureaucracy. They are not professionals and it might not make sense to hire an accountant if they own only one rentable dwelling. Five, they require flexibility in tenancy contracts.¹⁹⁶ The rented dwelling may suddenly be needed for their children, or they need to sell it due to some unexpected financial distress. The second category, which, as previously presented, is almost non-existent in the Baltic states, is institutional investors. This type of investors usually is oriented on long-term profit. They are legal entities, that, besides investing in residential real estate, invest in many other investment products, such as commercial real estate, stocks and bonds. Moreover, usually, residential real estate is just a fraction of their total investment output that is used for diversification purposes. Their long-term goals and low risk tolerance often do not overlap with the available risk levels in residential real estate market. Typically, these investors own a large number of dwellings in one building or several adjacent properties. Their target group is higher-income tenants, because they are expected to better obey payment discipline.¹⁹⁷ The third group is social landlords. These are governments or municipalities themselves, or non-profit organizations owned by them. They do not operate in a supply and demand market, as their goals are to supply housing to predefined categories of people. These categories usually include low-income families, elderly, and disabled people.

The other side of the market is the demand, which consists of tenants. Tenants are less homogeneous than landlords and have a wide array of preferences and purchasing power. Nevertheless, they could be divided in two groups: i) tenants by choice, and ii) tenants by constraint.¹⁹⁸ The former group has a higher purchasing power than the latter. Those are mostly people who would like to remain mobile and do not want to undertake long term commitments. Such as, students, young couples and singles, middle- and upper-income class professionals. The latter group consists of: i) workers migrating for employment

¹⁹⁵ Ober Haus, "Real Estate Market Report 2021. Baltic States Capitals (Vilnius, Riga, Tallinn)", p. 31. Available on: <https://www.ober-haus.lt/wp-content/uploads/Ober-Haus-Market-Report-Baltic-States-2021.pdf>. Accessed January 26, 2022.

¹⁹⁶ Ira Gary Peppercorn and Claude Taffin, *Rental Housing. Lessons from International Experience and Policies for Emerging Markets*, Policy Research Working Paper 76182, (Washington, DC: The World Bank, 2013), pp. 8-9. Available on: <http://documents.worldbank.org/curated/en/810681468339259949/pdf/Rental-Housing-lessons-from-international-experience-and-policies-for-emerging-market.pdf>. Accessed January 26, 2022.

¹⁹⁷ *Ibid.*, p. 9.

¹⁹⁸ *Ibid.*, p. 13.

reasons, ii) people with informal income, iii) lower-income class people who cannot save up for a mortgage down payment, and iv) defaulted persons who are obstructed from borrowing markets. Bargaining power of the two groups differs considerably. The tenants by choice are able to choose the dwelling they prefer, and press the price downwards, as the landlords understand that their offered dwelling is not the only option for them. However, the tenants by constraint often have no other options than to accept the price and quality offered by the landlord.

5. NEW REGULATION OF TENANCY IN LATVIA

This chapter will examine the new regulation of tenancy in Latvia which is in force since May 1, 2021. First, an analysis of stability granted to tenants and flexibility to landlords will be performed, similar to the comparative analysis in Chapter 2. Second, it will be assessed if the new regulation will reach its aims.

5.1 Analysis of the new tenancy law

A new law for residential tenancy has been passed by the Parliament in March, 2021¹⁹⁹ after almost a decade since it was first proposed by the Ministry of Economics in 2013. The aims of the new law are: i) to ensure a balance between the rights and duties of tenants and landlords, and ii) to increase the affordability of housing.²⁰⁰ In the following sub-chapters the new law will be analysed in a similar fashion as the former and existing tenancy regulations in the Baltic states in Chapter 2.

5.1.1 Rent control and price adjustments

The new law proposes even more freedom of contract in regards of setting the amount of rent payment. The parties are free to negotiate the amount of initial rent payment as before. Similarly, also rent increases are allowed only if they have been mutually agreed upon in the contract. The precise manner of increase has to be defined in the contract.²⁰¹ Nevertheless, the parties are free to agree on the reasons and schedule for rent increase. There exists no obligation for the landlord to justify the rent increase according to imperative norms as it is now, other than the mutually agreed upon reasons stipulated in the contract. The new law is also more liberal than the Estonian and Lithuanian regulations, which limit the freedom to contract by imposing minimum time intervals between rental payment increases. Although, the new law prohibits increase in rental payment if not agreed upon beforehand, it cannot be defined as a second generation rent control as parties are free to agree on increases without limitations.

5.1.2 Renewal

Parties possess a freedom to contract in respect to renewal rights of a tenancy contract. The only limitation regarding the term prohibits the tenancy contracts to be concluded for unspecified term.²⁰² Nevertheless, the contracts do not renew automatically by default and neither party possesses a right to ask for renewal, with the exception of it being included in the contract by a mutual agreement. Moreover, a tacit renewal of a tenancy contract that

¹⁹⁹ New Law, supra note 4.

²⁰⁰ *Ibid.*, Article 1.

²⁰¹ *Ibid.*, Article 10.

²⁰² *Ibid.*, Article 9.

was possible according to the Civil Law, is not possible anymore according to the new tenancy law. The only justification that allows the tenant to use the residential dwelling is a written tenancy contract.²⁰³ As tacit agreements are not in a written form they cannot serve as a justification for using the residential dwelling. However, an opinion exists that tacit agreements will still be valid. Nevertheless, the courts should use them as a justification only in an exception, not as a norm.²⁰⁴

The new law is again more liberal than any of the existing regulations in other Baltic states. The parties are allowed to decide on prolongation without any imperative limitations, with the exception of the requirement of a specified term. When the tenancy contract ends, they are free to conclude a new one. This might be regarded to the detriment of the tenant, as the landlord is not locked in a new tenancy contract as is the case in Estonia and Lithuania. Yet, the changes compared to the previous Latvian regulation are modest, as tenants in Latvia had to be aware of the term of the tenancy contract themselves²⁰⁵.

5.1.3 Unilateral termination

In the new law, the tenant has the same rights on unilateral termination of a tenancy contract as before. The tenant has an imperative unlimited right to terminate the tenancy contract unilaterally.²⁰⁶ The only condition is delivering a notification to the landlord one month before the termination date. If the term of the tenancy contract is longer than 10 years, the parties are allowed to mutually agree on a longer notification period.²⁰⁷ The tenant may terminate the tenancy contract without delivering a notification, if: i) the landlord has not brought the dwelling in the possession of the tenant, or does not allow the tenant to use it undisturbed²⁰⁸, or ii) the landlord does not maintain building where the dwelling is located in a habitable condition according to the normative acts of housing maintenance²⁰⁹.

As in the previous regulation, the landlord is allowed to unilaterally terminate the tenancy contract only in the situations that are stipulated in the law.²¹⁰ First, if the tenant or other persons living with him: i) damage the dwelling or the building where the dwelling is located, or perform illegal construction works in the said premises, ii) use the said premises for other uses that are not intended in the tenancy contract, iii) make living for other persons in the said premises unbearable.²¹¹ The addition, if compared to the previous regulation, is the specific inclusion of illegal construction performed by the tenant as a reason for terminating the tenancy contract. Before it was not specifically included in the law, and courts had interpreted that such activities may not harm the landlord and are not a sufficient basis for terminating the contract.²¹² Second, if the tenant without landlord's approval has sub-rented the dwelling, or allowed other persons to live there.²¹³ The courts have previously

²⁰³ *Ibid.*, Article 7.

²⁰⁴ Lapsa 2018, *supra* note 174, p. 19.

²⁰⁵ Rolands Krauze, "Par dzīvojamās telpas īres līguma termiņu" [On the term of the tenancy of a residential dwelling], *Jurista Vārds* No. 17 322 (2004): p. 2. Available on: <https://juristavards.lv/doc/88311-bpar-dzivojamas-telpas-ires-liguma-terminub/>. Accessed January 26, 2022.

²⁰⁶ New Law, *supra* note 4, Article 20.

²⁰⁷ *Ibid.*, Article 27(1).

²⁰⁸ *Ibid.*, Article 18(1).

²⁰⁹ *Ibid.*, Article 18(3).

²¹⁰ *Ibid.*, Article 21.

²¹¹ *Ibid.*, Article 22.

²¹² *Supra* note 96.

²¹³ New Law, *supra* note 4, Article 23.

put the burden of proof on the landlord, therefore, similarly as in the previous regulation, this breach might be problematic to prove. Third, if the tenant has: i) an arrear of rental payment that exceeds the value of two months of the agreed rental payment, or ii) has not paid the payments for utilities for more than two months. Both, the sum or the period, that are stipulated in law can be extended in the tenancy contract.²¹⁴ The term is shortened from three to two months if compared to the previous regulation. Additionally, specifying the amount or rental payment arrear resembles the existing court practice, as the previous regulation stated the period of not paying the rent, not the amount of arrear. Fourth, if: i) the landlord has decided to demolish the building where the dwelling is located as reconstruction of it is not financially viable, or ii) the landlord has decided to perform reconstruction in the dwelling which cannot be done while the dwelling is habited. By using any of these grounds for termination, the landlord is liable for compensating damages that might have arisen to the tenant as well as moving expenditures.²¹⁵ Under the previous regulation, in the presented situations the landlord was forced to offer the tenant an alternative dwelling of the same size and location on the same terms. The new law allows for monetization of the liability. Additionally, the landlord is allowed to withdraw from the tenancy contract if official institutions have categorized the dwelling or the building where the dwelling is located as being dangerous and prohibited the usage of it. The liability of compensating losses arisen to the tenant as well as moving expenditures is supplemented with the compensation of the investments the tenants might have made in the dwelling according to the tenancy contract.²¹⁶ The notification periods vary – one month in case the contract is concluded for up to a year, three months if the contract is concluded for a longer term, and immediate termination in case of the tenant demolishing the dwelling, disturbing other people, or the dwelling has been categorized as uninhabitable.²¹⁷ Interestingly, the notification period is not stipulated in the law, if the tenant is demolishing the dwelling or disturbing other people, in spite of it being present in the last version of the new tenancy law that was passed by the parliament.²¹⁸ Conceivably, due to a mistake, the notification period will have to be set by courts.

The new regulation of unilateral termination of the tenancy contracts makes the present regulations in the Baltic states more homogeneous. Due to the prohibition to conclude contracts for unspecified term, the previously tenant protective regime in Latvia that did not distinguish in between tenancy contracts for specified and unspecified term is annulled. Nevertheless, the existing hardship clause for the benefit of the tenant in Estonia would make the Estonian regulation the most tenant protective among the Baltic states with respect to the unilateral termination of the tenancy contract.

5.1.4 Change of ownership

The first major change presented in the new law is the alteration of the application of the principle 'sale does not break hire'. According to the new tenancy law, existing tenancy contracts are binding to the new owner only if they have been registered in the Land Register. If the tenancy contract is not registered in the Land Register, the new landlord is

²¹⁴ *Ibid.*, Article 24.

²¹⁵ *Ibid.*, Article 25.

²¹⁶ *Ibid.*, Article 26.

²¹⁷ *Ibid.*, Article 27.

²¹⁸ 13. Saeimas sēžu stenogrammas. [Transcripts of the meetings of the 13th Parliament]. Available on: <https://www.saeima.lv/lv/transcripts/view/2207>. Accessed January 26, 2022.

allowed to unilaterally terminate the tenancy contract by notifying the tenant two months in advance.²¹⁹

The initial aim of the law drafters was to make it mandatory to register all tenancy contracts in the Land Register, however, during the review in the Parliament a voluntary registration was proposed and accepted.²²⁰ To make the registration more affordable and less cumbersome, it can be done online without a visit to a notary, if the tenancy contract is signed with an electronic signature. The registration fee is EUR 14,23.²²¹ Nevertheless, both, landlord and tenant, have to agree to the registration of the tenancy contract in the Land Register. To incentivize tenants to agree to the registration, the principle of 'sale does not break hire' is applied only to registered tenancy contracts. To incentivize landlords, the system of undisputed enforcement presented in the following sub-chapter is also applied only to registered tenancy contracts. Another incentive of registration for the landlord is the escape from liability against the tenant in case when the acquirer terminates a tenancy contract that was not registered in the Land Register.²²² Additionally, the state should also benefit from a wider registration of the tenancy contracts as it would lessen possible tax evasion in the tenancy market.²²³

The proposed system of applying the 'sale does not break hire' principle to only registered tenancy contracts, theoretically puts Latvia on par with Lithuania in the level of tenant protection in case of change of ownership of the dwelling. However, providing incentives for both parties and an affordable cost of registration, allows the system to actually work and protect the tenant in Latvia as opposed to Lithuania. As the Estonian system grants the tenant the right to ask the landlord to register the tenancy contract in the Land Register, it, theoretically, fulfils the same level of tenant protection as the proposed Latvian system. However, providing no incentives to the landlord for registering the tenancy contract wilfully, might lead to the landlord excluding people that insist on contract registration from her potential list of future tenants.

5.1.5 Undisputed enforcement procedure

The second major change introduced in the new tenancy regulation is the undisputed enforcement procedure for terminating tenancy contracts in certain situations prescribed by law. It is regulated not in the new tenancy law itself, but included in the amendments to Civil Procedural Law that were proposed together with the changes in the tenancy regulation.²²⁴ The undisputed enforcement procedure allows for a considerably speedier court process than regular court proceedings. The eviction of a tenant is possible in just over four months – consisting of two months build-up of rent arrear²²⁵, seven days of undisputed enforcement procedure²²⁶, and two months grace period the judge is obliged to give the tenant before

²¹⁹ *Ibid.*, Article 28.

²²⁰ *Ibid.*, Article 35.

²²¹ State Electronic Land Register - E-requests. Available on: <https://www.zemesgramata.lv/saturs/lv/409-389-1>. Accessed January 26, 2022.

²²² Kalvis Torgāns, *Saistību tiesības. Otrās papildinātais izdevums* [Law of obligations. Second supplementary edition], (Riga, Latvia: Tiesu namu aģentūra, 2018), p. 335.

²²³ A letter to the Parliament from the Ministry of Finance of Latvia. Available on: <https://titania.saeima.lv/LIVS13/saeimalivs13.nsf/0/7ACBCF276854E506C225852F00276C0F?OpenDocument>. Accessed January 26, 2022.

²²⁴ Civil Procedure Law, *supra* note 39, Section 400(1)(3).

²²⁵ New Law, *supra* note 4, Article 24.

²²⁶ Civil Procedure Law, *supra* note 39, Section 405(1).

she is evicted²²⁷. The grounds for termination of the tenancy contract that can be decided in the undisputed enforcement procedure include: i) non-payment of rent and utility payments for more than two months for a contract that is registered in the Land Register, or ii) maturity of a contract that is registered in the Land Register.²²⁸ All other grounds for termination of a tenancy contract by the landlord in case of a dispute have to be decided by a court in standard proceedings.

5.2 Will the new law reach its aims?

The first aim of the new tenancy law is to reach a balance between the rights and obligations of the parties to the tenancy contract. By setting such an aim, the government manifests that under the previous regulation the balance was insufficient. As shown in Chapter 2, the previous regulation placed Latvia in the middle in between the other Baltic states on the level of stability granted to the tenant, however, due to the time-consuming judicial proceedings the Latvian landlords were exposed to the greatest risk among the Baltic states of serious disruptions to cash flow. The aim of the Latvian government may as well be defined as a 'regulatory equilibrium'²²⁹. Such state requires on one hand profitability and respect for property rights to the landlord, and on the other hand affordability, stability and flexibility for the tenant.²³⁰ The new tenancy law will be analysed against the previously mentioned preconditions for a 'regulatory equilibrium' set out by Nassare-Aznar.

As for the respect of landlord's right to profit, the new tenancy law puts no limits on the profit the landlord is entitled to earn. There are no first- or second-generation rent controls present in the new tenancy law. The rental payment can be set freely as a result of negotiation of the parties. It is at landlord's discretion to decide on the initial price to ask for her dwelling. However, the landlord should include into her calculations the expenses necessary for her obligations to: i) upkeep the residential building where the dwelling is located in sound technical condition²³¹, and ii) any tax payments which she might be obliged to pay on the rental income²³². The undisputed enforcement procedure, in relation to default on payments by the tenant, grants the landlord the highly important time economy. As for the respect of landlord's property rights, multiple aspects should be reviewed. First, the undisputed enforcement procedure, in relation to expiry of tenancy contracts, allows the landlord to rightfully acquire possession of her dwelling considerably sooner than before. Second, the application of the principle 'sale does not break hire' for unregistered tenancy contracts effectively protects against 'surprise contracts' of newly acquired dwellings. Third, the new tenancy law allows the parties to agree on a security deposit.²³³ Although, it is limited to the value of two months of rental payment, the limitation is proportional to the maximum allowed arrear of rent. Fourth, the landlord does not possess a right to terminate the tenancy contract if the dwelling is needed for her personal use. Such a regulation makes

²²⁷ *Ibid.*, Section 405(2¹).

²²⁸ *Supra* note 224.

²²⁹ Christoph U. Schmid, "Introduction", in *Tenancy Law and Housing Policy in Europe: Towards Regulatory Equilibrium*, ed. Christoph U. Schmid, (Cheltenham, the UK: Edward Elgar Publishing, 2018), pp. 5-9.

²³⁰ Nassare-Aznar, *supra* note 1, p. 837.

²³¹ New Law, *supra* note 4, Article 18.

²³² State Revenue Service, Latvia. Nodokļi no dzīvokļa izīrēšanas vai iznomāšanas ienākumiem. [Tax from renting or leasing an apartment]. Available on: https://www.vid.gov.lv/sites/default/files/met_nodokli_no_dzivokla_iziresanas_iznomasanas_ienakumiem.pdf. Accessed January 26, 2022.

²³³ New Law, *supra* note 4, Article 12.

the landlord to: i) hesitate renting out her dwelling if she sees an option that it might be needed for her in the near future, or ii) bias towards shorter term tenancy contracts to be able to reassess more often the personal need for the dwelling. As discussed earlier, the ability to use the dwelling if urgently needed is welcome by individual landlords.

Regarding the tenant side of the 'regulatory equilibrium', affordability has to be assessed first. To the detriment of tenant, there exist no rent controls in the new tenancy law. However, if the second aim of the new tenancy law, to increase the availability of housing, is reached through increasing supply and in turn lowering price, the affordability precondition should be satisfied. As for stability, paternalistic²³⁴ enforcements of stability, such as a minimum term for tenancy contracts, are not present in the new tenancy law. Furthermore, neither are less paternalistic limitations²³⁵, such as tenancy contracts for unspecified term or limitations on rent increase for future tenants (prohibition to charge more rent to newcomer than to existing tenants). The stability for the tenant is guaranteed only throughout the duration of the tenancy contract. However, the existing collision of preferences on the term of the tenancy contract between the parties needs to be taken into account. Landlords prefer shorter contracts, to be able to: i) adjust prices to market rates more often, and ii) reassess more often the personal need for the dwelling. On the contrary, the tenants prefer longer term contracts, since that: i) lowers their transaction costs arising from changing the dwelling more often, and ii) does not limit their rights to terminate the contract unilaterally. Though not guaranteed, tenants may expect their rights to use the dwelling to be registered in the Land Register, due to the incentives offered to landlord to allow such registration. If not specifically agreed in the rental contract, the tenants of private dwellings do not possess pre-emption rights in case of sale of the dwelling. Nevertheless, their tenancy relations shall be respected by the new owner, if the tenancy contract was registered in the Land Register. As for flexibility, the tenant is allowed to unilaterally terminate the tenancy contract at any given time with a one-month notification. However, the other factor of flexibility is not met – sub-renting of the dwelling is only allowed with landlord's approval.

By analysing the new tenancy law against the preconditions proposed for a 'regulatory equilibrium' by Nassare-Aznar, it seems, at first sight, that such an equilibrium is not reached. From the landlord's perspective, the new tenancy law is undeniably an improvement with respect to her rights and obligations. The two main improvements are: i) the fast and effective dispute resolution in case of default on payments, and ii) the clarity and transparency that registration of tenancy in the Land Register provides to the existing, and new landlord. The only downside of the new tenancy law is the prohibition of terminating the contract in case of need of the apartment for own use. However, as there is no imperative minimum duration for a tenancy contract, it can be cured by shortening the initial term. On the contrary, a different outcome arises by assessing the 'regulatory equilibrium' from the tenant's perspective. Almost all prerequisites to reach a 'regulatory equilibrium' are not present in the new tenancy law. With the only exception to this being the universal right to unilateral termination of a tenancy contract. Though, it should not be interpreted that the situation has become significantly worse than previously. Rent controls did not exist in their classical form under the previous regulation as well. Similarly, there were no universal rights for a renewal of a tenancy contract, or a minimum imperative duration of it. The only improvement, which some might, at first sight, view as a

²³⁴ Nassare-Aznar, *supra* note 1, p. 828.

²³⁵ *Ibid.*

deterioration, is the increased transparency the registration of tenancy contracts in the Land Register provides. It might seem that the tenant is more protected with a universal application of the 'sale does not break hire' principle. However, it should be remembered that often after the ownership of the dwelling is changed, the 'surprise tenants' are the victims of landlord's illegal actions performed in order to evict them.²³⁶ The removal of the 'surprise factor' does not guarantee the end to the landlords' illegal actions. However, it allows the buyer of a property to bargain on the price accordingly, thus, saving money that could be used for monetary compensations to the tenants for termination of the contract, if they reach such agreement. To sum up, the 'regulatory equilibrium' according to the framework established by Nassare-Aznar is not reached with the new tenancy law in Latvia.

The second aim of the new tenancy law needs to be assessed separately from the first. Theoretically, increasing affordability of housing, at least in the short- and medium-term, could be possible without reaching a 'regulatory equilibrium'. A definition of affordable housing is provided by Stephens:

Housing is affordable when housing of an acceptable minimum standard can be obtained and retained leaving sufficient income to meet essential non-housing expenditure.²³⁷

Having examined the current situation on the housing affordability in the Baltic states in Chapter 3, it is clear that in Latvia a significant amount of people can afford to leave aside sufficient income to meet essential non-housing expenditure. However, at the same time it might be true, that the first part of the definition is not satisfied according to the data reviewed in Chapter 3. The data seems to show that a large number of people live in housing conditions that are not acceptable, as there is insufficient supply of adequate quality housing for an affordable price. An increase in supply of adequate rental housing could improve the situation. Additionally, by following the laws of supply and demand, it can be implied that the higher the supply, the lower the price. In fact, multiple housing developers have expressed intentions to increase the supply of rental housing after the new tenancy law is passed. The forecasted investment inflow could amount to EUR 100 million/year, in a ten-year period amounting to EUR 1 billion.²³⁸

For the residential tenancy to become a viable substitute to home-ownership in the long-run, both, a stable supply and a stable demand is a requirement. The new tenancy law seems to support the increase on the supply side well. However, the players on the demand side of the market, the tenants, are not able to grasp all the benefits of it. The new tenancy law might work in the short- and medium-term by increasing the competition on the supply side of the market. However, in the long run landlords might start to feel a shortage of demand for adequate quality rental housing, as residential tenancy will be viewed as an inferior type of tenure due to lack of stability and flexibility it provides to tenants.

²³⁶ LA.lv, Deputāti sašutuši par denacionalizēto namu īpašnieku patvaļu. [Members of Parliament shocked on the arbitrariness of landlords of denationalized houses]. Available on: <https://www.la.lv/deputati-sasutusi-par-denacionalizeto-namu-ipasnieku-patvalu>. Accessed January 26, 2022.

²³⁷ Mark Stephens, "The Meaning and Measurement of Housing Affordability", Presentation at ENHR Tirana 2017. Available on: <https://slideplayer.com/slide/12802310/>. Accessed January 26, 2022.

²³⁸ Nekustamo Īpašumu Attīstītāju Alianse. Jaunais īres likums ļaus īres dzīvokļos ik gadu ieguldīt aptuveni 100 miljonus eiro. [The Alliance of Real Estate Developers. The new tenancy law will attract investment in rental apartments in the amount of 100 million euros per year]. Available on: <https://niaa.lv/lv/zinas/niaa-jaunais-ires-likums-laus-ires-dzivoklos-ik-gadu-ieguldit-aptuveni-100-miljonus-eiro>. Accessed January 26, 2022.

CONCLUSION

The residential tenancy regulation in the Baltic states is rooted in the historical developments of transitioning from command-based to market economies. The processes of restitution and privatization brought with themselves the necessity for a rigid and highly tenant protective residential tenancy regulation. However, over time the level of tenant protection has been gradually decreased by legislative and judiciary acts. Nevertheless, the improvements in the housing quality have been insufficient.

The comparative analysis of the pre-2021 residential tenancy regulations in the Baltic states showed that, although they were different in some aspects, in general they were relatively homogeneous. None of the regulations imposed first generation rent controls in practice. Similarly, second generation rent controls that limit increases in rental payments by pegging the adjustments to the costs of maintenance of the dwelling were present in all three countries. There was no absolute right to renewal of a tenancy contract for the tenant, and the landlord, by taking the necessary procedural steps, was allowed to terminate the contract upon expiry of it. The tenant was offered a high degree of flexibility in choosing how long to stay in the rented dwelling, as she was allowed to unilaterally terminate a tenancy contract without providing any specific reasons. Likewise, the landlord was only allowed to terminate the tenancy contract on imperative reasons, which are mostly associated with a breach performed by the tenant. As for the differences, the principle of 'sale does not break hire' was respected unconditionally in Estonia and Latvia, but not Lithuania where it requires a registration in the Land Register. The Latvian treatment of tenancy contracts for unspecified term was the most inflexible, as they were treated identically to contracts for specified term. However, the minor aspects, such as pre-emptive right to renewal against other tenants, procedural aspects of communication, automatic renewal if no action is taken, and the open possibility to introduce first generation rent control placed Lithuania in the top of granting stability to the tenants, followed by Latvia and Estonia. On the other side, the landlords' surety and regularity of income was best protected in Estonia, due to the considerably faster judicial proceedings. Thus, the first research question can be answered as follows: according to the pre-2021 tenancy regulations the most stability in tenancy relations for the tenant was provided in Lithuania, however, the least amount of risk to the landlord – in Estonia.

Tenure can be divided in two large groups – owner-occupied and tenanted. Each of them has their advantages and disadvantages. As for owner occupied, the greatest benefit is the acquisition of an asset over time and stability in times of financial distress. Nevertheless, the returns of the acquired asset are, usually, overestimated by people, as evidence shows that the average yearly return of asset prices in real terms in the long-run is only 0,3%. The major drawbacks of owner-occupancy are the high entry costs in the form of down-payment for a mortgage, and the hinderance of mobility due to high transaction costs of exchanging the assets. On the other hand, the main benefit of tenancy is the mobility due to the relatively low transaction costs of moving to another rented dwelling. Additionally, tenancy is at minimum a necessary first step on the housing ladder, as it does not require substantial savings to rent a dwelling. The major disadvantage is the insecurity in times of individual financial distress. For the society as a whole, the mobility associated with tenancy allows for productivity gains due to increased labour mobility. Thus, the answer to the second question is as follows: tenancy captures the spill-over effects of mobility in the form of increased

labour productivity, as well as provides housing for the less financially stable, including young people.

All of the Baltic states exhibit a high share of owner-occupancy as a type of tenure. At first sight, it might seem that the tenancy market is the most developed in Latvia, as it exhibits the highest share of private rental tenancy among the Baltic states. However, when looking in perspective with the EU, all of the countries have relatively low rates of private rental tenancy, ranging from 1%, to 4%, to 7% for Lithuania, Estonia, and Latvia, respectively. Latvians seem to enjoy the lowest housing cost overburden rate, as well as the lowest share of rental payments in total disposable income. Moreover, the levels are low also when compared to the EU average. However, such seemingly inexpensive tenure at private rental tenancy comes at a cost. More than 60% of rented dwellings are overcrowded, and nearly a half out of those are in inadequate technical condition. However, it is suspected that such conditions are not completely voluntary. There seems to exist a shortage of adequate quality housing for an affordable price on the market, with the available housing being unproportionally more expensive to the level of increase in level of quality it provides. The situation is similar in Lithuania. However, the Estonians, although spending a larger share but still less than European average, seem to be able to acquire an adequate quality housing. In light of the said, the answer to the third research question is as follows: there seems to be a negative correlation between the stability provided to tenant and the development of a tenancy market, and a positive correlation of providing the least amount of risk to the landlord and development of the tenancy market.

The legislator of the new residential tenancy law in Latvia has set two aims for it to reach. First, a balance between the rights and obligations of the parties to a tenancy contract. Second, to increase affordability of housing. By applying the principles of a 'regulatory equilibrium' to the level of rights and obligations granted to each of the parties to a tenancy contract, it is inferred that they are unsatisfactory to establish a 'regulatory equilibrium'. The rights and obligations of the landlord are respected almost to the fullest. However, those of the tenant have not been improved to guarantee stability, thus making tenancy look like an inferior type of tenure in the eyes of the tenant. As for the second aim, in line with the answer to the third research question, such a 'regulatory equilibrium' is not needed to increase the supply of adequate quality housing in the underdeveloped tenancy market present in Latvia. By applying the laws of supply and demand, a rightward shift of the supply curve lowers the equilibrium price in the market. Furthermore, multiple housing developers have expressed intentions to perform significant investments in the rental housing stock, after the new tenancy law is implemented. Thus, the answer to the fourth research question is as follows: the new tenancy law should reach the aim of increasing affordability of housing by increasing the supply of adequate quality housing to the market, however, it will not reach a balance between the rights and obligations to the parties of a tenancy contract.

Nevertheless, the importance of demand in the rental housing market should not be underestimated. A well-functioning tenancy market requires both – a stable supply and a stable demand. In the long-run, it is at interests of both parties to increase the stability offered to the tenant, after the supply will have caught up with the existing demand. In light of the foregoing, the hypothesis set at the beginning of this article has to be rejected, since for the tenancy to become a viable substitute to home-ownership it has to be not only affordable, but also grant stability to the tenant in the long-run.

APPENDIX 1

Rent control	LV old	EE	LT	LV new
1 st generation rent control	-	-	+/-	-
2 nd generation rent control	+	+	+	+
Landlord's obligation to provide reason for rent increase	+	+	+	-
Rent adjustment for contracts for unspecified time prohibited	+	-	-	+
Tenant's right to contest rent as being excessive	-	+	-	-
Renewal	LV old	EE	LT	LV new
Tenant possesses universal right to ask for renewal	-	-	-	-
Automatic renewal	-	+	+	-
Tacit renewal	+	+	+	+
Sitting tenant's priority against newcomer tenant	-	-	+	-
Termination	LV old	EE	LT	LV new
Unlimited right to terminate for tenant	+	+	+	+
Right to terminate only in situations prescribed in law for landlord	+	+	+	+
Termination of contracts concluded for unspecified term prohibited	+	-	-	-
Tenant's right to postpone termination due to hardship	-	+	-	-
Change of ownership	LV old	EE	LT	LV new
'Sale does not break hire' does not require registration in Land Register	+	+	-	-
New owner's need for personal use not a valid reason for termination	+	-	-	-
Previous landlord liable for damages against tenant in case of termination	-	+	-	-
Tenant's right to demand registration in Land Register	-	+	-	-