

Maltese law of letting and hiring:

Lessons from the past and solutions for the future

O regime maltês do arrendamento: lições do passado e soluções para o futuro

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October 2017

ABSTRACT: The Maltese government is currently seeking to address the question of how to regulate its private rented sector. A wave of foreign employees, driven by the remarkable economic growth of the island, has produced a dramatic rise in rental prices, thereby constraining a segment of the population to live in challenging housing conditions. Although a degree of regulation appears to be necessary in order to stabilise the increase in rents, proposals for government intervention in the sector are treated with significant scepticism as not only have overly-restrictive mechanisms led to the paralysis of the market twice in the course of the country's recent history, but due to governmental inaction, an appreciable number of rental contracts remain to this day subject to a disproportionate, and in some cases even unjustified, controlling method. In the light of the fact that neither over-regulation nor complete liberalisation appear to be viable solutions in ensuring the wellbeing of the sector, the administration is currently in search for a well-calibrated and flexible model, which is capable of ensuring stability for tenants and a sustained profitability for landlords at one and the same time.

KEY WORDS: Housing; Rent; Rent Regulation; Tenancy law; Tenant; Landlord.

RESUMO: A questão da regulamentação do sector privado do arrendamento encontra-se presentemente a ser trabalhada pelo governo Maltês. A chegada de uma "onda" de funcionários estrangeiros, atraídos pelo crescimento económico da ilha, desencadeou um aumento dramático das rendas, constringendo um segmento da população a viver em precárias condições de alojamento. Apesar da necessidade de alguma intervenção no sentido de estabilizar o aumento das rendas, as propostas governamentais têm sido tratadas com cepticismo, tendo em conta a história recente do país e a paralisação, por duas vezes, do mercado do arrendamento com medidas demasiado restritivas. No entanto, a inacção governativa levou a que muitos contratos permaneçam sujeitos a um controlo desproporcionado e até injustificado. Tendo em conta que nem o excesso de regulação nem a completa liberalização do sector parecem ser soluções viáveis para o problema, a administração procura um modelo flexível e bem calibrado, capaz de assegurar, ao mesmo tempo, a estabilidade dos arrendatários bem como o proveito dos senhorios.

PALAVRAS-CHAVE: Alojamento; renda; Lei das rendas; Lei do arrendamento; arrendatário; senhorio.

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1. Introduction

The Maltese experience may be considered as a simultaneous example of the dysfunction of both rigidly-controlled as well as completely liberalised models. Maltese tenancy law is, in fact, currently characterised by two diametrically opposed regimes. Rental contracts signed before 1995 are governed by a mechanism that grants lifelong security of tenure to sitting tenants and allows rents, as initially set (even as far back as the 1930s), to increase every three years in line with the index of inflation. On the other hand, agreements entered into after the 1st of June 1995, including present ones, need not be contracted for any minimum duration and initial prices and eventual increases are not regulated in the least manner.

The Maltese tenancy market must be understood in the light of the home ownership promotion policies sustained by successive administrations since the 1960s. During the times of housing distress, with its acutest phase being the post-WWII period, sitting tenants were protected through rent-controlling statutes, whilst new households looking for accommodation were actively supported in building their own homes. This led to a situation of relative equilibrium until in the late 1980s Malta embarked on a series of pro-market policies which underlined the asset value of property (this was also heightened by the tracing of development boundaries that led to a steep surge in property prices). This changing scenario had a dual effect: economically, that of rendering controlled rents artificially low when compared with the surging values of property and wages (see Annex 2), whilst politically, that of instilling a negative public sentiment towards government intervention and regulation in general.

In the mid-1990s, therefore, the Government embarked on a liberalising policy in an attempt to breathe new life into the private rented sector. In 2010, it once again reaffirmed its non-interventionist intentions through another reform which, under the pressure of a string of European Court of Human Rights (ECHR) decisions condemning the Maltese State for property rights violations, attempted to start phasing out pre-1995 controlled leases.

The 2010s, however, were to once again expose the perils of an entirely liberalised system. The strong economic performance of the country attracted a considerable number of foreign employees whose automatic choice was the renting of property. This meant that the average rent of a one-bedroom apartment in Malta went from €438 in 2010 to €579 in 2016 (30%), leaving many low-income earners, including pensioners, who would not be granted sufficient credit to purchase an immovable property in a situation of significant housing instability.

2. The history of rent regulation in Malta

Rent regulation in Malta consists of a series of extreme political oscillations between control and liberalisation, are described in more detail below.

2.1. The Rent Restriction (Dwelling Houses) Ordinance (1944)

The first robust rent control measures were enacted in the aftermath of the Second World War.¹ The administration of the island gave life to the “Rent Restriction (Dwelling Houses) Ordinance”² through which the rent of houses built before 1939 was frozen at its pre-war level, while those tenements erected after the war became subject to the jurisdiction of the Rent Regulation Board. The bill was amended in 1947 since the local government set out to provide more low-rent dwellings for the population.³ The amendments of 1947 established that the new “Fair Rent” for houses built after the war would be lowered to a sum equivalent to a return of 3% per year on the freehold value of the site and 3.25% on the capital outlay on construction.⁴ Security of tenure was also prolonged indefinitely with tenants enjoying lifetime protection, with the additional right of transferring their rights onto their descendants *causa mortis*. By this stage owners of houses built prior to 1939 had already been placed at a disadvantage since the frozen rates had in actual fact taken the shape of a real subsidy towards tenants. Furthermore, the price-fixing mechanism soon disincentivised any further investment in the private rental market until, as a result of its stagnation, it was ultimately liberalised through the Housing (Decontrol) Ordinance of 1959.

2.2. The Housing (Decontrol) Ordinance (as amended in 1979)

The second cycle of rent regulation commenced in 1979. Right after its independence in 1964, in fact, Malta faced another period of insufficient supply and housing had assumed such political prominence that the election of the Labour Party was attributed to the promise of tackling this shortage.⁵ This situation shifted the national policy towards socialist ideals amongst which security of tenure and affordable housing. In 1979, three years after its re-election, the Labour Party was called to amend the rent law. Upon the termination of their lease, Maltese citizens could no longer be evicted since their leases would be renewed automatically. Moreover, landlords were prohibited from asking new tenants for higher rents, vary the rent during the same lease or ask tenants to pay for repairs in the absence of an attached certificate, attesting the good state of the dwelling, to the original contract.⁶ Lifelong protection, with the additional right to transfer the lease *causa mortis*, was once

¹ The first intervention had come in 1925 through the “Control of Rents of Immovables Act” which stipulated the tacit renewal of the lease upon the landlord’s failure to give due notice within a 15-day period and the setting up of an Arbitrary Commission on leases. The “Urban Rent Regulation Act” of 1929 eventually gave birth to a regulatory body that would oversee all the matters dealing with rent: the Rent Regulation Board. This Board was bestowed unprecedented powers and was set up with the purpose of determining whether to allow the landlord to evict a tenant or to change the conditions regulating the said lease. A subsequent body of rules was eventually reinstated singlehandedly by the Governor of the island in 1931 as the *Reletting of Urban Property Ordinance* which was heavily based on its 1925 predecessor.

² Now indexed as Chapter 116 of the Laws of Malta.

³ A. CAMILLERI, “Building Trends and Policies 1943-1981”, Dissertation submitted to the Department of Architecture and Civil Engineering, University of Malta, 1982.

⁴ These were lowered from 3.5% and 5% respectively.

⁵ J. BOISSEVAIN, “Contesting Maltese Landscapes”, *Journal of Mediterranean Studies*, 2001:11(2), 280.

⁶ Housing (Decontrol) Ordinance, Article 5.

again guaranteed to tenants although increases were allowed to take place, in line with the index of inflation, after the lapse of a fifteen-year period. Despite this possibility, rents were at no point allowed to exceed double the value of the previous rent.⁷ Predictably, these measures eventually led to a further paralysis of the sector as the controlled rents detached themselves excessively from the market rents that could be imposed. The liberalisation of the market, therefore, took place precisely in 1995 through the Housing Laws (Amendment) Act.⁸

2.3. Human Rights issues relating to rent control statutes

Besides engendering the decline of the market, controlled leases also started bearing important implications at a human rights level. The turning point, at a continental level was represented by the judgment of *Hutten-Czapska v. Poland*⁹ in which the ECHR veered towards a decisively more liberal interpretation of Protocol 1 Article 1 (P1-1) with respect to rental cases. In this instance, the Court confirmed the principle that the wide discretion of the State in the housing sphere allowed it to decide whether to leave rents to the play of free-market forces or to subject it to statutory control, however, it further spelt out that a rent scheme that restricted the landlord's return to around 33% to 50% of the freely contracted rents was not legitimate. More specifically, the combination of the restriction of rent increases and the impossibility of receiving a return that was at least "reasonably commensurate" with the general costs of maintenance was found to "[impair] the very essence of [the applicant's] right of property"¹⁰ and, even more remarkably, the Court established the landlords' "entitlement to derive profit from their property".¹¹

These decisions had an inevitable effect on the Maltese scenario. As stated above, despite the liberalisation of the market in 1995, the previous two regimes (described under section 1.1 and 1.2) remained fully operative with respect to leases negotiated prior to that date. To the date of writing, the Court decided seven cases lodged against the Maltese State, in all of which the Court found a violation of the landlords' rights as protected by P1-1. The table below illustrates the amount of the statutory rents in proportion to their free market value.

⁷ Housing (Decontrol) Ordinance, Article 5(3)(c).

⁸ Act XXXI of 1995.

⁹ App. no. 35014/97, 16 June 2006.

¹⁰ *Hutten-Czapska*, §202 §235. The departure from the previous jurisprudential position, namely *Mellacher v. Austria* (App. no. 10522/83; 11011/84; 11070/84), was further justified on the basis of the stringent conditions attached to the termination of the lease and the absence of any maintenance contribution, or State subsidy in such respect, that prevented the property from deteriorating due to lack of modernisation [§224].

¹¹ *Hutten-Czapska*, §239. The Polish Rent Scheme was found to give rise to a "systemic violation" of the right to property.

Case	% of market rent fixed by statute
<i>Ghigo</i>	1.9% (in 2005)
<i>Fleri Soler and Camilleri</i>	1.6% (in 2006)
<i>Edwards</i>	11.6% (1976-1996) 11.4% (1997-2006)
<i>Amato Gauci</i>	6.3% (in 2002) although if rent had been challenged in front of RRB it would have been raised to an equivalent of 12.5%
<i>Aquilina</i>	2.25% (until 2010) 6.4% (following reform)
<i>Zammit and Attard Cassar</i>	12.3% (until 2010) 15.8% (following reform)
<i>Apap Bologna</i>	16% (in 1987) 6.5% (following reform)

Table 1 Percentage of market value fixed by rent control statute

The Court underlined the fact that given the considerable discrepancies between the maximum rents allowed by the legislation and their actual market values, the amounts of which they were in receipt could never constitute “fair compensation”.¹² Whilst asserting that due to the large margin of appreciation afforded to States, they could impose “significant reductions” in the amount of rent chargeable, they could not subject landlords to such “minimal profits” that would have remained so regardless of any additional procedures that they might have taken.¹³ The Court further held that the State had ultimately required the applicant to bear most of the social and financial costs of providing housing accommodation.

These judgments have a wide-ranging effect on the scope of policy-making since they represent new juridical standards in the particular sphere of property law and housing. The reinforcement of landlord’s property rights represent the prohibition of any measure that shifts the entire burden for the provision of social housing on the backs of private owners. Thus, European jurisprudence has moved steadily away from the doctrine that allowed State parties unlimited discretion in the field of housing policy and by introducing the fair balance test it guaranteed applicants an effective assessment of the situation complained of.

¹² *Fleri Soler and Camilleri v. Malta*, Fourth Section, App. No. 35349/05, 26 September 2006, §74.

¹³ *Fleri Soler and Camilleri* (2006), §§75,78.

One can, therefore, conclude that the position of the ECtHR in respect of rent control is adamantly against any model that proposes the complete detachment of rents from their market prices. The reasons for which the Maltese regimes were found to run contrary to human rights were summarised by the Court in the first judgment of *Mifsud v. L-Avukat Generali*¹⁴:

- a. the low amount of rent which did not reflect the market value of the property
- b. the compulsory once-every-fifteen year increase
- c. the method in which the increase would be calculated was solely based on the index of inflation without one considering the value of the property as a relevant factor
- d. the state of uncertainty in relation to when the owner would have the right to regain possession of the dwelling; an uncertainty that kept existing despite the restriction of the definition of the word "tenant" through the 2010 reform
- e. the lack of procedural guarantees in cases where he would need the premises for his personal use or that of any family member or where the tenant would not deserve that protection.

This brief overview allows us to extract two main shortcomings from the rent control mechanisms applied in the past. First of all, when it was decided to intervene in favour of tenant, the latter was given excessive protection, specifically: i) a lifelong security of tenure which was further capable of being transferred to successive generations and ii) a complete freezing of rents which would not be allowed to increase if not superficially and after an excessively long span of time. The indefinite pegging of rent increases to indexes that were entirely detached from the values of the private rental sector, may only yield disproportionate results. This is demonstrated by the comparison amongst the average wage, the real house prices and the index of inflation illustrated in Figure 1 below. The most important lesson to be drawn from the Maltese experience, however, is that contrary to popular belief, it is not any kind of regulation that hampers investment in the sector, but simply one that does not allow landlords sufficient profit and sufficient reassurances should they desire to retrieve the possession of their property or decide to capitalise their assets through resale.

¹⁴ Civil First Hall (Constitutional Jurisdiction), 18 September 2012, Rik. 33/2010.

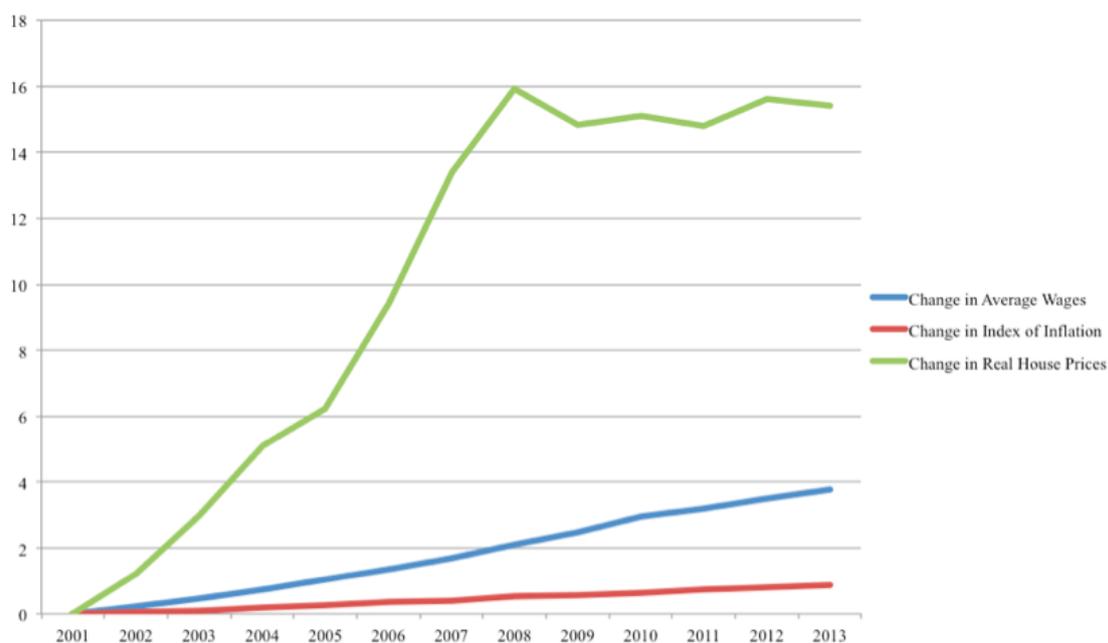


Figure 1 Change in Average Wage, Index of Inflation and Real House Prices (base=100)

3. The Current Situation

The frequent regulatory shifts described above together with the active promotion of self-build by government, had the result of rendering leases increasingly unappealing to local households. Table 2 shows how since the post-war period the share of renting households has been consistently diminishing.

Year	1948	1957	1967	1985	1995	2005	2011
Owner occupied	23.1%	26.1%	32%	53.9%	68%	75.2%	76.5%
Rented ¹⁵	76.9%	73.9%	68%	46.1%	23%	20.6%	19.9%
No. of occupied dwellings	69,965	70,950	74,069	101,509	119,479	139,178	152,770

Table 2 Trends of Owner Occupied and Rented dwellings in Malta out of entire housing stock¹⁶

¹⁵ Figures for rented properties include public dwellings being rented out by government.

The following Census might, however, register the first increase in the proportion of rented dwellings as Malta has witnessed a dramatic increase in its population due to the rising numbers of foreign employees who seek employment in the country’s booming economy. Figure shows how the number full-time and part-time foreign workers more than quadrupled from 2006 to 2014. One of the main drivers was the online gaming industry, which took advantage of Malta’s favourable regulatory condition and it has been reported that half of all the new jobs being created in this specific sector are being taken up by foreign workers due to the fact that not enough Maltese are in possession of the necessary skills to fulfill these roles. In 2014 it was estimated that only three out of every 10 jobs in the I-gaming industry were taken by Maltese.¹⁷ Foreign workers are also numerous in the professional services and administrative support activities, as well as in the construction and information and communication sectors. The tourism industry also relies heavily on migrants workers with hotels and restaurants employing a considerable degree of foreign employees.¹⁸

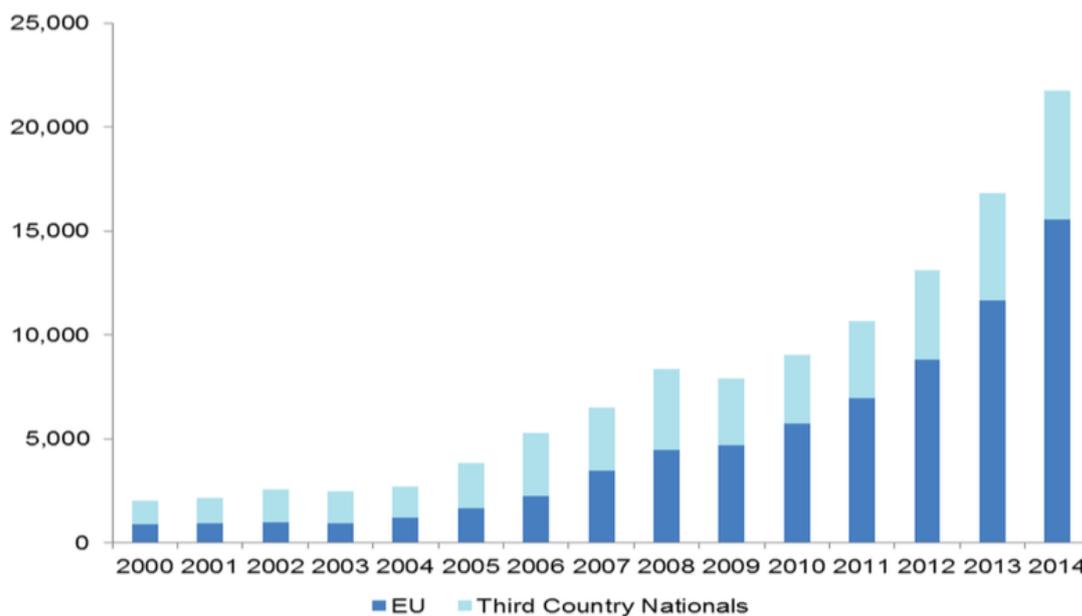


Figure 2 Number of full-time and part-time foreign workers¹⁹

In the absence of the least degree of regulation (unregulated in the sense that the only law governing the contract of letting and hiring is the Civil Code which does neither set any restrictions on the setting of rent or the duration of the contract), this sudden influx resulted

¹⁶ Source: A. CAMILLERI, *Malta: A Plea for Bi-partisan Consensus*, paper presented to the Housing Affordability Conference, Malta, 1999; data relating to 2005 retrieved from: NSO, *Census on Population and Housing 2005*, xiv; data relating to 2011 retrieved from NSO, *Census on Population and Housing 2011*, 246.

¹⁷ I. MARTIN, "18,000 foreign workers in Malta", *The Times (Malta)*, 11 February 2014.

¹⁸ Ibid. Grech, 2015, 14.

¹⁹ Ibid. Grech, 2015, 7.

in a rental crisis, wherein prices for one-bedroom flats in 2016 soared unpredictably by 64% over the 2012 average.²⁰ Besides problems of affordability there also emerged instances of increasing abusive behaviour on the part of landlords.²¹

3.1. The Main Features of the Liberal regime

In this light, it is worth examining the regulatory shortcomings that contributed to these results. For the purpose of this exercise, the author is going to utilise the model devised by Nasarre.²² The analytical framework identifies seven drivers that determine the health of the private rented sector. Three aspects are fundamental for the tenant: a) affordability, b) stability and c) flexibility, whilst four aspects are imperative for the landlord: a) profitability, b) rehabilitation capabilities of the dwelling, c) guarantees for the performance of tenant's contractual duties and d) the expeditiousness of eviction procedures.

3.1.1. Tenants' Evaluative Criteria

a) Affordability

The Civil Code does not impose any restrictions on the setting of initial rents or their increases. This liberal framework which, as the current experience has shown, is incapable of absorbing sharp increases, is the main factor that allowed this climate of speculation. Amid fears that government intervention, of whatever degree, would paralyse the market, the administration chose to double the subsidies available for tenants and those applicants who do not possess assets exceeding €23,300 from one year prior to the date of application may receive monthly assistance of up to €166 a month (the amount varies according to family size and income). The government also sought to extend the criteria under which families qualified for this subsidy; its target is to double the number of families benefiting from this scheme from 1,400 to 2,800.²³ Nevertheless, the mere reliance on State subsidies has proved to be insufficient as in the absence of a stabilising mechanism, nothing impeded landlords from further increasing rents and absorbing the increased subsidies themselves.²⁴

²⁰ NSO, *Average Monthly Rents*, 2017.

²¹ H. GRECH, "The minefield that is Malta's rental market - from incorrect bills to abusive landlords", *The Malta Independent*, 18 September 2017.

²² S. NASARRE AZNAR, "Leases as an Alternative to Homeownership in Europe. Some Key Legal Aspects", *European Review of Private Law*, 2014:6, 815-846.

²³ E SCICLUNA, Budget Speech 2017, Ministry for Finance, 2016, 47-48.

²⁴ "Muscat underlines government efforts to make the country 'future-proof'", *The Sunday Times of Malta*, 6 August 2017. Available on: <https://www.timesofmalta.com/articles/view/20170806/local/muscat-underlines-government-efforts-to-make-the-country-future-proof.655058>.

b) Stability

The Civil Code does not impose any minimum duration for rental contracts. This means that in Malta, residential leases could be negotiated for any term that is agreed between the landlord and tenant ranging from one day, to any number of years. The rapid fluctuations within the Maltese private rented sector promotes short-term agreements ranging from six to twelve months in order to allow landlords to renegotiate the terms of the agreement more frequently, and thereby press the tenant for a higher rent. In general, much to the detriment of tenant stability, the absence of at least a minimum compulsory duration has made Maltese landlords think along the lines of short-term capital gains rather than longer-term investment.

c) Flexibility

In line with the tenet of *pacta sunt servanda* (i.e. contracts have a binding force between parties) tenants are bound to respect the entire term contracted with the landlord. Therefore, in the absence of the specific clause regulating premature withdrawal, the tenant does not have the right to demand termination unilaterally.²⁵

The tenant's possibility of leaving a property before the expiration of the term also depends on whether and under which conditions he would be allowed to transfer the lease to another tenant. The two means through which this could be done under Maltese law are either the subletting or the assignment of the lease, but these possibilities were significantly reduced through the 2010 amendments. The position was, in fact, inverted and the tenant is not entitled to sublet the lease or assign it to a third party unless such right was specifically agreed upon in the contract.²⁶

3.1.2. Landlords' Evaluative Criteria

a) Profitability

The decision to revert to the liberal Civil Code provisions in 1995 was precisely motivated by the need to render the private rented sector profitable, and thereby, attractive for investors. The Civil Code, in fact, does neither foresee the establishment of a minimum rent nor a limitation of their increases (except for Article 1531C which is, however, only applicable in respect to pre-1995 agreements). On the other hand, it envisages a situation where rents

²⁵ *Emmanuel Cauchi et v. BCF Holding Limited et*, Civil Court (First Hall), 28 June 2006, Cit. 1852/2001/1.

²⁶ Civil Code, Article 1614.

would be governed by the rules of the free market, thereby guaranteeing maximum profitability for investors.

b) Rehabilitation capabilities

The conception of private leases as short definite agreements has to a large extent diminished the role of the landlord's ability to renovate or refurbish the property during the course of the same lease. This particular aspect acquires an entirely different dimension in case of longer-term or indefinite leases. Under the Maltese law the landlord may not conduct any structural repairs during the course of the tenancy unless these were necessary since, as held in the case of *Baruni Lino Testaferrata Bonici v. Joseph Formosa*.²⁷ The Court has also asserted very clearly that the landlord may only conduct repairs that are deemed *necessary* during the course of the tenancy and it was only in such cases that the tenant would have to tolerate the loss of the use of the dwelling.²⁸

As regards ordinary repairs, the recent amendments have shifted greater responsibility onto the tenant (as stated above, one of the main objects of the most recent revision was that of creating more favourable conditions for landlords). The responsibility of the tenant has now been widened to include any repairs beyond those relating to the structure of the building itself, including the ceilings.²⁹ Exception is made for damages that are caused by decay or "force majeure" or by no fault of the same tenant.³⁰

The duties of the landlord have been briefly summarised by jurisprudence as all the repairs that become necessary saving for: i) those that the law, or the private lease agreement, allocates to the tenant, ii) those damages for which the tenant is liable due to fault or negligence, iii) those that are not necessary for the enjoyment of the property.³¹

c) Guarantees

Guarantees are a fundamental aspect for any investor, particularly in the rental market where landlords risk facing rent and utility arrears, defaults and even damage to their property. Under any system of law, guarantees can be both *ex ante* (such as a deposit or the request of a surety) as well as *ex post* (such as liens and insurance agreements). Another guarantee for the landlord is his possibility of retrieving the use of his property in the case that he proved certain personal circumstances.

²⁷ Commercial Court, 16 June 1955, Vol. XXXIX(D).III.884.

²⁸ Civil Code, Article 1548.

²⁹ Article 1540(3).

³⁰ Civil Code, Article 1557.

³¹ *George Zammit v. Michele Galea*, Civil Court (First Hall), 22 February 1957, Vol. XLI(D).II.iii.911.

A regards deposit, there exists no specific provision in the Civil Code, therefore, besides the absence of any deposit retention schemes there also exist no limitations to the amount that could be requested by landlords. Jurisprudence has, however, laid out a number of guidelines that regulate the practice of retaining deposits. First of all, as was held in *PSS Holdings Limited v. Warren Tabone Valetta et*³² the landlord claiming the retention of the amount must be capable of proving the damage, at least on a balance of probability. More importantly, the Court of Appeal has held that any amount left as a deposit must be set off with any rent arrears, since if the landlord were simultaneously allowed to retain the entire deposit on top of the recovery of any arrears, the Court would be permitting a situation of unjustified enrichment to take place in his favour.³³

The Civil Code also grants a special privilege to the landlord over particular movable property belonging to the lessee³⁴ (jurisprudence has clarified that in order for this privilege to be regularly exercised, the landlord needed to obtain a warrant of seizure).³⁵ Nevertheless, the landlord may not dissolve the contract on the basis that he desires the property for his own habitation as long as this right would have been “expressly stipulated” in the contract.³⁶

d) Eviction Procedure

The Maltese legal framework reserves all matters relating to the rental of immovable property to the Rent Regulation Board (RRB)³⁷ as constituted by the Reletting of Urban Property (Regulation) Ordinance.³⁸ Other than the specialised Board, the law also foresees an expedite procedure through which, in the absence of a valid *prima facie* defence by the tenant, the landlord would obtain an eviction order on the first hearing.³⁹ Thus, demands made solely for the eviction of any tenant from the rented premises, regardless of whether the landlord would have a claim for any unpaid rents or for any other consideration due by way of damages, can be decided without proceeding to trial.

The summary of the key aspects for both landlords and tenants under the Maltese Civil Code is illustrated in Table 3 below. In the fourth column each particular element is graded in a scale of: high, medium and low, depending on how advantageous it is to the respective contracting party.

³² Small Claims Tribunal, 31 May 2013, App. Nr. 571/2011.

³³ *Prof. Albert Fenech v. Michel Vat et*, Court of Appeal (Inferior), 16 December 2014, App. Civ. Nr. 209/2011/1.

³⁴ Article 2009(e).

³⁵ *Mario Galea v. Francis Cardona et*, Small Claims Tribunal, 17 April 2008, Talba Nr. 40/2006.

³⁶ Article 1573.

³⁷ Civil Code, Article 1525(1).

³⁸ Article 16.

³⁹ Reletting of Urban Property (Regulation) Ordinance, Article 16A.

L A N D L O R D	Profitability	No rent restriction: LL's absolute discretion to set initial rents and any eventual increases	High
	Rehabilitation capabilities	LL cannot effect repairs or improvements unless necessary: hardly affects investment due to short-term nature of tenancy	Low (discourages long-term leases)
	Guarantees	LL may request any form of guarantee: no limit on advance payments, possibility to recover dwelling (if foreseen in contract)	High
	Eviction Process	Specialised court and summary eviction procedure	High
T E N A N T	Affordability	No control on initial rate nor on frequency or amount of increase	Low
	Stability	No minimum duration. No obligation by LL to give notice or to renew agreement	Low
	Flexibility	T bound to pay full term until expiration of contract; T cannot sublet premises unless agreed upon in contract	Low

Table 3 Key Aspects for Landlords and Tenants

This brief analysis reveals the true workings of the theory of freedom of contract when applied to the field of tenancy law. Although the naïve assumption leads to the belief that if unobstructed, it would adjust itself naturally to the interaction of supply and demand, when analysed in practice it exposes a system which, in case of the least market imbalance, favours exclusively the interests of the landlords. As may be seen in Table 2, the Civil Code regime represents high across-the-board advantages for landlords (except for rehabilitation capabilities which are, however, hardly relevant in case of short-term leases) but few benefits for tenants. Under the present system, leases in Malta are indeed unaffordable, unstable and inflexible.

4. The possible way forward

The Maltese experience, as analysed in detail under Sections 1 and 2, shows that the property market is so dynamic that it must necessarily contain a degree of control in order to ensure adequate housing conditions at least for the medium-term. Nevertheless, due to this very same dynamism, controlling mechanisms must be flexible enough to allow the market to remain a profitable and, therefore, a functional one. Thus, whilst it must be ensured that the market remains profitable for landlords, the legislator must seek alternatives to keep rentals stable for a reasonable period of time. Long-term protection involving price-freezing mechanisms has proven, twice already, to be counterproductive as they engender the paralysis of the sector. This could be best achieved by establishing minimum terms of duration accompanied by a cap on the permissible increases during the course of that same term, which would render rents predictable at least until the termination of that medium-term agreement. Models of reference in this case are France and Italy which both provide a compulsory duration which could be further renewed unless the landlord has a valid ground on which to oppose the renewal.

The minimum length of contracts in France is that of three years for individual market landlords and six for institutional market rental landlords, however, if the landlord does not offer a new contract with a new rent within six months of the expiration of the old one, the latter contract would be automatically renewed for three years under the existing terms.⁴⁰ In Italy, the minimum duration is that of four years with a right to renew the tenancy for a further four years unless the landlord gives notice on the basis of the exhaustive list of circumstances foreseen in the law.⁴¹ These grounds include: the landlord's need of the dwelling for himself or for any relative up to the second degree for any residential, commercial or professional activity; the tenant's gratuitous availability of a similar premises in the same municipality; the landlord's need to repair any serious damage to the building where the tenant's presence would impede the said works; the landlord's need to restructure the building and; the tenant's non-use of the dwelling (saving any legitimate reason).⁴² After the expiration of the second term, the landlord is free to terminate the contract for whichever reason, although if neither of the parties gives notice to the other the contract would be renewed at the same conditions for a further term.

The main commonality in both these models is that whilst allowing the free setting of rents⁴³, thus permitting a market return to landlords, it in turn ensures a minimum term of stability

⁴⁰ F. CORNETTE, *National Report for France*, TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, p. 119. Available on: <http://www.tenlaw.uni-bremen.de/reports/FranceReport_09052014.pdf>.

⁴¹ Law 831/1998, Article 3 as quoted in R. Bianchi, *National Report for Italy*, TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, 2014.

⁴² Interestingly the law also gives landlords the right to refuse the renewal of the lease if they would be about to sell the immovable although in such cases the tenant would have a right of preemption. Furthermore, this right is restricted to small landlords (i.e landlords who would not own any other dwellings besides the rented dwelling and their own residence).

⁴³ An exception in France is made to the "strained" areas as determined by the ALUR Act of 2014 (Loi n° 89-462 du 6 juillet 1989, Article 2). Special Rent Observatories will have the specific task of collecting and controlling private rental data in the most reliable and accurate way possible. The indicators that the observatories would be in charge of publishing are those relating to the "median rent"⁴³ of reference calculated from the "stock" of all existing rents. This figure would, in turn, yield the maximum allowable rate set at 20%

for all renting households. The decisive compromise, in terms of the seven criteria assessed above, is that between landlord profitability and tenant stability. Such arrangements are, nevertheless, backed by an active involvement by the administration in overseeing the conditions of the market and in ensuring that forecasted increases in demand would be met by a range of incentives meant to foster supply. Monitoring structures must necessarily be in place in order to enable government to gauge and assess the subsidies granted to the more vulnerable segment of tenants, thereby ensuring that rents would remain affordable for all socio-economic categories.

5. Final Remarks

It would be too facile to state that since rent control mechanisms led to the decline of the sector in the past, then the very idea of State intervention in the rental market should be dismissed. Attempts at regulating the market in Malta failed because they were culpably allowed to outline the timeframes within which they would have been considered legitimate; in this respect, the government is yet to devise an adequate phasing-out strategy for 'old' pre-1995 rentals. The way forward is for the government to explore solutions that could promote increased stability in the market with the objective of setting a fair playing field within which landlords and tenants may conduct their negotiations. In summary, the main lessons to be learnt are the following:

a. The small Maltese market is, in itself, a demonstration that property markets are extremely dynamic as well as greatly susceptible to demographic changes. The recent years have, in fact, witnessed a shock in demand, which landed the country into an affordability crisis. The main reasons for which Malta was caught unprepared were: i) the lack of any regulatory mechanisms that sought to buffer the impact of vertiginous rent increases, ii) the absence of a rent observatory that could foresee the price changes in time and recommend the necessary policies to mitigate the effects of the market imbalance.

b. A stabilising mechanism is necessary in order prevent sudden market fluctuations from destabilising the housing conditions of local households. Maltese experience has shown that price-fixing mechanisms, pegged to artificial indexes for an indefinite time-period lead to market dysfunctions. The direction to take is, therefore, that of low-to-moderate regulation which is capable of providing stability from the short-to-medium term but which guarantees the landlord's recovery of the use of the property after the specified time-period.

c. There also exists the need for a monitoring body, tasked specifically with overseeing the market conditions. This body would have two primary functions: first of all that of introducing a necessary degree of transparency in the pricing of rents. The absence of a

above the median rent and the minimum at 30% below.⁴³ The legislation has therefore created a range above or below which the both the tenant or the landlord, depending on the case, would be entitled to request a reassessment of the rent.

public index as to the average rents in each locality was certainly a factor that favoured speculation and accelerated the increases. Secondly, an indication as to the mean prices would also enable government to be more effective in the administration of subsidies. An updated index accompanied by a minimum compulsory duration would also ensure that the subsidies are not reabsorbed by immediate rent increases.

d. Intervention in the private rented sector must have its foundations in the recognition of housing rights. National legislation must recognise the State's obligation to guarantee adequate housing conditions for every individual, and to acknowledge that the object being contracted in rental agreements is not an ordinary consumer product, but a unit conducive to the realisation of a fundamental human right i.e. the right to a 'home'.

6. Conclusion

The State must look towards achieving a functional private rented sector that is further capable of safeguarding the rights of those who participate in it. Rather than relinquish its role as a regulator it must strive towards mediating between the respective interests of landlords and tenants and oversee the fairness of the conditions being negotiated. This must be done in the light of the Maltese experience with rent regulation, which demonstrates that a completely free market inevitably leads to the same levels of unease as over-regulation.

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(texto submetido a 2.10.2017 e aceite para publicação a 11.10.2017)